# Section 185 single-enterprise agreement legislative checklist

This checklist has been prepared by the Fair Work Commission’s administrative staff. It may not reflect the views of the Commission Member dealing with the enterprise agreement approval application, who will form their own views about the matters set out in this checklist.

This checklist is used when:

* the agreement is a single enterprise agreement (other than a greenfields agreement), and
* the notification time for the agreement was on or after 6 June 2023, and
* the agreement was made on or after 6 June 2023.

**Matter:**

**Member:**

## Summary of issues with the application

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| Section 1: Forms and Representation |
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| Section 2: Pre-approval requirements - Form F17  * **Agreement made date:** * **Notification time:** |
|  |
| Section 3: Terms of the Agreement |
|  |
| Section 4: National Employment Standards (NES) |
|  |

## Summary of boot

| Better off overall test (BOOT) summary - for detailed analysis, see section 5 of the checklist |
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## Summary of application

### Administrative information

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| --- | --- |
| **Prepared by** |  |
| **Name of Employer(s)** |  |
| **Lodgment Date** |  |
| **Agreement Made Date** |  |
| **Notification Time** |  |

### Agreement information

|  |  |
| --- | --- |
| **Background Information (industry, union involvement, number of employees, whether involved in engagement session etc.)** |  |
| **Modern Award(s) (Q8 F17)** |  |
| **Award(s) Incorporated** |  |
| **NES Precedence Term** |  |

## Miscellaneous considerations

| **Consideration** | **Marked if ‘Yes’** |
| --- | --- |
| Request to be expedited |  |
| Are there any missing documents including material incorporated? |  |
| Separate signature page(s) |  |
| Confidentiality request |  |
| Request for s.586 correction or s.217/218A variation |  |
| Pre-emptive undertaking |  |
| Inconsistencies or omissions on declaration |  |

| **Details of any issues or considerations for Member:** |
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## Section 1: Forms and Representation

| **Requirement** | **Marked if an issue** |
| --- | --- |
| Form F16 (s.185, rule 32 FW Rules)Signed and dated by employer or bargaining representative (if bargaining representative, instrument of appointment must be provided) |  |
| **Form F17 (s.185, rule 32(3) and (4) FW Rules)**  Signed by employer including date signed |  |
| Form F18 (s.183, s.185, rule 32(5) FW Rules) and/or Form F18A (s.185, rule 32(6) FW Rules)Signed by employee organisation or employee representative including date signedHas every union bargaining representative listed on the Form F16 lodged a Form F18? Does the union/s or employee bargaining representative/s object to the approval of the agreement and/or have they raised any issues? |  |
| Agreement (s.185(2), reg. 2.06A FW Regs)Signed by the employer and at least 1 employee/employee representative and includes full name, address and authority of each person. |  |
| Requests for documents |  |

| **Details of any issues or considerations for Member:** |
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## Section 2: Pre-approval requirements – Form F17

