

Notice of employee representational rights – Guide for employers

Employer must notify employees

In accordance with s.173 of the *Fair Work Act 2009* (the Act) an employer that will be covered by a proposed single-enterprise agreement that is not a greenfields agreement must take all reasonable steps to give notice of the right to be represented by a bargaining representative (the Notice) to each employee who will be covered by the agreement and is employed at the notification time for the agreement. The Notice must be given as soon as practicable, **and not later** than 14 days after the notification time for the agreement. If the Notice is not provided within the prescribed time, the agreement cannot be approved.

Notification time is the time when:

- a) the employer agrees to bargain, or initiates bargaining for the agreement, or
- b) the employer receives a request to bargain for a replacement agreement¹, or
- c) a majority support determination in relation to the agreement comes into operation²,
or
- d) a scope order in relation to the agreement comes into operation³, or
- e) a supported bargaining authorisation in relation to the proposed agreement that specifies the employer comes into operation, or
- f) a single interest employer authorisation in relation to the agreement that specifies the employer comes into operation.

See [Date calculator for single enterprise agreement](#) for assistance with legislative timeframes.

In addition, the Commission must take into account paragraphs 1 to 3 of the [Statement of Principles on Genuine Agreement](#). Paragraph 1 says that an employer should ensure employees are informed about bargaining for an enterprise agreement in a timely and appropriate manner so that they have a reasonable opportunity to be represented in bargaining for the agreement. Employees should also be informed of their rights to be represented in bargaining and how to exercise those rights. Paragraphs 2 and 3 say that provided the employer has not misled employees about these matters, the giving of the Notice is taken to satisfy paragraph 1.

¹ the employer receives a request to bargain from a bargaining representative of an employee and the bargaining is for a proposed single-enterprise agreement (other than a greenfields agreement) to replace one that has passed its nominal expiry date within the past 5 years

²A **majority support determination** is a determination made by the Commission that a majority of the employees who will be covered by an agreement want to bargain with the employer, or employers, that will be covered by the agreement.

³ A **scope order** is an order made by the Commission that determines the group of employees that will be covered by an agreement that will cover the employer.

Content of the Notice

The Act states that the Notice must contain the content prescribed by the *Fair Work Regulations 2009* (the Regulations), must not contain any other content **and** must be in the form prescribed by the Regulations. Schedule 2.1 to the Regulations contains the notice template.

The employer must **NOT** change the content of the Notice by adding or removing any text, apart from inserting the employer's name and other details which are specifically required to be included.

If the employer varies the content of the Notice, depending on the circumstances the Fair Work Commission may not be able to approve the enterprise agreement.

Since **12 December 2018**. The Commission may approve an agreement despite the employer having made 'minor procedural or technical errors' with the pre-approval steps, provided employees have not been disadvantaged by the errors in terms of the underlying objects of the pre-approval step.

How the Notice is given

Each of the following methods is a way in which the employer for a proposed single-enterprise agreement may give an employee who will be covered by the agreement the Notice. The employer may:

- give the Notice to the employee personally
- send the Notice by pre-paid post to the employee's residential address or a postal address nominated by the employee
- send the Notice (or an electronic link that takes the employee directly to a copy of the Notice on the employer's intranet) to the employee's email address at work or another email address nominated by the employee
- fax the Notice to the employee's fax number at work, at home or to another fax number nominated by the employee, or
- display the Notice in a conspicuous location at the workplace that is known by and readily accessible to the employee.

The employer is not prevented from using another manner of giving the Notice to the employee.

Completing the Notice

The Notice of employee representational rights can be downloaded from the [NERR – Notice of employee representational rights](#) page of the Commission's website.

1. Answer a question about individual agreements to ensure the correct version of the notice is used.
2. Download the notice in either Word or PDF format.
3. Insert relevant information into the notice where required, such as the name of employer, name of the proposed agreement and coverage of the agreement.
4. Save a copy of the notice to provide to employees and for lodging with the Commission.
5. The employer should note when and how the notice was provided to each employee; this information is required in response to the related question on Form F17 – *Employer's declaration in support of an application for approval of a single enterprise agreement (other than a greenfields agreement)*.

