Making a Single Enterprise Agreement

Step by step guide to making a Single Enterprise Agreement that is not a greenfields agreement

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This document is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Commission and its work. Reading this document is not a substitute for reading the specific provisions of the Fair Work Act 2009 that relate to Enterprise Agreement making and approval. The Commission does not provide legal advice.
Introduction

In this document you will find a detailed step by step guide to making a Single Enterprise Agreement, Sample timeframe for bargaining and lodging a Single Enterprise Agreement for approval, and a Checklist for making a Single Enterprise Agreement that you can follow to help you make a Single Enterprise Agreement (Agreement).

It will take you from the moment you consider making an Agreement with your employees, through to finalising the Agreement and having it approved by the Fair Work Commission (Commission).

Why make an Agreement?

Making an Agreement can have several advantages. Provided the Agreement will result in employees being better off overall than under their award, it can be used to tailor wages and working conditions to meet the needs of your business and your employees by:

- implementing terms and conditions that suit your own individual business needs for the term of the Agreement
- creating your own wage and classification structure
- giving you more control over payroll so that payroll resources can be arranged at a time that suits you
- where your employees are covered by more than one award, aligning hours and roster patterns.

Additional benefits may be that:

- case studies have demonstrated that employers, employees and representatives perceive some Agreement clauses to be productivity enhancing or innovative in workplaces
- by involving staff in the Agreement-making process, issues can be identified and strategies implemented in the Agreement that the award does not address
- an Agreement also provides protection from industrial action, which may otherwise be unlawful before the nominal expiry date of the Agreement.

Who can make an Agreement?

You can only make an Agreement with two or more employees. An Agreement cannot be made with a single employee.

STEP 1: Prior to bargaining

Bargaining involves negotiating the scope of coverage and the terms of a proposed Agreement.

It is important that all employees are aware of the proposed terms of the Agreement and their effect compared to their entitlements under the relevant award(s). Ensure that you accommodate the particular needs of your vulnerable employees, such as juniors or those who speak English as a second language when explaining the Agreement.
The Commission will need to be satisfied that you took all reasonable steps to provide information and explain the terms of the agreement, and the effect of those terms, to employees in an appropriate manner.

If you do not take reasonable steps to communicate with employees (by providing information and explaining the terms of the Agreement and their effect to employees in an appropriate manner), the Agreement may not be approved and the bargaining process may have to start again. Reasonable steps can include you actively facilitating bargaining representatives to inform employees (e.g. a meeting run by a union delegate to explain the effect of the Agreement on your behalf).

**Timeframes for making an Agreement**

**What is a day?**

In order to successfully make an Agreement, there are some actions you must perform within particular timeframes. These timeframes are usually expressed as a number of days before or after a particular act or event occurred or is to occur. When applying these timeframes, make sure that you do not count the day on which the relevant act or event occurred or is to occur. Depending on how it is proposed to deliver a document, you will need to allow additional time for a Notice or document to be delivered (e.g. if the information is being posted, allow extra time).

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**Example**

You are required to provide your employees with a document called the Notice of Employee Representational Rights (the Notice) no more than 14 days after you decide to commence bargaining. You decide to commence bargaining on 14 May 2019. The first of the 14 days will be 15 May 2019 and the last will be 28 May 2019. This means you must give your employees the Notice by no later than 28 May 2019.

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**Example**

You cannot hold a vote for your Agreement until at least 21 days after you provide your employees with the Notice. You provide your employees with the Notice on 28 May 2019. The first day after you provided your employees with the Notice is 29 May 2019, and the twenty-first is 18 June 2019. This means that your employees cannot start voting until on or after 19 June 2019.

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It is very important that you comply with any time limits set out in the *Fair Work Act 2009* (the Act), as non-compliance could result in your Agreement not being approved and the bargaining process may have to start again. See Sample timeframe for bargaining and lodging a Single Enterprise Agreement for approval.

