Fair Work Commission

Background Paper

Model terms for enterprise agreements

17 September 2024
Fair Work Commission

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This paper has been prepared by staff of the Fair Work Commission to promote discussion and facilitate the consultation process. It does not represent the views of the Commission on any issue.

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Contents

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Glossary

AIRC	Australian Industrial Relations Commission
Closing Loopholes Bill	Fair Work Legislation Amendment (Closing Loopholes) Bill 2023
Closing Loopholes No.2 Act	Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024
Commission or FWC	Fair Work Commission
FW Act	Fair Work Act 2009
FW Bill	Fair Work Bill 2008
FW Regulations	Fair Work Regulations 2009
IFA	Individual flexibility arrangement
WAD	Department of Employment and Workplace Relations' Workplace Agreements Database

1. Introduction

[1] On 26 February 2024 the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (**Closing Loopholes No. 2 Act**) received Royal Assent.

[2] Part 5 of Schedule 1 to the Closing Loopholes No.2 Act amends the *Fair Work Act 2009* (**FW Act**) to confer new functions on the Fair Work Commission (**Commission or FWC**) to make new model terms for enterprise agreements and the copied State instrument model term for settling disputes. These provisions commence on 26 February 2025, or an earlier date fixed by proclamation.

[3] Pursuant to sections 202, 205, 737 and 768BK of the FW Act as amended, the Commission must make a model:

- flexibility term for enterprise agreements (s.202(5))
- consultation term for enterprise agreements (s.205(3))
- term for dealing with disputes for enterprise agreements (s. 737(1), and
- term for settling disputes about matters arising under a copied State instrument for a transferring employee (s.768BK(1A)).

[4] This background paper is concerned with the Commission's development of the model terms. The FW Act as amended sets out broad considerations the Commission must take into account in determining the model terms. For the purposes of this background paper, the reference 'model terms for enterprise agreements' includes reference to the requirement to make a model term for settling disputes about matters arising under a copied State instrument for a transferring employee.

[5] In a statement issued on 17 September 2024 the President announced the commencement of a major case for model terms for enterprise agreements. This paper is intended to:

- provide an overview of the relevant legislative provisions of model terms in enterprise agreements,
- provide analysis on data from the Workplace Agreements Database on the types of flexibility and dispute resolution terms (model or otherwise) incorporated into enterprise agreements approved between 1 January 2020 and 31 March 2024,
- identify common differences of flexibility, consultation and dispute resolution terms found in enterprise agreements that depart from the existing model terms and provide examples of such terms, and
- examine the standard clauses found in all modern awards in relation to individual flexibility arrangements, consultation about major workplace change, consultation about changes to rosters or hours of work and dispute resolution.

[6] Interested parties are invited to consider and provide any comments on the draft timetable set out in the President's statement issued on 17 September 2024. Any comments on the draft timetable should be sent to chambers.hatcher.j@fwc.gov.au by **5:00 pm (AEST) on 23 September 2024**.

2. Overview of provisions in FW Act relating to model terms for enterprise agreements

This section provides an overview of the relevant legislative provisions of model terms in enterprise agreements and copied State instruments. It also sets out the changes to the process for determining the model terms for enterprise agreements and the model term for settling disputes arising under a copied State instrument as amended by the Closing Loopholes No.2 Act.

[7] Currently, the FW Act requires enterprise agreements to contain (among other things) a flexibility, consultation and dispute resolution term. These terms must meet certain requirements that are set out in the FW Act.

[8] Division 5 of Part 2-4 of the FW Act deals with mandatory terms of enterprise agreements and includes provisions in relation to the flexibility and consultation terms.

[9] Section 186(6) of the FW Act sets out the requirements for a term about settling disputes and ss.737 and 768BK contain provisions about the model term for dealing with disputes for enterprise agreements and settling disputes about matters arising under a copied State instrument for a transferring employee.

[10] Model flexibility, consultation and dispute resolution terms which meet the requirements in the FW Act are currently prescribed in the *Fair Work Regulations 2009* (**FW Regulations**).

[11] Part 5 of Schedule 1 to the Closing Loopholes No.2 Act changes the process for determining the model terms for enterprise agreements and the model term for settling disputes arising under a copied State instrument. It provides that the model terms must be determined by the Commission, taking into account a number of matters.

