



About the F85 application form

Application for reconsideration of whether an enterprise agreement passes the better off overall test

About enterprise agreements and applications for reconsideration of the better off overall test

Enterprise agreements are agreements made at the enterprise level that contain terms and conditions of employment.

The Fair Work Commission (the Commission) assesses and approves enterprise agreements. Before the Commission can approve an agreement, it must be satisfied that the agreement meets the requirements for approval set out in the *Fair Work Act 2009* (the Fair Work Act), including that the employees will be 'better off overall' under the agreement than they would be if the relevant award applied.

When applying the better off overall test, the Commission may only have regard to patterns or kinds of work, or types of employment, if they are reasonably foreseeable at the test time (section 193A(6) of the Fair Work Act).

The Commission can reconsider whether an enterprise agreement passes the better off overall test if:

- before approving the agreement the Commission had regard to patterns or kinds of work, or types of employment engaged in, or to be engaged in, by award covered employees for the agreement, and
- at the test time or a later time, one or more award covered employees engaged in other patterns or kinds of work, or other types of employment, to which the Commission did not have regard under section 193A(6) of the Fair Work Act.

An application for reconsideration of whether an enterprise agreement passes the better off overall test can only be made for an enterprise agreement that was made on or after 6 June 2023.

When to use this form

Use this form to make an application for the Commission to reconsider whether an enterprise agreement passes the better off overall test.

You can use this form if you are:

- an employer covered by the agreement, or an officer or authorised employee completing this form for an employer covered by the agreement
- an employee covered by the agreement, or
- an officer or authorised employee of an employee organisation covered by the agreement.

Lodgment and service of your completed form

1. **Lodge your application** and any supporting documents with the Commission.
2. You can lodge your application by post, fax or email, or in person to the [Commission office](#) in your state or territory.
3. **As soon as practicable** after lodging this application with the Commission, **serve a copy** of this application on:
 - each employer covered by the agreement, and
 - each employee organisation covered by the agreement.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make an application to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person's lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person's behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

- an employee or officer of the person or
- a bargaining representative that is representing the person, or
- an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](#) sets out further exceptions to the requirement to give notice and seek permission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Better off overall test - The better off overall test requires the Commission to be satisfied, as at the time the application for approval of the agreement by the Commission was made, that each award covered employee, and each reasonably foreseeable employee would be better off overall under the agreement than under the relevant modern award.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a state or territory.

Modern award – Awards are legal documents that specify minimum pay rates and conditions of employment. A modern award is an award that commenced on or after 1 January 2010.

Paid agent – In relation to a matter before the Commission, this is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, a Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or business responding to an application made by an applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the [Fair Work Commission Rules 2013](#) deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with applications for reconsideration of whether an enterprise agreement passes the better off overall test. The information will be included on the case file, and the Commission may disclose the information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information

Form F85 – Application for reconsideration of whether an enterprise agreement passes the better off overall test

[Fair Work Act 2009](#), section 227A

This is an application for the Fair Work Commission to reconsider whether an enterprise agreement passes the better off overall test.

The Applicant



These are the details of the person or organisation making the application.

Legal name of Applicant			
Applicant's ACN (if a company)			
Applicant's trading name or registered business name (if applicable)			
Applicant's ABN (if applicable)			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

What is the Applicant?

- An employer covered by the agreement
- An employee covered by the agreement
- An employee organisation covered by the agreement

Does the Applicant have a representative?

A representative is a person or organisation that is representing the Applicant. There is no requirement to have a representative.

Yes – Provide representative’s details below

No – Go to question 1

Applicant’s representative

These are the details of the person or organisation that is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Is the representative a lawyer or paid agent?

Yes

No

1. The Agreement

1.1 What kind of agreement is the enterprise agreement for which the Applicant wants the better off overall test to be reconsidered (the Agreement)?



A multi-enterprise agreement can be a supported bargaining agreement, single interest employer agreement or a cooperative workplace agreement.

A single enterprise agreement

A multi-enterprise agreement

1.2 What is the name of the Agreement?



Write the name exactly as it appears in the title clause of the Agreement and include the Agreement ID/Code Number if known.

1.3 Are you aware of any variations of the Agreement that have been approved by the Fair Work Commission (the Commission) under section 211 of the Fair Work Act since the Agreement was approved?

Yes

No

If you answered **Yes** – include the matter number of the application(s).

2. Employer(s) covered by the Agreement

2.1 What is the industry of the employer(s) covered by the Agreement?

--

2.2 Provide details of all of the employers covered by the Agreement:



If the Applicant is an employer covered by the Agreement, you do not need to provide the Applicant's details again.

Legal name of employer			
Employer's ACN (if a company)			
Employer's trading name or registered business name (if applicable)			
Employer's ABN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Attach additional pages if necessary.

3. Employee organisation(s) covered by the Agreement

3.1 Provide details of all of the employee organisations (if any) covered by the Agreement:



If the Applicant is an employee organisation covered by the Agreement, you do not need to provide the Applicant's details again.

Name of employee organisation			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

Attach additional pages if necessary.

4. The application

4.1 List the modern awards, if any, that cover the employer(s) and any of the employees covered by the Agreement.



You should include the MA number for each award. You can find the MA number on the [modern awards list](#) page on the Commission's website.

--

4.2 What are the patterns or kinds of work, or types of employment, engaged in by one or more employees covered by the Agreement, that the Applicant believes the Commission did not have regard to under s.193A(6) of the Fair Work Act when approving the Agreement?

See section 227A(2) of the [Fair Work Act 2009](#).

The Commission can reconsider whether an enterprise agreement passes the better off overall test if:



- before approving the agreement the Commission had regard to patterns or kinds of work, or types of employment engaged in, or to be engaged in, by award covered employees for the agreement, and

- at the test time or a later time, one or more award covered employees engaged in other patterns or kinds of work, or other types of employment, to which the Commission did not have regard under section 193A(6).

4.3 Does the Applicant consider that the Agreement passes the better off overall test as applied under section 227B(2) of the Fair Work Act?

- Yes
- No

If you answered **No** – Explain why the Applicant considers that the Agreement does not pass the better off overall test, using numbered paragraphs.

Attach additional pages if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	

Date	
Capacity/ Position	



If you are not the Applicant and are completing and signing this form on the Applicant's behalf, include an explanation of your authority to do so in the **Capacity/Position** section above.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS