Workplace Agreements

What is a workplace agreement?

A workplace agreement is a formal agreement between an employer and employee about working conditions and employee entitlements. It can stand in place of awards.

Workplace agreements are different to common law employment contracts already existing between employers and employees, which may be in writing or based on a handshake. They are different because there are *specific requirements* they must contain and they must be *formally lodged with and approved* by an authority. Compliance with these requirements gives workplace agreements legal force and allows them to stand in place of awards where a common law employment contract cannot.

The federal laws about workplace agreements have changed

As of 1 July 2009, there are new federal industrial laws. Some of the new laws about federal workplace agreements applied immediately and others applied as of 1 January 2010.

Who can make a workplace agreement?

If you are a national system employer you can make an enterprise agreement under federal industrial laws.

If you are a non- national system employer you can make a workplace agreement under Western Australian state laws.

Why make a workplace agreement?

Most farming work in Australia is governed by awards which lay down terms and conditions that employers must follow when employing workers. These award terms include such things as overtime, public holiday pay, higher rates for weekend work and annual leave loadings. These entitlements apply, and employees can take action for payment of them (now or in the future), even if the common law agreement between the employer and the employee does not include payment for them.

Some farmers find that these award terms are inflexible and do not take account of busy times or the non-standard hours involved in farming work. Workplace agreements allow employers and employees to move away from the inflexibility of awards and put in place conditions of work which are tailor-made to suit the needs of their business and their employees.

Because workplace agreements actually stand in the place of awards, employers cannot be liable in the future for payment of award entitlements unless they are included in the workplace agreement.

What types of workplace agreement are there?

The WorkChoices laws had six types of workplace agreement. Some farmers may have put in place AWAs or collective agreements under the WorkChoices laws. These agreements will continue to apply until they are terminated.

However, after 1 January 2010 the National Employment Standards apply to all workplace agreements if the standards provide more favourable terms than the workplace agreement, regardless of when they were entered into.

There are four types of workplace agreement in the federal industrial system, which apply from 1 July 2009:

- Single-enterprise agreements;
- Multi-enterprise agreements;
- Greenfields agreements (for new enterprises before employees are engaged);
- Individual Transitional Employment Agreements or ITEAs (see below for special rules about ITEAs).

Single-enterprise agreements will be most frequently used by the farming industry.

Two or more employers can enter into a single enterprise agreement provided they are engaged in a joint venture or common enterprise or are related companies or have obtained an authorisation from The Fair Work Commission allowing them to bargain together.

Australian Workplace Agreements (AWAs) and Individual Transitional Employment Agreements (ITEAs)

Australian Workplace Agreements (AWAs) are individual agreements between an employer and one employee.

In March 2008, AWAs were replaced with 'Individual Transitional Employment Agreements' or ITEAs. The nominal expiry date for all ITEAs is no later than 31 December 2009. In addition, employers and employees could only enter into an ITEA if there was at least one employee whose employment was covered by an AWA as of 1 December 2007.

As of 1 January 2010, new ITEAs cannot be made.

Enterprise agreements

Enterprise agreements are agreements between national system employers and a group of employees, or all of the employees in the workplace.

For more information about workplace agreements for non-national system employers go to *Western Australia State Laws* page in the *Employment and Reward* section at www.thepeopleindairy.org.au

A majority or 51% of those who cast a valid vote can approve a single-enterprise agreement.

The advantages of enterprise agreements are that they cover multiple employees and automatically apply to all new employees.

Some employers have concerns that if they put in place an enterprise agreement there may be a loss of confidentiality about wages and conditions. This issue is quite simple to address.

If the enterprise agreement records the minimum amount of income which will be paid so that the agreement will pass the Better Off Overall Test (BOOT) there is nothing to stop the employer paying more than that amount to different employees. In this case the employer can simply put in place a short common law agreement which provides for the higher wages and increased benefits paid to the individual employee and this agreement can sit alongside the enterprise agreement.

