

EMPLOYER'S GUIDE TO

MAKING AN EMPLOYER GREENFIELDS AGREEMENT



STEP ONE

Follow this checklist for making an employer greenfields agreement:

- Your employer greenfields agreement meets the Australian Fair Pay and Conditions Standard (the Standard)
- You are eligible to make an employer greenfields agreement (refer to Employers, Additional information on Who can make an agreement, at www.oea.gov.au)

You can make an employer greenfields agreement if:

- The agreement relates to a new business that you propose to establish or are establishing
- You have not yet employed any of the persons who will be necessary for the normal operation of the business and whose employment will be subject to the agreement
- Potential protected award conditions have been noted and considered, if applicable to employees
- You have included a dispute settlement procedure
- You have not included prohibited content
- If applicable to you, you have included guarantee provisions for Victorian employees (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au)
- The agreement is signed by the employer and the full name and address of the person who signed the agreement is provided along with an explanation of their authority to sign the agreement

STEP TWO

Make your declaration by either:

- Completing the declaration online via www.oea.gov.au

OR

- Completing the *Employer Declaration Form – Employer greenfields agreement*, which is available to order or download from Publications - Employer greenfields agreements, on www.oea.gov.au

To declare that (in summary):

- The information provided is true and correct
- The agreement being lodged is an employer greenfields agreement

STEP THREE

Lodge your declaration and the employer greenfields agreement by either:

Lodging online via www.oea.gov.au

And ensure you:

- Complete the online declaration
- Attach a copy of the employer greenfields agreement

OR

Lodging by post at this address:

Office of the Employment Advocate
Locked Bag 12
MARRICKVILLE NSW 2204

And ensure you:

- Include the completed *Employer Declaration Form – Employer greenfields agreement*
- Attach a copy of the employer greenfields agreement
- Lodge the *Employer Declaration Form – Employer greenfields agreement* and the employer greenfields agreement, before you employ any persons who will be covered by the agreement

Note

- Your employer greenfields agreement starts to operate as soon as it is lodged.
- You will receive a receipt from the Office of the Employment Advocate (OEA).
- You must keep a signed copy of the Employer greenfields agreement for the duration of the agreement and for seven years after it is terminated.

IMPORTANT INFORMATION

Australian Fair Pay and Conditions Standard

An employer greenfields agreement cannot exclude an employee's entitlements under the Australian Fair Pay and Conditions Standard (the Standard).

The minimum conditions covered in the Standard are:

- (1) a federal minimum wage, Australian Pay and Classification scales casual loadings set by the Australian Fair Pay Commission;
- (2) four weeks paid annual leave per year (five weeks for continuous shift employees) up to two weeks of which can be cashed out if provided for in an employer greenfields agreement;
- (3) ten days paid personal/carer's leave per year and two days compassionate leave per occasion;
- (4) up to 52 weeks unpaid parental leave (maternity, paternity and adoption); and,
- (5) a limit to the maximum ordinary hours of work to 38 hours per week (which can be averaged over twelve months in an employer greenfields agreement or if otherwise agreed in writing) and reasonable additional hours.

Protected award conditions in bargaining

An employer greenfields agreement starts operating from the date it is lodged. When employees are employed the employer greenfields agreement will exclude award(s) that would otherwise apply to those employees.

Certain award conditions are protected and will apply when employees are employed subject to an employer greenfields agreement. Protected award conditions will become part of any employer greenfields agreement to the extent that the agreement does not expressly exclude or modify them. These award conditions can only be removed or modified by specific provisions in the employer greenfields agreement.

The protected award conditions are public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates, outworker conditions and shift/overtime loadings. Note certain award conditions applying to outworkers cannot be excluded or modified to provide a less favourable outcome.

Dispute settlement procedure

Every employer greenfields agreement must have a dispute settlement procedure. Where an employer greenfields agreement is lodged without a dispute settlement procedure, the model procedure in the *Workplace Relations Act 1996* will automatically apply.

Prohibited content

Some content cannot be included in an employer greenfields agreement. If such content is included when an employer greenfields agreement is lodged, it will be unenforceable, but it will not render the agreement invalid. There are penalties of up to \$33,000 for lodging an employer greenfields agreement which includes prohibited content. An employer can ask the OEA to check for prohibited content, before the agreement is made.