If you perform actions outside of the required timeframes, the Commission may not be able to approve your Agreement. For more information see section 36(1) of the Acts Interpretation Act 1901 (Cth) as in force on 25 June 2009 (see section 40A of the *Fair Work Act 2009*).

✔️ Use the [Date calculator](#) to check that your dates comply with the legislation.
STEP 2: Commence bargaining

Bargaining allows you and your employees (and/or bargaining representatives) to negotiate an Agreement that will take into account both your business needs and the interests of your employees.

How do you begin the bargaining process?

The process of bargaining usually begins with you initiating or agreeing to bargain for a proposed Agreement with your employees. A common method of beginning the bargaining process is by:

- Preparing a draft Agreement with the terms you would like to include in your Agreement (See Step 3 below for what to include in a proposed Agreement), or
- Holding a meeting to discuss what could be contained in an Agreement.
- Alternatively a bargaining representative (which might include a union) may provide a list of proposals or a draft Agreement as a starting point.

It may also be helpful to view the following:

- The modern award(s) relevant to your business.
- The National Employment Standards (NES).
- Your current Agreement (if you have one)
- Examples of other Agreements made by similar businesses. All Agreements that have been approved by the Commission are available on the Find an Agreement page on our website.
  - On the left-hand menu you can choose a relevant Industry from the drop-down list.

Modern awards set out minimum entitlements for employees such as rates of pay, penalty rates and allowances. Modern award entitlements, together with the entitlements under the NES, form a safety net of entitlements.

Modern awards can be found on the Find an award page of our website. You can find out which awards apply to your business by visiting the Awards page on the Fair Work Ombudsman's website or by contacting the Fair Work Ombudsman on 13 13 94.

The day you and your employees start to bargain (or agree to bargain) is called the notification time. This is an important date because it affects the timing of other steps in the Agreement making process as outlined in Step 1.

How do you notify employees that bargaining has commenced?

Once bargaining has been initiated, it is your responsibility to notify all relevant employees. This is done by taking all reasonable steps to provide all employees employed at the time who will be covered by the proposed Agreement with a Notice of Employee Representational Rights (Notice) no later than 14 days after the notification time.

This Notice informs employees of their right to be represented by a bargaining representative. The Notice appears in Schedule 2.1 of the Fair Work Regulations 2009 (Regulations) (see here for a guide to the Notice). The Notice must contain only the content
prescribed by the Regulations and no other content except that which the Regulations require the employer to insert or omit.

✔️ Use the Notice generator to ensure your Notice complies with the Regulations.

If the Notice is not in the prescribed form, and/or it is not provided to some or all employees (because, for example, all reasonable steps were not taken) within 14 days from the notification time, the Agreement cannot be approved by the Commission. The bargaining process will need to recommence with the issue of a valid Notice.

As the employer you should ensure that you keep records of when and how you provided the Notice to your employees, the steps taken to provide the Notice to the employees and a record of the appointment of any bargaining representatives that employees give to you in return.

You should consider how you will give the Notice to employees who may not be at the workplace on the day (i.e. employees who may be rostered off, employees on leave or long term absence). In some cases it may be appropriate to use a variety of methods to give the Notice to different employees including by email, post or handing out a hard copy.

For more information see sections 173 and 174 of the Act.

**The bargaining process and appointing a bargaining representative**

You and your employees may appoint any person as your bargaining representative for a proposed Agreement. Alternatively, you may prefer to bargain on your own behalf.

Remember that a union will be the default bargaining representative for any employees who are members of the union, unless the employee(s) have appointed another person in writing as their bargaining representative or have, in writing, revoked the status of the union as the default bargaining representative.

**Good faith bargaining requirements**

You and other bargaining representatives must meet the good faith bargaining requirements. Examples of conduct that is consistent with good faith bargaining includes:

- holding meetings to discuss the proposed Agreement
- sharing relevant information with each other in a timely manner
- giving genuine consideration to each other’s proposals
- responding to proposals and giving reasons for the response to proposals
- recognising and working with each other’s bargaining representatives (if any).