What has to be in an enterprise agreement?

Minimum content

The Fair Work Act creates 10 minimum conditions (see below) called the National Employment Standards (NES). These conditions are taken to apply to all enterprise agreements whether they are written down in the agreement or not. They also apply to all other workplace agreements for national system employers regardless of when they took effect.

If a term of a workplace agreement provides an entitlement that is less favourable to an employee than the equivalent entitlement in the NES, the entitlements under the NES will apply regardless of the terms of the agreement.

Terms of an enterprise agreement which exclude the NES are not enforceable.

Terms which supplement the NES are allowed providing there is no detriment to the employee as compared to the NES.

The NES are:

- maximum weekly hours of work;
- requests for flexible working arrangements;
- parental leave;
- annual leave;
- personal/carer's leave and compassionate leave;
- community service leave;
- long service leave;
- public holidays;
- notice of termination and redundancy pay;
- The Fair Work Information Statement.

Maximum weekly hours of work

- Maximum working hours under the NES are 38 hours per week for full-time employees and for part-time employees, their ordinary hours or 38 hours whichever is less.
- Modern awards or enterprise agreements set out what are ordinary hours of work. The Pastoral Award 2010 specifies ordinary hours of work for award employees on dairy farms as 152 hours over a four consecutive week period.
- Employees can be required or requested to work reasonable additional hours in addition to ordinary hours.

Requests for flexible working arrangements

- The NES give employees the right to request a change to working arrangements if they have 12 months continuous service and are parents of, or have responsibility for the care of, a child under school age, or a disabled child under 18 years of age.
- Casual employees who work on a regular and systematic basis with a reasonable expectation of continuing work can also make a request for flexible working arrangements.
- The request must be in writing and provide detail of the change sought and reasons for the change. Employers must respond to the request in writing within 21 days and give reasons if the request is refused.
- A request may only be refused on **reasonable business grounds** (see below) which should be specified in the written response.

Reasonable business grounds

The Fair Work laws do not specify what are 'reasonable business grounds' but the following may be relevant in determining what is reasonable:

- the effect on the workplace and the employer's business of approving the request;
- the financial impact on the employer's business of approving the request;
- the impact on efficiency, productivity and customer service of approving the request;
- the inability to organise work among existing staff;
- the inability to recruit a replacement employee;
- the practicality of arrangements that may need to be put in place to accommodate the employee's request.

Parental leave

- The NES provide up to 24 months unpaid leave for the birth of a child or the placement for adoption of a child under 16 years of age. This entitlement also applies to same sex couples.
- The employee taking parental leave must have completed 12 months of continuous service immediately before qualifying for this entitlement.
- Casual employees employed on a regular and systematic basis over at least a 12-month period prior to the expected date of birth who have a reasonable expectation of continuing regular employment are also entitled to unpaid parental leave.
- Each member of an employee couple can take up to 12 months leave.
- In addition, an employee who has taken 12 months of unpaid parental leave can request an extension for a further period of up to 12 months. Any extension period is reduced by any parental leave or special maternity leave taken by the employee's partner. A request for the extension of parental leave may only be refused on **reasonable business grounds** (see above).
- Parents cannot take parental leave at the same time except for a period of up to 3 weeks around the time of birth or adoption.

Annual leave

- The NES provides for 4 weeks' paid annual leave for each year of service. Annual leave accrues throughout the year on a pro-rata basis and from year to year. Part-time employees also accrue annual leave on a pro-rata basis depending on the hours they work. Casual employees do not receive annual leave as the casual loading compensates them for this entitlement.
- Payment for annual leave is calculated on what the employee would have received for the employee's **base rate of pay for ordinary hours of work** (see definition below).
- The Pastoral Award 2010 also provides for a 17.5% annual leave loading to be paid when leave is taken and upon termination if any annual leave is paid out.