| **Requirement** | **Marked if issue** | **Comments (if there is an issue)** |
| --- | --- | --- |
| **Employees covered by the agreement - (s.186(3), s.186(3A)) (Q4)**  Does the agreement cover all employees – if not, was the group fairly chosen considering geographical, operational and organisational distinctness? |  |  |
| **Sufficient interest and sufficiently representative - (s.186(2)(a), s.188(2), s.188B) (Paras 17-19 SOP) (Q27)**  Do the employees who voted on the agreement have sufficient interest in the terms of the agreement and are sufficiently representative of the employees the agreement is expressed to cover?  To determine if employees have sufficient interest, the FWC may take into account:   1. Whether the employees entitled to vote on the agreement are to be paid the rates in the agreement; and 2. Whether the employees entitled to vote on the agreement are employed across the full range of:  * Classifications in the agreement; * Types of employment in the agreement; * Geographical locations the agreement covers; * Industries and occupation the agreement covers. |  |  |
| NERR Provision - (s.173, s.174, s.186(2)(a), s.188(1) s.188(3), s.188(4), s.188B) (Sch 2.1 of FW Regs) (Paras 1, 2 & 3 SOP) (Q19, Q20) The Notice of employee representational rights is in prescribed form.  The employer took all reasonable steps to give the Notice to each employee covered by the agreement and employed at the time of notification.  The employer did not mislead employees as to their right to be represented or the role of an employee organisation as the default bargaining representative of its members. |  |  |
| **NERR Provision – Timeliness - (s.173(3), s.181, s.186(2)(a), s.188(1) s.188(3), s188(4), s.188B) (Q18, Q20, Q28)**  The employer provided the Notice of employee representational rights no later than 14 days after notification time.  Employees provided with the Notice of employee representational rights at least 21 days before commencement of voting. |  |  |
| **Consideration of the proposed agreement - (s.186(2)(a), s.188(1), s.188B) (Paras 4-7 SOP) (Q21.1, Q21.2, Q28)**  The employer should provide employees with a reasonable opportunity to consider a proposed enterprise agreement before voting on it.  The employer meets this requirement if;   1. The employer has provided employees with:  * A full copy of the Agreement; and * A full copy of any other material incorporated by reference in the agreement;  1. The materials provided under 1. above are provided either:  * At least **7 full calendar days** before the day on which voting starts; or * Such other reasonable time as is agreed with one or more employee organisation(s) acting as bargaining representative(s) for a significant proportion of the employees to be covered by the agreement;  1. The materials provided under 1. above are provided by:  * Giving employees, or ensuring employees have access to, a hard copy of the materials; * By electronic means; or * By combination of above methods.   Provided that employees have reasonable opportunity to access and read material during the whole of the period from the time material is provided until completion of the voting process. |  |  |
| **Explaining the terms of the agreement – (s.180(5), s.180(6), s.186(2)(a), s.188(1), s.188(4A), s.188B) (Paras 8 – 14 SOP) (Q22, Q23, Q24)**  The Employer must take all reasonable steps to ensure that:   1. The terms of the agreement, and the effect of those terms, are explained to the employees; and 2. The explanation is provided in an appropriate manner taking into account the particular circumstances and needs of those employees.   *Note: See Statement of principles paragraphs 8 to 14 for examples on how this is satisfied* |  |  |
| **Providing employees with a reasonable opportunity to vote – (s.186(2)(a), s.188(1), s.188B) (Paras 15 & 16 SOP) (Q25, Q26.1, Q26.2)**  Employees should be given a reasonable opportunity to vote on the proposed agreement in a free and informed manner. This should include:   1. A voting process that ensures the vote of each employee is not disclosed to or ascertainable by the employer; 2. A method and period of voting that provides all employees entitled to vote with a fair and reasonable opportunity to cast a vote; 3. Employees must be informed of the time, place and method of vote:  * At least 7 full calendar days before the day on which voting starts; or * By such other reasonable time as is agreed with one or more employee organisation(s) acting as bargaining representative(s) for a significant proportion of the employees to be covered by the agreement. |  |  |
| **Lodgment - (s.182(1), s.185(3)) (Q28 of F17 and Q1.4 of F16)**  Application was lodged no later than 14 days after agreement was made. |  |  |
| **Voting - (s.182(1), s.186(2)(a), s.188) (Q29)**  Did a majority of employees who cast a valid vote approve the agreement? |  |  |
| **Number covered** |  | |
| **Number voted** |  | |
| **Number voted to approve** |  | |
| **Views of employee organisation(s) acting as bargaining representatives (s.188(1), s.188B) (Para 19 SOP)**  Have the employee organisation bargaining representatives provided a view that they support the approval of the agreement and do not have concerns that the agreement was not genuinely agreed to by the employees covered by the agreement? |  | |