Prohibited content includes terms of a workplace agreement that:

- (1) deals with pay deductions and payroll deduction facilities for trade union membership subscriptions or dues
- (2) allows employees to receive leave to attend union training sessions or paid leave to attend union meetings
- (3) deals with the rights of trade unions or employer associations to be involved in dispute resolution (unless the organisation is the representative of the employer or employee's choice)
- (4) deals with right of entry by unions and employer associations
- (5) deals with the renegotiation of a workplace agreement
- (6) restricts an employer from using independent contractors or labour-hire arrangements
- (7) deals with the forgoing of annual leave credited to an employee bound by the agreement (otherwise than in accordance with the *Workplace Relations Act 1996*)
- (8) requires the provision of employee information to trade unions unless required by law
- (9) directly or indirectly encourages other persons bound by the agreement to become or remain a member of an industrial association
- (10) directly or indirectly discourages other persons bound by the agreement to not become or not remain a member of an industrial association
- (11) requires a person bound by the agreement to indicate support, or lack of support for persons bound by the agreement being members of an industrial association
- (12) allows persons bound by the workplace agreement to engage in or organise industrial action
- (13) prohibits or restricts disclosure of a workplace agreement's details by parties to the agreement
- (14) provides a remedy for dismissal for a reason that is harsh unjust or unreasonable
- (15) is discriminatory in that it discriminates against an employee bound by the agreement because of or for reasons including race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. A provision is not discriminatory merely because it provides for rates in accordance with the relevant Australian Pay and Classification scale or federal minimum wage; or discriminates on the basis of the inherent requirements of the employment; or it is in respect of employment in an institution conducted in accordance with particular teachings/beliefs of a particular religion or creed and discriminates on the basis of those teachings/beliefs and is done in good faith
- (16) is objectionable in that it is a provision that requires or permits any conduct that would contravene the freedom of association provisions of the *Workplace Relations Act 1996* including a provision that requires payment of a bargaining services fee to an industrial organisation
- (17) deals with a matter that does not pertain to the employment relationship (unless it is ancillary/incidental/a machinery matter/or is trivial)
- (18) directly or indirectly restricts the ability of Australian workplace agreements to be offered, negotiated or entered into, or
- (19) prevents an employer from making an Australian workplace agreement (this is the only type of prohibited content that is relevant for the content of pre-reform certified agreements, preserved state agreements and notional agreements preserving state awards).

For more information on prohibited content, refer to Employers, Additional information on Prohibited Content, at www.oea.gov.au.

Nominal Expiry Date

Employer greenfields agreement may include a nominal expiry date, up to a maximum of one year. Where an employer greenfields agreement does not include a nominal expiry date, its nominal expiry date will be the first anniversary of its lodgement. An employer greenfields agreement continues to operate following its nominal expiry date until it is either terminated or replaced.

Mandatory content for Victorian workplace agreements

For Victorian employers who are not constitutional corporations and their employees, workplace agreements must contain mandatory terms (guarantees of minimum wage rates and casual loadings) without which the workplace agreement would be void (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au).

Signing of the Agreement

An employer greenfields agreement must be signed by the employer and the person who signed the agreement must provide their full name and address with an explanation of their authority to sign the agreement.

Declaration

An employer greenfields agreement operates on lodgement. It is the employer's responsibility to make sure that the employer greenfields agreement lodged meets the legal requirements and to make a declaration to this effect.

If lodging the employer greenfields agreement online, the declaration can also be made online. If lodging by post, the declaration must be made on the *Employer Declaration Form – Employer greenfields agreement*, provided by the OEA.

Lodging

An employer greenfields agreement can be lodged online or by post. You must lodge before the employment of any persons whose employment will be subject to the employer greenfields agreement.

If lodged online, the lodgement can also be completed online.

If lodged by post, the *Employer Declaration Form – Employer greenfields agreement*, should be completed.

Remember: Lodgement is not completed until the declaration is received by the OEA.

Retention of signed agreement

An employer must retain a signed copy of the workplace agreement for the duration of the agreement and for a period of seven years after it is terminated.