Personal/ carer's leave and compassionate leave

- Under the NES, employees (other than casual employees) are entitled to 10 days paid personal/ carer's leave for each year of service.
- Personal/carer's leave accrues on a pro-rata basis throughout the year and from year to year and there is no cap on how much of this leave can be used for carer's leave.
- Payment for personal/carer's leave is calculated on what the employee would have received for the employee's **base rate of pay for ordinary hours of work** (seen definition below).
- Employees are also entitled to two days of paid compassionate leave per occasion and casual employees are entitled to two days unpaid compassionate leave. Compassionate leave can be taken on two consecutive days, two separate days or any other period as agreed between the employer and the employee.

Base rate of pay for ordinary hours of work

The employee's base rate of pay is the rate payable to the employee for ordinary hours of work.

The employee's base rate of pay does not include:

- Incentive-based payments and bonuses;
- loadings;
- monetary allowances;
- overtime or penalty rates.

Modern awards or enterprise agreements set out what are 'ordinary hours of work'. The Pastoral Award 2010 specifies ordinary hours of work for employees on dairy farms as 152 hours over a four consecutive week period.

For award-free employees the ordinary hours of work are those agreed to between the employer and the employee, up to 38 hours per week.

Community service leave

- Employees (excluding casual employees) are entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service.
- Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency

management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

Long service leave

The Government has indicated that it is working towards a uniform minimum long service leave standard. Until this occurs, state and territory laws continue to apply.

Public holidays

- The NES provides for employees to be absent from work on specified public holidays.
- The Pastoral Award 2010 provides for employees in the dairy industry who work on a public holiday to be paid at the rate of double time.

Notice of termination and redundancy pay

- As of 1 January 2010, employers are required to provide *written* notice of the day of termination of employment. The written notice can be given to the employee in person or delivered or posted to their last known address. Employees are not required to give *written* notice.
- The employee can work the notice period or the employer can pay the employee in lieu of that notice. If notice is paid out the employer must pay the full amount the employee would have earned had the minimum notice period been worked.
- Notice periods are calculated according to the length of the employee's continuous service. These periods are a minimum only and longer notice periods can be given.
- Under the Pastoral Award 2010 employees must also give the same amount of notice as employers and if they fail to give notice, employers can deduct money from the employee's termination payments. However, employees do not have to give the additional week of notice based on the age of the employee and length of service. Award-free employees can only be required to give notice if it is a term of an enterprise agreement.
- The National Employment Standards provide that all employees who have been employed for more than 12 months or more and who are not employed by a 'small business employer" are entitled to redundancy pay if the employee's employment is terminated:

  (a) because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or

  (b) because of the insolvency or bankruptcy of the employer.

The Fair Work Information Statement

- The NES requires all employers to give each new employee a copy of the **Fair Work Information Statement** prior to or as soon as practicable after commencement of employment.
- The Fair Work Information statement contains information about the roles of The Fair Work Commission and the Fair Work Ombudsman, the National Employment Standards, modern awards, agreement making and freedom of association.
- The Fair Work Information Statement also contains information on individual flexibility arrangements, employee records and privacy and termination of employment.

For more information about the NES go to the National Employment Standards in the *Employment and Reward* section at www.thepeopleindairy.org.au

Nominal expiry date

Enterprise agreements must have an expiry date of no more than four years from approval of the agreement by The Fair Work Commission.

Dispute resolution

All workplace agreements must contain a section which has a procedure for dealing with disputes between the employer and employees about matters arising under the agreement. If this is not included, then The Fair Work Commission cannot approve the agreement.

It is suggested that any dispute resolution procedure be simply worded and include a three-stage process. Stage one is an initial attempt by the parties in dispute to resolve the dispute informally at the workplace level. If this is not possible, then stage two is for the parties to agree that the dispute be resolved by alternative dispute resolution, which includes mediation, assisted negotiation, conciliation and arbitration, by a person or organisation agreed to by both parties. If the parties cannot agree on the type of alternative dispute resolution or who conducts the alternative dispute resolution, then stage three is to seek assistance from The Fair Work Commission or another independent person or alternative dispute resolution provider.