Note: The good faith bargaining requirements do not mean that you must make concessions, but you must genuinely consider and respond to offers and proposals put forward by the other side.

**What do you do if parties are not meeting the good faith bargaining requirements?**

If you think that a party involved is not meeting the good faith bargaining requirements, you may apply to the Commission for assistance to promote fair and efficient bargaining.
STEP 3: Developing the terms of the Agreement

What do you need to consider when you are negotiating an Agreement?

When you negotiate an Agreement, you must make sure that it:

- Will lead to each employee being better off overall under the Agreement than they would be under the relevant modern award, and
- Does not provide for any entitlements that are detrimental to an employee when compared to those provided under the NES.

Some common terms or clauses that can be found in an Agreement include, but are not limited to:

- Coverage
- Nominal expiry date
- Definitions or glossary
- Consultation, dispute settlement, and flexibility terms
- Hours of work
- Classification structure and rates of pay
- Penalty and overtime rates
- Allowances
- Breaks
- Deductions authorised by an employee

What terms do you need to include in your Agreement?

There are certain terms that must be included in an Agreement. You and your employees (or bargaining representatives) can negotiate the precise content of these terms; however, most of these terms need to meet the requirements of Act. Below is a list and explanation of the terms that must be included in an Agreement.

Coverage term

Example coverage clause

2 Who does this Agreement cover?

(a) This Agreement will cover:

(1) Darren’s Motor Garage Pty Ltd (Company) in respect of its employees at the Southport garage who are covered by this Agreement; and

(2) Employees of the Company at the Southport garage who are covered by the classifications set out in clause X of the Agreement undertaking vehicle repair or maintenance activities (Employees).

Your Agreement must include a coverage term which identifies you (the employer), the employees to be covered by the Agreement, the work that will be performed by employees and the location(s) it will be performed at.
**Consultation term**

Your Agreement must contain a consultation term which requires you to consult with employees about:

- a major workplace change that is likely to have a significant effect on your employees; and
- a change to their regular roster or ordinary hours of work.

The consultation term must allow for employees to be represented during consultations.

For changes to employees’ regular roster or ordinary hours of work, the consultation term must also require you to provide information to employees about the change, invite employees to give their views about the change, and to consider the views of employees.

You can include the model consultation term in the Regulations, or you can draft your own term, but this term must comply with the requirements of the Act.

If the Agreement does not contain a consultation term, or the term does not comply with the requirements in the Act, the model consultation term will be taken to be a term of the Agreement.

For more information see section 205 of the Act.

**Dispute settlement term**

Your Agreement must contain a dispute settlement term which provides a procedure for settling disputes about matters arising under the Agreement and in relation to the NES.

The term must require or allow the Commission, or another person who is independent of those covered by the Agreement, to settle a dispute.

A **dispute settlement term** must not, for example, provide for disputes to be resolved solely by:

- the managing director of the employer; or
- a disputes board made up of officials of a union covered by the Agreement.

The term must also allow for the representation of employees during the dispute.

You can include the model dispute settlement term in the Regulations, or you can draft your own term, but this term must comply with the requirements of the Act.

If the Agreement does not contain a dispute settlement term, or the term does not comply with the requirements in the Act, the Commission may either refuse to approve the Agreement, or approve the Agreement with undertakings (see discussion below on ‘Undertakings’).

For more information see section 186(6) of the Act.
Flexibility term

Your Agreement must contain a flexibility term that allows you to make an individual flexibility arrangement (IFA) with an employee which varies the effect of specified terms of the Agreement in order to meet the genuine needs of you and the individual employee.

You can include the model flexibility term in the Regulations, or you can draft your own term, but this term must comply with the requirements of the Act.

If the Agreement does not contain a flexibility term, or the term does not comply with the requirements in the Act, the model flexibility term will be taken to be a term of the Agreement.

For more information see sections 202, 203 and 204 of the Act.