### **Pay rate comparison**

| **Has the employer provided classification matching? (Q9 F17)** | **Basis of pay rate comparison** |
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## Section 3: Terms of the Agreement

| Requirement/Consideration | Marked if an issue | Clause/s |
| --- | --- | --- |
| **Nominal expiry date (s.186(5))**  Is the nominal expiry date more than 4 years after approval date? |  |  |
| Date of commencement (s.54(1))Is the date of commencement anything other than 7 days after the date of approval? |  |  |
| Superannuation term (s.186(4), s.194(h)) If the Agreement specifies a superannuation fund:   * does the fund offer a MySuper product; or * is the fund or scheme an exempt public sector superannuation scheme; or * is the fund a fund of which a relevant employee is a defined benefit member of? |  |  |
| Shiftworker for the purposes of the NES (s.187(4), s.196) Agreement defines or describes an employee as a shiftworker for the purposes of the NES?  Is this consistent with the definition in the relevant award(s)? |  |  |
| **Unlawful terms, and designated outworker terms (s.172, s.186(4), s.186(4A), s.194, s.195, s.253)**  Unlawful terms include discriminatory terms, objectionable terms, terms that provide for a method which an employee or employer may elect not to be covered by the agreement, terms about unfair dismissal, terms about industrial action and terms about superannuation. |  |  |
| **Right of entry term (s.186(4), s.194(f) & s.194(g)**  Does the agreement contain any terms that deal with the rights of officials or employees or employees of employee organisations to enter the employer’s premises? |  |  |
| Stand down provisions inconsistent with the Act? |  |  |
| Deductions inconsistent with the Act? |  |  |
| Dispute settlement term (s.186(6), reg 6.01, Sch 6.1 of FW Regs) |  |  |
| Flexibility term (ss.202­–204, reg 2.08, Sch 2.2 FW Regs) |  |  |
| Consultation term (s.205, reg. 2.09, Sch 2.3 FW Regs) |  |  |
| Workplace delegates’ rights term (s.205A) |  |  |

| **Details of any issues or considerations for Member:** |
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## Section 4: National Employment Standards

**Relevant sections of the *Fair Work Act*:** (s.55, s.56, s.186(2)(c), s.196, s.253)

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| **NES Precedence Term**  Does the agreement contain a NES precedence term? |  |

| Requirement | Marked if an issue | Clause/s |
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| Maximum weekly hours of work (s.62 – s.64)38 hours per week |  |  |
| Request for flexible working arrangements (s.65 – s.66)Section 65(1A) FW Act |  |  |
| Casual employment (s.66A – s.66MA)See Division 4A of Part 2-2 of FW Act. |  |  |
| Parental leave (s.67 – s.85)12 months unpaid + right to request further 12 months |  |  |
| Annual leave (s.86 – s.94)4 weeks paid leave (5 weeks for shiftworkers) |  |  |
| Personal/carer’s leave (s.95 – s.107)10 days paid leave + 2 days paid compassionate leave + 2 days unpaid carer’s leave for a casual employee or for permanent employees when their paid personal leave has been used |  |  |
| Community service leave (s.108 – s.112)10 days paid jury leave + unpaid emergency service leave |  |  |
| Long service leave (s.113 – s.113A)As per the pre-reform award or NAPSA, or in accordance with state or territory long service leave legislation |  |  |
| Public holiday (s.114 – s.116)Paid day off for each public holiday (employer can request employee to work if such request is reasonable) |  |  |
| Notice of termination and redundancy (s.117 – s.123)Up to 4 weeks’ notice (5 weeks’ if over 45 and in job for over 2 years) depending on years of service AND between 4-16 weeks redundancy pay depending on years of service |  |  |
| Family and domestic violence leave (s.106A- s.106E and s.107)10 days of paid family and domestic violence leave in a 12 month period |  |  |
| Superannuation contributions (s.116A -116E)Employer must make superannuation contributions to an employee | ☐ |  |
| Information Statements ([s.124](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s124.html) – s.125B) Fair Work Information Statement for all employees  Casual Employment Information Statement for casual employees |  |  |

| **Details of any issues or considerations for Member:** |
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## Section 5: Better off overall test report

**Relevant sections of the *Fair Work Act*:** (s.186(2)(d), s.193, s.193A)

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| **Relevant award(s)** |  |
| **BOOT considerations/ comments** | **BOOT considerations (s.193A(6))** |
| **BOOT summary (s.193 & 193A(2))** |
| **Views of parties (if any) (s.193A(3) & (4))** |

## Modelling