Flexibility terms

All enterprise agreements entered into from July 2009 must include a flexibility term providing for employees and the employer to agree to flexible arrangements for work. The flexibility term must be drafted in a way which ensures that as a result of the flexibility agreement the employee will be better off overall. The flexibility term must also allow for termination by either party with 28 days notice or at any time by agreement. The flexibility term must provide for any flexibility agreement to be in writing and signed by each party and if the employee is under 18 years of age the agreement must be signed by a parent or guardian as well as the employee.

The Fair Work Act provides a model flexibility term in the regulations. If the agreement does not include this term, The Fair Work Commission will make a note on the agreement, when it approves it, that the model clause is included. A copy of the model flexibility term is provided in the *Employment and Reward* section at www.thepeopleindairy.org.au

Consultation term

All workplace agreements entered into from July 2009 must include a consultation term which requires the employer to consult with the employees about major workplace changes which are likely to have a significant effect on employees.

The legislation provides a model term. If the agreement does not include this term, The Fair Work Commission will make a note on the agreement, when it approves it, that the model term is included. A copy of the model consultation term is provided in the Employment and Reward section at www.thepeopleindairy.org.au

What about the Award? – the better off overall test

The Better Off Overall Test (or BOOT test) applies to all enterprise agreements entered into as of 1 January 2010.

The Better Off Overall Test for enterprise agreements compares the workplace agreement with all of the terms of the relevant award. The enterprise agreement will pass the Better Off Overall Test if on balance the employee is better off in the terms and conditions of employment when compared with the award.

The purpose of the Better Off Overall Test is to ensure that the proposed enterprise agreement provides better terms and conditions for employees than they enjoy under the relevant award. In most cases this will amount to a comparison of the financial rewards the employee receives before and after the enterprise agreement is entered into.

Consideration can be given to the provision of accommodation, fuel and use of a vehicle, meat and milk. Consideration can also be given to providing extra superannuation, extended annual leave and other leave for family purposes if practicable.

What must not be in a workplace agreement?

Enterprise agreements

Enterprise agreements must not contain unlawful terms. Unlawful terms include:

- terms which are discriminatory;
- terms which are 'objectionable' – terms which are contrary to the General Protections (see the *General Protections* resource in the *Employment and Reward* section at www.thepeopleindairy.org.au
- terms excluding or changing the laws about unfair dismissal which are unfair to employees;
- terms providing unfair remedies for unfair dismissal for employees who have not served the minimum employment period (this does not include warnings procedures for managing performance);
- terms preventing the joining of a union or taking part in union activities;
- terms requiring payment of a bargaining fee to a union;
- terms allowing for industrial action during the life of the agreement;
- terms about right of entry to the workplace by union representatives which are inconsistent with the Fair Work Act.

Reaching agreement on the terms of workplace agreements

Good communication

Good communication and a willingness to negotiate are vital to successful agreement making.

Unless a union or employees have applied to The Fair Work Commission and been granted a bargaining order, there is no formal process for beginning negotiations or bargaining.

If employers want to begin negotiations about a workplace agreement it is a good idea to have a basic draft of the terms and conditions they would like to see implemented before negotiations begin, as it will provide a basis for discussions.

When beginning negotiations, employers should make sure that employees are told that the draft is only a draft for discussion and that their input is welcomed.

Remember, employees often have good ideas about how productivity, for instance, can be improved and may suggest alternatives that employers have not thought of. Employers should also have given consideration to what they might be prepared to trade off to get a successful result.

Good faith bargaining

The WorkChoices laws did not require parties to bargain in 'good faith'. Under the federal industrial laws which took effect on 1 July 2009, employers and employees must bargain in 'good faith'.