2.1 Flexibility term

[12] Section 202(1) of the FW Act provides that an enterprise agreement must include a flexibility term that:

- enables an employee and his or her employer to agree to an arrangement (an ***individual flexibility arrangement***) varying the effect of the agreement in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer, and
- complies with section 203.

[13] This requirement was introduced into the FW Act on commencement. The Explanatory Memorandum to the Fair Work Bill 2008 (**FW Bill**) states that 'in order to facilitate more flexible employment relationships, enterprise agreements will also be required to include an individual flexible arrangement and a consultation clause where major change is considered'.[1]

[14] The ability for employers and employees to negotiate individual flexibility arrangements within the scope of the flexibility term was designed to increase productivity and provide for mutually beneficial employment arrangements.[2]

[15] The Explanatory Memorandum to the FW Bill states:

> '...It is intended that the model term to be prescribed will be based upon the model flexibility term developed by the AIRC for inclusion in modern awards. These provisions will allow employers to enter into individual flexibility arrangements with employees where this is to the benefit of the employer and the employee.'[3]

[16] The Senate Committee Report for the introduction of the FW Bill noted that the model flexibility clause developed by the Australian Industrial Relations Commission (**AIRC**) created a template for the new model flexibility term to be included in enterprise agreements under the FW Act.[4]

[17] The provisions of section 203 of the FW Act detail the requirements of a flexibility term in an enterprise agreement:

> **203 Requirements to be met by a flexibility term**
>
> *Flexibility term must meet requirements*
>
> (1) A flexibility term in an enterprise agreement must meet the requirements set out in this section.
>
> *Requirements relating to content*
>
> (2) The flexibility term must:
>
> (a) set out the terms of the enterprise agreement the effect of which may be varied by an individual flexibility arrangement agreed to under the flexibility term; and
>
> (b) require the employer to ensure that any individual flexibility arrangement agreed to under the flexibility term:
>
> (i) must be about matters that would be permitted matters if the arrangement were an enterprise agreement; and

[1] Explanatory Memorandum to Fair Work Bill 2008, at r.151.
[2] Standing Committee on Education, Employment and Workplace Relations, Fair Work Bill: Report: Fair Work Bill 2008 [Provisions] (aph.gov.au) at 3.13.
[3] Explanatory Memorandum to Fair Work Bill 2008, at r.151.
[4] Senate Standing Committee on Education, Employment and Workplace Relations, Fair Work Bill: Report: Fair Work Bill 2008 [Provisions] (aph.gov.au) at 3.12.

(ii) must not include a term that would be an unlawful term if the arrangement were an enterprise agreement.

(2A) If, in accordance with this Part, the enterprise agreement includes terms that would be outworker terms if they were included in a modern award, the flexibility term must not allow the effect of those outworker terms to be varied.

Requirement for genuine agreement

(3) The flexibility term must require that any individual flexibility arrangement is genuinely agreed to by the employer and the employee.

Requirement that the employee be better off overall

(4) The flexibility term must require the employer to ensure that any individual flexibility arrangement agreed to under the term must result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.

Requirement relating to approval or consent of another person

(5) Except as required by subparagraph (7)(a)(ii), the employer must ensure that the flexibility term does not require that any individual flexibility arrangement agreed to by an employer and employee under the term be approved, or consented to, by another person.

Requirement relating to termination of individual flexibility arrangements

(6) The flexibility term must require the employer to ensure that any individual flexibility arrangement agreed to under the term must be able to be terminated:
(a) by either the employee, or the employer, giving written notice of not more than 28 days; or
(b) by the employee and the employer at any time if they agree, in writing, to the termination.

Other requirements

(7) The flexibility term must require the employer to ensure that:
(a) any individual flexibility arrangement agreed to under the term must be in writing and signed:
(i) in all cases—by the employee and the employer; and
(ii) if the employee is under 18—by a parent or guardian of the employee; and
(b) a copy of any individual flexibility arrangement agreed to under the term must be given to the employee within 14 days after it is agreed to.

[18] If an enterprise agreement does not include a flexibility term, or the flexibility term does not meet the requirements of the FW Act, the model flexibility term for enterprise agreements is taken to be a term of the enterprise agreement.[5]

[5] Fair Work Act 2009, s.202(4) and Re Minister for Employment and Workplace Relations (2010) 195 IR 138.

[19] Relevantly, the Closing Loopholes No.2 Act has not amended section 203 of the FW Act. The requirements of a flexibility term in an enterprise agreement as set out in s.203 of the FW Act above remains the same.