Nominal expiry date for the Agreement

You must include a nominal expiry date that is not more than 4 years after the date that the Agreement is approved by the Commission.

✓ An Agreement comes into operation 7 days after it is approved by the Commission (or later if specified in the Agreement) so you can make the nominal expiry date 4 years from approval not 4 years from commencement or operation.

Agreements continue to operate after their nominal expiry dates until they are replaced or terminated by the Commission.

For more information see sections 54, 58 and 186(5) of the Act.

STEP 4: Vote on the Agreement

When you think that a suitable Agreement has been negotiated with your employees (or their bargaining representatives), you may put the proposed Agreement to a vote of your employees.

Who can vote?

The employees who must be asked to vote for a proposed Agreement are those who are:

- Employed by you at the time of the vote, and
- Covered by the proposed Agreement.
Example
A construction company employs construction workers on various sites and clerical workers in its head office. The company has been negotiating with the clerical staff for a proposed Agreement which covers the clerical employees. When it is time to vote only the clerical employees who are employed at that time can vote. Because the construction workers will NOT be covered by the proposed Agreement they do not have a right to vote on that proposed Agreement.

How do you prepare for the vote?

At least 8 days before you ask your employees to vote on the proposed Agreement, you must undertake certain steps. The 7 day period prior to the vote commencing is known as the access period.

Below is an explanation of what you must do at least 8 days before requesting employees to vote.

- You must take all reasonable steps to notify your employees of the time and place of the vote, and the method of vote that will be used.
- You must take all reasonable steps to ensure that during the access period, the employees who will be covered by the Agreement are given a copy of:
  - The written text of the Agreement, and
  - Any other material incorporated by reference in the Agreement;

or that these materials are accessible by the employees throughout the entire access period.

Please note that material can be incorporated into an Agreement even if the Agreement does not expressly state that it has been incorporated. For example, an Agreement that requires employees to comply with an employer’s OHS policy may have the effect of incorporating that policy, even if the Agreement does not expressly state that the policy has been incorporated.

- You must take all reasonable steps to ensure that:
  - The terms of the Agreement, and the effect of those terms compared to their entitlements under the award, are explained to your employees, and
  - The explanation is provided in an appropriate manner taking into account the particular circumstances and needs of your employees. The following are examples of the kinds of employees whose circumstances and needs are to be taken into account for the purposes of complying with this requirement:
    - employees from culturally and linguistically diverse backgrounds
    - young employees, and
    - employees who did not have a bargaining representative for the Agreement.
If an employer wants the vote to commence on the proposed Agreement on Wednesday 21 February 2018, the access period will run from the morning of Wednesday 14 February 2018 to the evening of Tuesday 20 February 2018. The employer must notify employees of the upcoming vote on Tuesday 13 February 2018.

For more information see section 180 of the Act.

**Methods of voting**

There are a number of ways in which a vote for a proposed Agreement can take place. The method that you choose will depend on the size and operations of your business. Some common voting methods are voting by ballot, electronically and a show of hands.

**Timeframe for the vote**

A request to employees to approve an Agreement must not be made until at least 21 days after the day on which you give the last Notice to your employees. The 7 day access period can run concurrently with the 21 day period (between the day the last Notice was given and voting commences) but must be 7 clear days.

If the employer gave the last Notice on Tuesday 6 February 2018, the employer cannot request that employees vote to approve the proposed Agreement until on or after Wednesday 28 February 2018. If the vote is held on 28 February, the access period must begin on 20 February 2018.

Simply, when calculating 21 days, the day on which you gave the last Notice of employee representational rights is not included—it is 21 clear days after that day.

Use the [Date calculator](https://www.datecalculator.com) to assist you

For more information see section 181 of the Act.

**When is an Agreement made?**

An Agreement is made when a majority of employees who cast a valid vote, vote in favour of making the Agreement.