'Good faith' bargaining includes the following:

- attending and participating in meetings at reasonable times;
- disclosing information (not commercially sensitive information) in a timely manner;
- giving genuine consideration to the proposals of the other parties and giving reasons for the responses;
- responding to proposals in a timely manner;
- not engaging in conduct which undermines the bargaining process;
- recognising and bargaining with other bargaining representatives.

Good faith bargaining refers to the 'process' of bargaining and not the outcome. For instance good faith bargaining does not require the bargaining representatives to give concessions they do not want to give or reach agreement.

If either party does not bargain in good faith, the other party can seek bargaining orders from The Fair Work Commission requiring this to occur. In rare circumstances, if a party breaches a bargaining order The Fair Work Commission can arbitrate and make a workplace determination.

Genuine agreement

The Fair work Commission cannot approve the agreement unless it is satisfied that the agreement has been genuinely agreed to by the employees.

This means that the employees have been provided with all of the documentation which the federal industrial laws require to be provided within the timeframes laid down (see below). This includes a written copy of the agreement and any other material which is to be a part of the agreement as well as the information about how and when the vote is to occur.

Employers must make sure that all employees understand the effect of the proposed enterprise agreement as compared to their current award and non-award entitlements. It is important that you ensure that employees have a copy of the award to enable them to compare the entitlements under the award with the proposed enterprise agreement.

Employers must also make sure that they explain the effect of the terms in the agreement to employees in a manner which takes into account any special needs employees may have.

If any employees have limited literacy, employers will need to be especially careful to make sure they understand the effect on them of each clause of the proposed agreement.

'Genuine agreement' also means that employers have complied with the requirements of the approval process (see below).

No coercion

Coercion is prohibited and penalties apply.

This means that no person can take any action which has (or is intended to have) the effect of forcing a person to make, approve, lodge, vary or terminate a workplace agreement, or not to do any of these, against their will.

However, employers *can* make the enterprise agreement binding on new employees.

No false or misleading statements

Employers should be careful not to make false or misleading statements about the effect of the workplace agreement, or penalties could apply. Statements made carelessly may also attract penalties if the employee is misled, even if this was not intended.

If any employees have limited literacy, employers will need to be especially careful to make sure they understand the effect on them of each clause of the proposed agreement.

The bargaining process – formalities for enterprise agreements

Bargaining begins when an employer and employees initiate or agree to begin negotiations about an enterprise agreement or when an employer is ordered to begin negotiations by The Fair Work Commission. This is called the 'notification time'.

Bargaining representatives

Once the 'notification time' has begun, employers must inform all employees within 14 days of their right to be represented by a bargaining representative, by giving them a copy of the 'Notice of Employee Representational Rights'. A copy is provided in the Employment and Reward section at www.thepeopleindairy.org.au

The notice must be given to each employee individually either in person or by mail, email or fax.

The bargaining representative can be a consultant, a fellow worker, colleague, union or anybody the employee trusts who is independent of the employer.

Employers are regarded as bargaining representatives but they can also appoint bargaining representatives. Any appointment must be in writing.

If an employee is a member of a union, the union is deemed to be the bargaining representative unless the employee asks them not to be or appoints someone else in writing.

If the employee(s) want to have a bargaining representative to assist them, employers must allow this person to attend discussions and to represent them in meetings.

Other formalities – provision of documents and advice about voting

Employers cannot request employees to vote on the enterprise agreement until 21 days has passed since the last employee received the Notice of Employee Representational Rights. This means that voting cannot occur until the 22nd day.

At least 7 days before voting can occur, employers must either give all employees a copy of the proposed agreement and any other documents which will be a part of the agreement or ensure that they have access to these documents at the workplace.

Employers must also notify all employees of the date and time of the vote and how the ballot will be taken. Voting can occur either by ballot or electronic means. The vote can be by a show of hands or any other method which shows genuine agreement.

Once these formalities have been complied with the employer can ask the employees to approve the agreement by voting.

Enterprise agreements are made when a majority (51%) of those who cast a valid vote, have voted in favour of the agreement.

