

# Modern awards and enterprise agreements

## Legal information for community organisations

### This fact sheet covers:

- ▶ what is a modern award?
- ▶ when does a modern award apply?
- ▶ what is an enterprise agreement?



### Disclaimer

This fact sheet provides information on modern awards and enterprise agreements. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

**An employment contract determines the terms of an employment relationship. However, these terms can be changed by a modern award or an enterprise agreement.**

If an employment contract provides an entitlement that is less than an applicable modern award or enterprise agreement, the lesser provision does not have any effect – the more beneficial entitlement applies to the employee.



### Caution – breach

Employers may be required to pay a monetary penalty, outstanding entitlements (plus interest) or compensation for breaching a term of a modern award or enterprise agreement.

Employees can claim back pay for a period of up to six years, if they have not received their entitlements under a modern award or enterprise agreement.



# Modern awards



## What is a modern award?

Modern awards set out the minimum employment entitlements for employees in a particular industry or occupation.

Modern awards can't include entitlements that are less beneficial to employees than the minimum wage or National Employment Standards (**NES**). The NES are 12 minimum standards of employment that apply to all employers and employees covered by the [Fair Work Act 2009 \(Cth\)](#) (**Fair Work Act**). Some of the NES do not apply to casual employees.



For more information on the NES, see our [fact sheet on employee entitlements](#).

There are approximately 123 modern awards that cover most occupations and industries in Australia.

### Modern awards include terms concerning:

- the engagement of full-time, part-time and casual employees
- hours of work
- rosters and breaks
- minimum rates of pay
- penalty rates for overtime, shift work and weekend work
- leave, and
- allowances to be paid

## When does a modern award apply?

A modern award applies to employees who work in the industry or occupation it covers. Each modern award includes specific coverage provisions.

The provisions of an award do not apply to 'High income employees' (those who earn more than \$175,000 as of 1 July 2024) if they have a contractual guarantee of annual earnings at or above this level.

If an employee is covered by an enterprise agreement, the modern award that would otherwise cover the employee will not apply (although some award terms may be incorporated into the enterprise agreement). If the enterprise agreement is terminated, the appropriate modern award will then apply.

It is not possible to contract out of modern award coverage.



### Tip

Work out which modern award applies to your employees (if there isn't an enterprise agreement in place) and carefully review the modern award to check you comply with its terms and provide sufficient payments and benefits to your staff.



## Finding the relevant modern award

To identify the modern award that covers your employees, you must consider the industry in which you operate, and the employee's job type and duties.



### Tip

Check the 'coverage' clause (usually under section 4) of a modern award to see if it covers you and your employees. For example, the *Social, Community, Home Care and Disability Services Industry Award 2010 (Social Award)* provides that the award applies to employers in the social and community services sector (as well as other sectors) and applies to employees listed in the classifications found in the award.

## How to find the relevant modern award

### Modern awards list

To determine the award that is most likely to apply to an employee in your organisation, based on either the industry you operate in or your employee's occupation, check the [alphabetical listing of Modern Awards on Fair Work Australia's website](#):

Common awards for not-for-profit organisations and their employees are:

- Social Award
- *Clerks – Private Sector Award 2020*
- *Miscellaneous Award 2020*
- *Registered and Licensed Clubs Award 2020*

### Check coverage clause

Once you have selected a modern award by industry or occupation, go to the 'Coverage' clause of the award (usually around clause 4).

This clause generally sets out in detail the industry, employers and employees the Award covers.

### Check classifications

Each award groups employees into certain 'classifications' by outlining factors including the type of work they perform, their experience, qualifications, skills, knowledge, responsibilities and/or managerial levels.

The award then allocates each classification a minimum weekly wage or hourly rate and other entitlements. For example, Schedule B of the Social Award sets out 8 classification levels – from level 1 (a clerical and/or support role) to level 8 (a senior role). The award allocates a different minimum wage for each of these 8 classifications.

### If more than one award could apply?

Where more than one award could apply:

- determine the award which is most appropriate to the work performed by the employee and to the industry in which the employee normally performs the work
- contact the Fair Work Ombudsman for guidance on which award is the correct one for your employees. Call 13 13 94, or
- contact a lawyer for advice

### Rates of pay

Once an employee's classification is determined this will guide you in determining their rates of pay and entitlements.

See the [Fair Work Ombudsman Pay Calculator tool](#)

### Subscribe to updates

Subscribe to award updates to be notified of changes to the award (for example, pay rate increases) on the [Fair Work Ombudsman website](#).



The [Fair Work Ombudsman](#) can also help you find the applicable modern award using its '[Find my award tool](#)'. This tool allows searches by occupation and industry to help determine the applicable modern award.