If the vote is unsuccessful bargaining can continue, and there is no limit to the number of times that a proposed Agreement can be put to a vote. However each time a proposed Agreement is put to a vote, the relevant requirements regarding the voting process outlined in this Step 4 must be met.

For more information see section 182 of the Act.
STEP 5: Lodge the Agreement and Forms with the Commission for Approval

Once the Agreement has been made, you need to apply to the Commission to have the Agreement approved. To do this you must lodge the Agreement along with the relevant application forms (see immediately below) to the Commission within 14 days of the Agreement being made.

For more information see section 185 of the Act.

What do you need to lodge with the Commission?

1. **Form F16**—Application for approval of an enterprise agreement

2. **Form F17**—Employer’s statutory declaration in support of an application for approval of an enterprise agreement. In this form you will be requested to attach a copy of the Notice that was given to employees during bargaining.

   **Note:** The responses you provide in the Form F17 statutory declaration, along with the terms of the Agreement, will help the Commission determine if the above statutory requirements and timelines have been complied with.

   To assist the Member to make their decision and reduce delays in the approval process you should also provide:
   - copies of any materials provided to employees to notify them of the time and place at which the vote was to occur and the voting method to be used; and
   - copies of any materials provided to employees to explain the terms of the Agreement and the effect of those terms.

3. A signed copy of the Agreement:

   - The Agreement must be signed by you (the employer) and an employee representative;
   - The signature page must also include the printed name of each signatory, their address, and an explanation of the person’s authority to sign the Agreement, that is their role or position title (see the Regulations, reg. 2.06A).

4. A union bargaining representative may also wish to lodge a Form F18 (if applicable)—Statutory declaration of employee organisation in relation to an application for approval of an enterprise agreement. Similarly, an employee bargaining representative may wish to lodge a Form F18A (if applicable)—Statutory declaration of employee representative in relation to an application for approval of an enterprise agreement.

   **Important**

   The signed copy must include the **full name and address** of each person who signs the Agreement; and an **explanation of the person’s authority** to sign the Agreement (ie their role). Note the Agreement will be published on the Commission’s website so to protect your privacy, you may use your **business** address rather than your home address.
How do you lodge documents?

Email the documents listed above to the relevant State or Territory Commission office. You must notify the employees who will be covered by the Agreement, through your usual means of communication (for example, by email), that you have applied to the Commission for approval of the Agreement.

✓ By September 2019 the Commission will be launching new smart forms that will allow you to enter and lodge some forms online at the same time as you submit your Agreement for approval.

STEP 6: Approval of your Agreement

What happens when I lodge my application?

Once you lodge your Agreement with the Commission you will be sent a ‘service email’ by the Commission with a reference number e.g. AG2019/7777. A copy of the Agreement will be published on the Commission’s Agreements in Progress page.

You may be contacted by staff of the Commission who will check your application to ensure all relevant information has been provided and forms are complete. The Agreement will then be allocated to a Member of the Commission who will assess it against the requirements of the Act.

What does the Commission consider when approving an Agreement?

Before the Member can approve the Agreement, he or she must be satisfied about a number of matters including that:

- the pre-approval requirements have been met (including providing a valid Notice to all employees and complying with the legislative timeframes)
- the Agreement was genuinely agreed to by the employees covered by the Agreement
- the terms of the Agreement and the effect of those terms were adequately explained to all employees
- the terms of the Agreement do not contravene the National Employment Standards
- employees will be ‘better off overall’ under the Agreement at test time than they would be under their applicable modern award(s)
- the group of employees covered by the Agreement was fairly chosen
- there are no unlawful or designated outworker terms in the Agreement
- the Agreement specifies a nominal expiry date and that date will not be more than 4 years after the day on which the Commission approves the Agreement
- other requirements relating to good faith bargaining have been complied with
- the Agreement includes a compliant dispute settlement term, flexibility term and consultation term

For further information see Parts 2-2 and 2-4 of the Act.
Better off overall test (BOOT)

The Commission Member needs to be satisfied that the Agreement passes the BOOT. An Agreement will pass the BOOT if the Commission Member is satisfied that at the time the application for approval is lodged with the Commission (‘test time’), each current and future employee who will be covered by the Agreement, will be better off overall if the Agreement applies to them rather than the relevant modern award. The Agreement will only apply to an employee once it is approved by the Commission.