NOTE: The employer must provide the notice to all employees who will be covered by the agreement and who were employed when bargaining commenced.

- The full version of the notice as found in the Fair Work Regulations is at Attachment A.
- A table explaining how to complete the notice is at Attachment B.
- A sample of a completed notice is at Attachment C.

Attachment A – Full version of Notice of employee representational rights

Extract from Regulation 2.05 of Fair Work Regulations

Schedule 2.1—Notice of employee representational rights

(regulation 2.05)

Fair Work Act 2009, subsection 174(1A)

[Name of employer] gives notice that it is bargaining in relation to a single-enterprise agreement (*[name of the proposed single-enterprise agreement]*) which is proposed to cover employees that *[proposed coverage]*.

What is a single-enterprise agreement?

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before the Fair Work Commission that relates to bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative.

[If the employee is covered by an individual agreement—include:]

If you are an employee covered by an individual agreement:

If you are currently covered by an individual agreement (Australian Workplace Agreement (AWA), pre-reform AWA, individual transitional employment agreement (ITEA), preserved individual State agreement or individual Division 2B State employment agreement), you may appoint a bargaining representative for the enterprise agreement.

Individual agreements automatically sunset at the end of 6 December 2023, unless an application to extend the agreement is made to the Fair Work Commission.

Individual agreements can also be terminated or a conditional termination can be made (which provides that if an enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

Attachment B – Instructions for completing Notice

COMPLETION INSTRUCTIONS	NOTICE TEMPLATE
Do not alter this section.	<p>Schedule 2.1—Notice of employee representational rights (regulation 2.05) <i>Fair Work Act 2009</i>, subsection 174(1A)</p>
In this section insert the name of the employer , the name of the proposed agreement and the proposed coverage of the agreement.	<p><i>[Name of employer]</i> gives notice that it is bargaining in relation to a single-enterprise agreement (<i>[name of the proposed single-enterprise agreement]</i>) which is proposed to cover employees that <i>[proposed coverage]</i>.</p>
Do not alter this section.	<p>What is a single-enterprise agreement? A single-enterprise agreement is an agreement between an employer (or related employers) and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.</p> <p>If you are an employee who would be covered by the proposed agreement: You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before the Fair Work Commission that relates to bargaining for the agreement. You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer. If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative.</p>
If the employee is covered by an individual agreement-based transitional instrument ⁴ then include this paragraph.	<p><i>[If the employee is covered by an individual agreement—include:]</i></p> <p>If you are an employee covered by an individual agreement: If you are currently covered by an individual agreement (Australian Workplace Agreement (AWA), pre-reform AWA, individual transitional employment agreement (ITEA), preserved individual State agreement or individual Division 2B State employment agreement), you may appoint a bargaining representative for the enterprise agreement. Individual agreements automatically sunset at the end of 6 December 2023, unless an application to extend the agreement is made to the Fair Work Commission. Individual agreements can also be terminated or a conditional termination can be made (which provides that if an enterprise agreement is approved, it will apply to you and your individual agreement will terminate).</p>
Do not alter this section.	<p>Questions? If you have any questions about this notice or about enterprise bargaining, please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.</p>

⁴ An **individual agreement-based transitional instrument** is an Australian Workplace Agreement (AWA), pre-reform AWA, individual transitional employment agreement (ITEA), preserved individual State agreement or individual Division 2B State employment agreement.

Attachment C – Sample completed notice

The following is a **sample only** of a completed notice where the employee is **not covered by an individual agreement-based transitional instrument**.

Schedule 2.1—Notice of employee representational rights

(regulation 2.05)

Fair Work Act 2009, subsection 174(1A)

AABB Pty Ltd gives notice that it is bargaining in relation to a single-enterprise agreement (*AABB Pty Ltd Enterprise Agreement 2023–2026*) which is proposed to cover employees that perform clerical work at the AABB Pty Ltd Melbourne site.

What is a single-enterprise agreement?

A single-enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before the Fair Work Commission that relates to bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative.

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

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This guide is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.