Signing the agreement

An enterprise agreement must be signed by the employer and at least one representative of the employees covered by the agreement.

The signing clause should include the full name and address of each person signing the agreement and an explanation of the person's authority to sign the agreement.

A simple clause that you can use is as follows:

"The employees have elected (insert the person's name) to be their representative and he/she is authorised to sign this agreement on behalf of all of the employees (or if a group of employees specify the group) at (insert name of business)."

If a bargaining representative has been appointed the original agreement with the bargaining agent must be sent to The Fair Work Commission with the agreement.

Lodgement of enterprise agreements

Lodgement must be within 14 days

Within 14 days of signing, the enterprise agreement must be lodged with The Fair Work Commission for approval.

The agreement will not apply until it has been approved.

Formalities – enterprise agreements

Three copies of the enterprise agreement must be lodged along with an Application for Approval of Enterprise Agreement (Form 16) and an Employer's Declaration in Support of Application for Approval of Enterprise Agreement (Form 17). The forms can be downloaded at www.fwa.gov.au/index.cfm?pagename=resourceforms#sub7

A copy of the agreement and Form16 must also be given to any employee bargaining representative as soon as possible after lodgement with The Fair Work Commission.

A checklist for approval and lodgement of enterprise agreements is provided at the end of this document and in the Employment and Reward section at www.thepeopleindairy.org.au

Approval of enterprise agreements by The Fair Work Commission

Before approving the enterprise agreement The Fair Work Commission must be satisfied that:

- the agreement was genuinely agreed to by the employees and that the parties bargained in good faith;
- the agreement does not breach the Australian The Fair Pay and Conditions Standard;
- the agreement passes the Better Off Overall Test;

- if the agreement covers only a group of employees, that the group was the fairly chosen;
- there are no unlawful terms (see above);
- there is a nominal expiry date (no more than 4 years);
- there is a dispute resolution clause.

In addition, if the agreement does not include a Consultation Term and a Flexibility Term, The Fair Work Commission will make a note that the model clauses are included in the agreement.

When does the enterprise agreement apply?

Under the federal industrial laws applying as of 1 July 2009 enterprise agreements do not apply until 7 days after they have been approved by The Fair Work Commission.

If the enterprise agreement does not pass the Better Off Overall Test, The Fair Work Commission may ask the employer to give a written undertaking about the conditions in the agreement which caused it to fail the test. If these undertakings do not cause financial disadvantage to the employee or result in substantial changes to the agreement The Fair Work Commission can then approve the agreement.

Termination of workplace agreements after 1 july 2009

Workplace agreements agreed to before 1 July 2009

If employers and employees have agreed to terminate a workplace agreement before 1 July 2009 the old rules apply for termination.

Collective agreements made before 1 July 2009

These agreements are now called Transitional Agreements as they were made before the new laws came into effect and they continue to apply despite the new laws.

The rules about termination of enterprise agreements (see below) apply to transitional agreements but there are different forms.

Employers will need to lodge an Application for Termination of Collective Agreement-Based Transitional Instrument using Form 28. The form can be downloaded at www.fwa.gov.au/index.cfm?pagename=resourceforms#sub8

See below for termination of ITEAs and AWAs.

Enterprise agreements – at any time

Termination by agreement at any time by employer and all employees

Employers and all of the employees can agree to terminate an enterprise agreement at any time.

An employer covered by an enterprise agreement can request employees covered by the agreement to approve the termination of the agreement by voting for it. The employer must make sure that all employees are aware of the time and place of the vote and give them a reasonable opportunity to consider whether they want to approve the proposed termination. The vote can be by ballot or electronic means and a majority or 51% of those who cast a valid vote can approve the termination.

Once the vote has been conducted an Application for Termination of Enterprise Agreement (Form 24) must be lodged with The Fair work Commission within 14 days. The form can be downloaded at www.fwa.gov.au/index.cfm?pagename=resourceforms#sub7

Enterprise agreements – after the nominal expiry date has passed

Once an enterprise agreement has passed its nominal expiry date, the employer, an employee covered by the agreement or the union can apply to The Fair Work Commission for the agreement to be terminated. The Fair Work Commission has to consider the views of all parties and the likely effect of the termination before approving the termination.