The BOOT requires the identification of Agreement terms which are more beneficial and less beneficial when compared to the relevant modern award, then balancing the terms to come to an overall view.

An Agreement may pass the BOOT even if some award benefits have been reduced or removed entirely, so long as overall those reductions are more than offset by the benefits under the Agreement. However, an Agreement cannot set a base rate of pay for an employee that is less than the base rate of pay in the relevant modern award.

Example (Rate correct as at 1 July 2019)

The rate of pay for an employee engaged as a panel beater under the terms of an Agreement is $820.00 per week.

Under the Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089] the comparable skill level for a panel beater is Vehicle industry RS&R—tradesperson or equivalent Level I R6 – the minimum weekly wage is $862.50.

Therefore, the employee must be paid the $862.50 minimum weekly wage from the modern award, even though the Agreement says the employee should be paid only $820.00 per week and may provide other more beneficial terms.

If your Agreement meets all of the requirements in the Act, including the BOOT, the Commission Member must approve it without any changes.

The Commission Member may ask you for more information if the material you have provided is not clear or does not allow for the Agreement to be properly assessed. The Commission Member may ask you to re-lodge documents or provide additional material that will help in the assessment of the Agreement.

For more information see sections 186(2)(d), 193 and 206 of the Act.

What is an undertaking and when will you need to provide one?

In many cases the Commission Member may seek further information, or clarification on certain aspects of the application for approval and the Agreement itself. In order to satisfy any concerns the Commission Member may have, you may be requested to provide or wish to offer a written undertaking(s) to address the concerns so that the Agreement can be approved. An undertaking is a written commitment by an employer to replace or modify a term of the Agreement with alternative text set out in correspondence to the Commission.
Please note undertakings cannot be used to address all concerns a Commission Member may have regarding an Agreement. The Commission will advise you if it is appropriate for you to provide an undertaking.

An **undertaking** is taken to be a term of your Agreement if accepted.

Before accepting an undertaking, the Commission must seek the views of each known bargaining representative for the Agreement.

An undertaking must not:

- cause financial detriment to your employees; or
- result in substantial changes to the Agreement.

For more information see sections 190 and 191 of the Act.

Please note that undertakings cannot be used to address a Commission Member’s concerns regarding an Agreement’s consultation term or flexibility term. If a Commission Member is not satisfied that an Agreement’s consultation term or its flexibility term meets the requirements of the Act, then the Commission Member must insert the relevant model term into the Agreement. In that case, the model term will become a term of the Agreement.

**How do you provide an undertaking?**

Any undertakings you give must be signed by you.

For more information about undertakings see our [Undertakings Fact Sheet](#).

**Hearings**

The Commission may ask you, your appointed bargaining representative (if any) and an employee (or their bargaining representative) to attend for a Commission hearing which can occur in person or by video or teleconference if there are any issues relating to the approval of the Agreement. Hearings are not required for the majority of Agreement approval applications.

**Approval**

Once the Agreement is approved, a copy of the Commission Member’s approval decision and the approved Agreement with any undertakings and model terms will be posted on the Commission’s website and emailed to the parties. The Agreement will come into operation **7 days** after the Commission Member approves it, unless a later day is specified in the Agreement.