### Caution

There are both **industry-based** and **occupation-based** awards. This means that multiple awards may appear to cover your employees. For example, a call centre operator employed in the social and community services sector could potentially come under both the *Clerks – Private Sector Award 2020* and the Social Award.

Take care to determine which award is the most appropriate by comparing the coverage clauses (clause 4) of the awards to your employees' job type, duties and industry. Some awards may contain exclusions which indicate which award takes priority. If not, the correct award will be that which is most appropriate to the work performed by the employee and the environment in which the employee normally performs the work.

You may need help from a lawyer to determine this question.

## Common awards for not-for-profit organisations:

### *Social, Community, Home Care and Disability Services Industry Award 2010*

This award applies to employers engaged in:

- the crisis assistance and the supported housing sector
- the social and community services sector; the home care sector, and
- the family day care scheme sector,

and their employees in the classifications listed in the award

### *Clerks – Private Sector Award 2020*

This award applies to employers and employees in the private sector throughout Australia regarding employees engaged wholly or primarily in clerical work, including administrative duties of a clerical nature (for example, filing and photocopying, answering calls and attending a reception desk).

### *Miscellaneous Award 2020*

This award applies to employees not covered by any other Modern Award, who are unskilled, semi-skilled or trade qualified, and not performing managerial or professional work. This award may also cover certain charities in limited circumstances.



### Caution

Employees in the social and community services sector are subject to special pay arrangements. See the [Fair Work Ombudsman webpage on Social & community services industry pay rates](#) for more information.



# Enterprise agreements



## What is an enterprise agreement?

An enterprise agreement is an agreement made between one or more national system employers and their employees about the employment relationship between them and the terms and conditions of employment of those employees.

An enterprise agreement is normally negotiated and agreed between the employer and employees collectively, often with the assistance of a union or representative, and must then be approved by the Fair Work Commission.

Specific terms must be included and excluded in an enterprise agreement. For example, a coverage term explaining who and what work is covered must be included, but unlawful terms cannot be included.

An enterprise agreement can't provide entitlements that are overall less beneficial than those provided by the modern award that would otherwise apply to the employees.

A modern award will not apply to an employee when an enterprise agreement applies to them. If the enterprise agreement is terminated and not replaced by a subsequent enterprise agreement, the appropriate modern award will then apply.

An enterprise agreement must not exclude the NES. To the extent that it does so, it will have no effect. However, enterprise agreements may include terms that are ancillary, incidental or supplementary to the NES, but only to the extent that the effect of those terms is not detrimental to an employee in any respect, when compared to the NES.

There are three types of enterprise agreements:

- single enterprise agreements, which are made between an employer or related employers and a group of employees
- multi-enterprise agreements, which are made between two or more employers and a group of employees, and
- greenfields agreements, made between at least one employer and at least one union in regards to an enterprise which does not yet have any employees



## Example

The NES provides that employees (other than casual employees) are entitled to four weeks of paid annual leave (or five weeks in the case of shift workers).

If a term of an enterprise agreement provides that employees are only entitled to three weeks' paid annual leave, this term would not comply with the NES and would have no effect. The NES entitlement of four weeks' annual leave will automatically apply.

An enterprise agreement must also pass the Better Off Overall Test (**BOOT**) (discussed below) – this means the employees, and each reasonably foreseeable employee that may be engaged by the employer in the future, must be better off overall under the enterprise agreement than under the relevant modern award.

## How is an enterprise agreement made?

An enterprise agreement is made through collective bargaining between an employer (or employers) and employees. It can be a complex process because:

- employers must comply with procedural requirements when negotiating an enterprise agreement with their employees, and
- there are certain terms that:
  - must be included (coverage, consultation, flexibility, nominal expiry date, dispute settlement and workplace delegates' rights)
  - may be included (matters regarding the employment relationship, organisations (for example, unions), authorised deductions and operation of the agreement), and
  - can't be included (unlawful terms, terms that contravene the NES, and designated outworker terms)



For more information on how an enterprise agreement is made, see the [Fair Work Ombudsman's webpage on enterprise agreements](#).

### Bargaining representatives

When negotiating an enterprise agreement, the parties will usually have bargaining representatives.

An employer will generally be their own bargaining representative, but may appoint a person in writing to be their bargaining representative. If employees are members of a union, and the union is entitled to represent the industrial interests of the employees in relation to work that will be performed under the agreement, the union will usually be the employees' bargaining representative. However, the employees can appoint anyone in writing to be their bargaining representative (including themselves), so long as the representative complies with the Fair Work Act and *Fair Work Regulations 2009* (Cth) (**Fair Work Regulations**), including being free from control and improper influence by the employer or another bargaining representative

### Bargaining process

Once bargaining has begun (because the employer has agreed to bargain or a Fair Work Commission order initiates bargaining), the employer must give employees a [Notice of Employee Representational Rights](#) as soon as practicable, and not later than 14 days after the start of bargaining. You can download the template (which must be followed) from the [Fair Work Commission website](#).