An Application for Termination of Enterprise Agreement (Form 24) must be lodged with The Fair Work Commission. The form can be downloaded at www.fwa.gov.au/index.cfm?pagename=resourceforms#sub7

ITEAs and AWAs

Termination by agreement

The employer and employee bound by an AWA or an ITEA can agree at any time to terminate the agreement. The agreement must be in writing and signed by both parties and if the employee is under 18 years of age, also signed by a parent or guardian. The agreement must be lodged with The Fair Work Commission for approval within 14 days and accompanied by an Application for Termination of Individual Agreement-Based Transitional Instrument (Form 29). The form can be downloaded at www.fwc.gov.au/awards-and-agreements/agreements/terminate-agreement/terminating-individual-agreements

Unilateral termination – termination by one party

If the AWA or ITEA has passed its nominal expiry date either party can apply to The Fair Work Commission for the agreement to be terminated. The application must be made on an Application for Termination of Individual Agreement-Based Transitional Instrument (Form 29) and lodged with The Fair Work Commission for approval. The form can be downloaded at www.fwc.gov.au/awards-and-agreements/agreements/terminate-agreement/terminating-individual-agreements

If The Fair Work Commission approves the termination it will apply from 90 days after the approval.

Termination conditional on enterprise agreement

Conditional termination of AWAs and ITEAs is intended to enable employees covered by these agreements to enter into an enterprise agreement by terminating the AWA or ITEA as soon as the new enterprise agreement comes into operation.

An employee who is covered by a conditional termination agreement can fully participate in bargaining for an enterprise agreement whether or not the AWA or ITEA has passed its nominal expiry date.

Where the AWA or ITEA has not passed its nominal expiry date, a conditional termination agreement must be signed by both the employer and employee. However, where the AWA or ITEA has passed its nominal expiry date, either the employer or the employee can make a conditional termination agreement.

When an enterprise agreement is made that covers an employee who is also covered by a conditional termination agreement, the conditional termination agreement must be lodged with the application to The Fair Work Commission for approval of the enterprise agreement.

Provided the formal requirements relating to the conditional termination agreement have been met, the AWA or ITEA then terminates when the enterprise agreement comes into operation.

The Conditional Termination Agreement must be in writing and signed and witnessed and if the employee is under 18 years of age, also signed by a parent or guardian.

Checklist for approval and lodgement of enterprise agreements

Notification time begins – Employer/employees decide to bargain/ordered to bargain

- ☐ Within 14 days **–** employer gives each employee **Notice of Employee Representational Rights**
- ☐ No less than 22 days later **–** employer requests employees vote on the agreement

Seven-day access period begins – all employees given:

- ☐ Copy of agreement and any associated documents
- ☐ Information about time and location of vote and method which will be used (electronic/ballot)
- ☐ Effect of enterprise agreement on current entitlements explained - copy of relevant award available to employees

Approval process for enterprise agreement

- ☐ A vote occurred and majority approved
- ☐ Signatures are accompanied by full name and address
- ☐ Signatures are accompanied by explanation of person's authority to sign the agreement

Lodgement of enterprise agreement with The Fair Work Commission – within 14 days of signing

- ☐ Signed agreement (plus any Conditional Termination Agreement if relevant)
- ☐ Original of Bargaining Agent Agreement(s) attached
- ☐ Signed **Employer Declaration** (Form 17 available at www.fwa.gov.au)
- ☐ Completed **Application for Approval** (Form 16 available at www.fwa.gov.au)
- ☐ Copies of agreement and completed **Application for Approval** given to bargaining representative as soon as possible

Addresses for state and territory offices of The Fair Work Commission can be found at www.fwa.gov.au/index.cfm?pagename=headercontact