If you have any questions in relation to the Agreement making process, this guide or the annexed documents, please contact the Commission for assistance at [member.assist@fwc.gov.au](mailto:member.assist@fwc.gov.au).
Annexure 1: Sample timeframe for bargaining and lodging a Single Enterprise Agreement for approval

There are important time limits that must be complied with throughout the bargaining and voting process, in particular:

- When you must issue the Notice
- When you must give employees a copy of the Agreement and any incorporated material, or provide access to the Agreement and any incorporated material
- When you must notify employees of the time and place of the vote, and the voting method that will be used
- When employees can vote
- When you must lodge your application for approval of the Agreement with the Commission

The following is an example of a typical Agreement-making timeframe that meets the requirements of the Act. In some cases bargaining could extend to a much longer period in order to allow the parties to fully negotiate the terms of the Agreement. Bargaining can also take place over a shorter period, provided the requirements of the Act are met. However, bargaining often takes place over a couple of months or more, even for smaller businesses.

The day you start, or agree to start bargaining. This is known as the notification time.

The day you must issue the Notice. This is the last day you can give your employees the Notice. The Notice must be given to employees within 14 days from the notification time.

The last day you can notify employees of the time and place of the vote, and the voting method that will be used. This is also the day you provide access to the Agreement and any incorporated material. The vote cannot be held until at least 7 clear days after this day.

The access period is from 16 to 22 October 2018.

When employees can vote (voting starts). This is the earliest date employees can start to vote on the Agreement. This must be at least 21 clear days after you gave employees the Notice and at least 7 clear days after notification of the vote.

The day voting ends. Voting can take place within a single day or over the course of several weeks. The Agreement is made on the final day of voting.

The day you must lodge your application for approval of the Agreement with the Commission. This is the last date the Agreement, along with accompanying forms, can be lodged with the Commission. The Agreement, along with accompanying forms, must be lodged within 14 days of the Agreement being made.

✓ Use the Date calculator to check that your dates comply with the legislation.
Annexure 2: Checklist for making a Single Enterprise Agreement

Step 1 – Prior to bargaining

Develop a plan for communicating with your employees ☐

Step 2 – Commence bargaining

Enter the date of notification ☐
(The date you started, or agreed to start bargaining)
Prepare Notice and distribute to employees
Enter the date you gave your employees the Notice ☐
(As soon as possible and within 14 days from the notification time)
First Notice: ☐
Last Notice: ☐

Step 3 – Developing the terms of the Agreement

The Agreement will pass the better off overall test (BOOT) ☐
No term is detrimental to an employee when compared to the NES ☐
The Agreement specifies the employer and the employees to be covered and the work that employees will perform ☐
The Agreement includes dispute settlement, consultation and flexibility terms which comply with the requirements in the Act ☐
The Nominal Expiry Date is no more than 4 years from the date the Agreement is approved by Commission (not the date it commences) ☐
Step 4 – Vote on the Agreement

Comply with the requirements of the access period

Advise employees of the time, place and method of the vote

Give all employees a copy of, or access to, the proposed Agreement and any other incorporated material

Explain adequately to all employees the terms of the Agreement and the effect of those terms when compared to the award

Enter the date the access period commences
Enter the date voting commences
(Must be at least 21 days after you gave employees the Notice and 7 clear days after notification of the vote)
Enter the date the Agreement is made (voting stops)
(Majority of employees who cast a valid vote voted to approve the Agreement)

Step 5 – Lodge agreement and forms with the Commission

Lodge the Agreement and supporting documentation within 14 days after the Agreement is made:

- Application Form F16
- Employer’s Statutory declaration Form F17
- A copy of the Notice of Employee Representational Rights (as per Step 2)
- A signed copy of the Agreement

* Copies of material distributed to employees about the Agreement and its effect, as well as information about the voting process

Step 6 – Approval of your Agreement

Your Agreement will come into operation 7 days after the Commission Member approves it unless a later date is specified in the Agreement.
For further information on Agreement making you can:

✓ Go to our website for
  o Date calculator
  o Notice generator
  o the Commission’s Enterprise Agreement Benchbook
    ▪ The Benchbook is a plain language guide to the Fair Work legislation, setting out the key principles of case law on enterprise agreements

✓ Read 10 tips for Agreement making

✓ Consult the guide to Making compliant agreement applications

✓ Contact us at member.assist@fwc.gov.au