All bargaining representatives must bargain in good faith and comply with the good faith bargaining requirements. These requirements include:

- attending and participating in meetings at reasonable times
- disclosing relevant information in a timely manner
- responding to proposals from other representatives in a timely manner
- giving genuine consideration to the proposals of other representatives, and giving reasons for the bargaining representative's responses to those proposals, and
- refraining from 'capricious' or unfair conduct that undermines freedom of association or collective bargaining, and
- recognising and bargaining with the other bargaining representatives for the agreement

As long as the bargaining representatives have bargained in good faith, they don't have to agree to the proposed agreement.

At any time (21 or more days after the Notice of Representational Rights is issued), an employer may put a proposed enterprise agreement to the vote. A single-enterprise agreement is made if 50% plus 1 of eligible employees vote on the agreement, and 50% plus 1 of the voters vote in support of the agreement. A multi-enterprise agreement is made if a majority of eligible employees of at least one employer vote in support of the agreement.



Under certain circumstances during the bargaining process, a bargaining representative may apply to the Fair Work Commission for a bargaining order.



### Note – changes to the bargaining process

The [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) made changes to the Fair Work Act regarding the bargaining process.

For more information, see the [Department of Employment and Workplace Relations fact sheets on bargaining and workplace relations](#) including:

- [bargaining disputes](#)
- [cooperative workplaces bargaining stream](#)
- [initiating bargaining - single enterprise agreements](#)
- [simplifying enterprise agreement approval requirements](#)

## Approval of the enterprise agreement by the Fair Work Commission – the Better Off Overall Test

Once a lawful enterprise agreement is reached, the Fair Work Commission must approve the enterprise agreement.

To approve an enterprise agreement, the Fair Work Commission must be satisfied:

- the employer has followed all the necessary steps
- the agreement is genuinely agreed to by the employees (not applicable for greenfields agreements)
- if the agreement is a multi-enterprise agreement:
  - the agreement has been genuinely agreed to by each employer and no person coerced, or threatened to coerce, any of the employers to make the agreement
  - if the agreement was not approved by the employees of all the employers, the agreement was varied to only cover the employers whose employees approved the agreement
  - the agreement does not cover employees in relation to general building and construction work
- the terms do not contravene the provisions of the Fair Work Act regarding the interaction between the NES and an enterprise agreement
- the agreement passes the Better Off Overall Test (**BOOT**)
- at least some of the employees covered by the agreement were represented by an employee organisation in relation to bargaining for the agreement (not applicable for greenfields agreements)
- the group of employees covered by the agreement was fairly chosen
- the agreement meets the requirements with respect to particular kinds of employees (shift workers, pieceworkers, school-based apprentices and school-based trainees and outworkers)
- the agreement contains appropriate terms, including a nominal expiry date, dispute settlement, and no prohibited terms
- approval of the agreement is not inconsistent with good faith bargaining
- if the agreement is a greenfields agreement:
  - the relevant unions are entitled to represent the industrial interests of a majority of the employees
  - it is in the public interest to approve the agreement
  - the agreement provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work





### Note – Statement of Principles on Genuine Agreement Instrument 2023

The Fair Work Commission must consider the [Statement of Principles on Genuine Agreement Instrument 2023](#) when determining whether an enterprise agreement has been genuinely agreed to by the employees. These principles provide guidance to employers about what they must do to ensure employees have genuinely agreed to the agreement.

Modern awards are used by the Fair Work Commission as the benchmark for assessing enterprise agreements before approval. The Fair Work Commission will apply the Better Off Overall Test (**BOOT**).

The BOOT requires the Fair Work Commission to assess whether, globally, any foreseeable employee is better off overall than if the relevant modern award applied to their employment. As a result, employers must identify what modern award would apply to the employment relationship (if the enterprise agreement did not apply) and make sure the agreement will meet the BOOT. You can find the relevant award at '[Find an award](#)' on the [Fair Work Commission website](#).



For more information see the Fair Work Commission webpages on the [application of the BOOT test](#) and the [approval process for enterprise agreements](#).



### Note – changes to the Better Off Overall Test

The [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) made changes to the Fair Work Act that simplify the operation of the BOOT.

For more information, see the [Department of Employment and Workplace Relations fact sheet on the Better Off Overall Test](#).