

ENTERPRISE AGREEMENTS

WHAT IS AN AGREEMENT?

An Agreement is a legally approved arrangement between all employees and the employer that sets out terms and conditions of employment.

An Agreement replaces any award that would otherwise apply to the employee. Moving forward with the implementation of an Agreement would remove workplaces from the provisions of the new Federal Horticultural Award.

An Enterprise Agreement may:

- provide four years of certainty
- provide an opportunity for 'voluntary hours'
- provide an opportunity for employees to bank time
- provide greater workplace flexibility
- minimise labour costs
- legalize existing arrangements
- provide a safeguard against wage claims

THE AGREEMENT MAKING PROCESS

Notice and information to employees

As with the current legislation, the new legislation requires certain steps to be taken in order to make an agreement. Notably, the new legislation places substantial responsibility upon the employer to provide information to employees and to ensure compliance with the required steps.

For instance, the employer will be required to take all reasonable steps to notify each employee of the right to be represented in the bargaining process. If the employer initiates the bargaining, the employer must give this notice to employees as soon as practicable but not later than 14 days after the employer initiates the bargaining or agrees to bargain.

An employer must ensure that the content of the notice complies with the requirements set out in the new legislation and the supporting regulations.

Access to proposed agreement and other information

Employees must be notified of the time and place, as well as the voting method that will be used to determine whether or not employees support the agreement. The employer will be required to take all reasonable steps to ensure that this notification is given to employees, taking into account that **at least 21 days** must pass between the date on which the employer gave employees the notice of representation rights and the date on which employees are asked to vote upon the agreement.

Employees must have sufficient access to the written text of any proposed agreement. If there is any other material incorporated by reference in the agreement, employees must also have sufficient access to that material. The employer is responsible to ensure that this occurs **at least seven days** before the voting process takes place. The employer will be required to take all reasonable steps to ensure that the terms of the agreement are explained to employees before it is put to the vote. That explanation must

take place in an appropriate manner having regard to the particular needs and circumstances of the employees (eg. age, language skills).

Approval by majority of voting employees

With respect to the vote, an agreement will be made when it is approved by a majority of employees who cast a valid vote. This means that it is unnecessary for the agreement to gain majority support from all employees, but it is necessary to gain majority support from those employees who participate in the voting process and have cast a valid vote.

Even if made in accordance with these required steps, an agreement will not have any legal effect until it is approved by Fair Work Australia. In view of this, it will be necessary to lodge the agreement with Fair Work Australia within 14 days of the vote.

Approval by Fair Work Australia

Fair Work Australia will be responsible for the assessment and formal approval of agreements. In carrying out its work, Fair Work Australia will assess whether the agreement passes 'the no-disadvantage test' (NDT), whether the agreement has been validly made in accordance with the required steps, and whether the agreement is generally compliant with the new legislation.

Among the matters that it can take into account, Fair Work Australia must be satisfied that approving the agreement would not be inconsistent with, or undermine, good-faith bargaining by one or more bargaining representatives.

Fair Work Australia will also be able to seek out further information if it has concerns about an agreement. For example they may have concerns about whether an agreement passes the no-disadvantage test.

There is no time period in which Fair Work Australia must approve an agreement. However, the Federal Government has indicated that it expects that Fair Work Australia will work speedily and informally to approve agreements, and that most agreements will be approved on the papers within seven days.

Please note that this information should be used as a guide only