



DETERMINATION

Fair Work Act 2009

ss.202(5), 205(3), 737(1), 768BK(1A) - Commission to determine model terms for enterprise agreements and the copied State instrument model term for settling disputes

Model terms for enterprise agreements and copied State instruments

(AG2024/3500, AG2024/3501, AG2024/3502, AG2024/3503)

VICE PRESIDENT GIBIAN
DEPUTY PRESIDENT DOBSON
DEPUTY PRESIDENT BUTLER

SYDNEY, 20 FEBRUARY 2025

Commission to determine model terms for enterprise agreements and the copied State instrument model term for settling disputes – Model Consultation Term for enterprise agreements – s 205(3) Fair Work Act 2009 (Cth).

[1] Further to our decision in [\[2025\] FWCFB 39](#), we determine that the Model Consultation Term for enterprise agreements is as follows:

Application of consultation term

- (1) This term applies if the employer:
 - (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology that is likely to have a significant effect on employees to which this enterprise agreement applies; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Consultation in relation to major workplace change

- (2) For a major change referred to in subclause (1)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant employee or employees may advise the employer that a person or employee organisation is their representative for the purposes of the procedures in this clause in relation to a major workplace change.
- (4) If:
 - (a) a relevant employee, or the relevant employees, advise the employer that a person or employee organisation is their representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

- (5) The employer must notify the relevant employees and their representatives (if any) of the decision to introduce the change.
- (6) As soon as practicable after making its decision, the employer must:
 - (a) consult with the relevant employees and their representatives (if any), including by discussing with them:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures to avoid or reduce any adverse effect of the change on the employees; and
 - (b) for the purposes of the consultation—provide, in writing, to the relevant employees and their representatives (if any):
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) the reasons or justification for the change; and
 - (iii) information about the expected effects of the change on the employees; and
 - (iv) any other matters likely to affect the employees.
- (7) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees or their representatives (if any).
- (8) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees and their representatives (if any).
- (9) The employer will take reasonable steps to communicate the outcome of the consultation process including the consideration that was given to matters raised about the major workplace change by the relevant employees and their representatives (if any).
- (10) If a term in this agreement provides for the introduction of a major workplace change in relation to the enterprise of the employer, the requirements to consult contained in clauses (3) to (9) are taken not to apply.
- (11) In this term, a major workplace change is “likely to have a significant effect on employees” if it results in:
 - (a) the termination of the employment of employees; or
 - (b) major change in the composition, operation or size of the employer’s workforce or to the skills required of employees; or
 - (c) the loss of, or reduction in, job or promotion opportunities; or
 - (d) the loss of, or reduction in, job tenure or job security; or
 - (e) the alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or
 - (g) job restructuring.

Consultation in relation to change to regular roster or ordinary hours of work

- (12) For a change referred to in subclause (1)(b):
 - (a) the employer must notify the relevant employees and their representatives (if any) in writing of the proposed change; and
 - (b) subclauses (13) to (18) apply.
- (13) The relevant employee or employees may advise the employer that a person or employee organisation is their representative for the purposes of the procedures in this clause in relation to changes to regular rosters or ordinary hours of work.
- (14) If:
 - (a) a relevant employee, or the relevant employees, advise the employer that a person or employee organisation is their representative for the purposes of consultation; and

- (b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

- (15) As soon as practicable after proposing to introduce the change, the employer must:
 - (a) consult with the relevant employees and their representatives (if any) about the introduction of the change, including by discussing the change with them; and
 - (b) for the purposes of the consultation—provide to the relevant employees and their representatives (if any):
 - (i) all relevant information about the change, including the nature and expected duration of the change; and
 - (ii) information about what the employer reasonably believes will be the effects of the change on the employees (including any effect on the employee's remuneration); and
 - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
 - (c) invite the relevant employees and their representatives (if any) to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (16) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees or their representatives (if any).
- (17) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees or their representatives (if any).
- (18) The employer will take reasonable steps to communicate the outcome of the consultation process including the consideration that was given to matters raised about the change to the regular roster or ordinary hours of work of employees by the relevant employees and their representatives (if any).

Definition

- (19) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (1).



VICE PRESIDENT

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