[20] The model flexibility term for enterprise agreements is currently set out in Schedule 2.2 of the FW Regulations and can be found at Annexure A.

[21] There have been no substantial changes to the model flexibility term since the commencement of the FW Act.

2.2 Consultation term

[22] Section 205(1) of the FW Act provides that an enterprise agreement must include a consultation term. It provides:

> **205 Enterprise agreements to include a consultation term etc.**
>
> *Consultation term must be included in an enterprise agreement*
>
> (1) An enterprise agreement must include a term (a ***consultation term***) that:
> (a) requires the employer or employers to which the agreement applies to consult the employees to whom the agreement applies about:
> (i) a major workplace change that is likely to have a significant effect on the employees; or
> (ii) a change to their regular roster or ordinary hours of work; and
> (b) allows for the representation of those employees for the purposes of that consultation.

[23] This requirement was introduced into the FW Act on commencement. As set out above in paragraph [13], such a term was mandated in enterprise agreements to facilitate more flexible employment relationships.[6]

[24] It was intended that the model consultation term set out in the regulations would be based on the consultation term developed by the AIRC for inclusion in modern awards.[7]

[25] The introduction of the *Fair Work Amendment Act 2013* amended the FW Act to insert s.205(1A), which provided new content requirements for enterprise agreements in relation to employers consulting with employees about changes to regular rosters or ordinary hours of work.

[26] The Revised Explanatory Memorandum to the Fair Work Amendment Bill 2013 states that the effect of the amendment was to 'ensure that, where a change to regular rosters or ordinary hours of work (which may impact upon an employee, particularly in relation to his or her family and caring responsibilities) does not constitute 'major workplace change'

[6] Explanatory Memorandum to Fair Work Bill 2008, at r.151.
[7] Explanatory Memorandum to Fair Work Bill 2008, at [878].

in accordance with subsection 205(1), an employer will nevertheless be required to engage in consultation with the employee about the change and impacts raised by the employee.'[8]

[27] Section 205(1A) of the FW Act details the required content in the term for a change to the employees' regular roster or ordinary hours of work:

> (1A) For a change to the employees' regular roster or ordinary hours of work, the term must require the employer:
> (a) to provide information to the employees about the change; and
> (b) to invite the employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
> (c) to consider any views given by the employees about the impact of the change.

[28] The Closing Loopholes No.2 Act has not amended the required content for a consultation term.

[29] If an enterprise agreement does not include a consultation term, the consultation term does not meet the requirements of the FW Act, or if the consultation term is an objectionable emergency management term, the model consultation term is taken to be a term of the agreement.[9]

[30] The model consultation term for enterprise agreements is currently set out in Schedule 2.3 of the FW Regulations and can be found at Annexure B.

2.3 Dispute resolution term

[31] Section 186(6) of the FW Act provides that the Commission must be satisfied that the agreement includes a term about settling disputes.

[32] This requirement was introduced into the FW Act on commencement. The Explanatory Memorandum to the FW Bill states:

> In addition, before approving an agreement, FWA must be satisfied that the agreement includes a term that provides a procedure that requires or allows FWA or another person who is independent of the employers, employees or employee organisations covered by the agreement, to settle disputes about any matters arising under the agreement; and in relation to the NES. Such term must allow for the representation of employees covered by the agreement for the purposes of the dispute settlement procedure.[10]

[8] Revised Explanatory Memorandum, Fair Work Amendment Bill 2013 (Cth) at [57].
[9] Fair Work Act 2009 s.205(2).
[10] Explanatory Memorandum to Fair Work Bill 2008, at r.152.

[33] The Explanatory Memorandum to the FW Bill states that for example, a dispute resolution term could not provide for disputes to be resolved by 'the managing director of the employer, or a dispute board made up of officials of a union covered by the agreement.'[11]

[34] Relevantly, section 186(6) of the FW Act provides:

> (6) The FWC must be satisfied that the agreement includes a term:
> (a) that provides a procedure that requires or allows the FWC, or another person who is independent of the employers, employees or employee organisations covered by the agreement, to settle disputes:
> (i) about any matters arising under the agreement; and
> (ii) in relation to the National Employment Standards; and
> (b) that allows for the representation of employees covered by the agreement for the purposes of that procedure.

[35] If an enterprise agreement does not include a dispute resolution term or the dispute resolution term does not meet the requirements of the FW Act, the Commission may either refuse to approve the agreement or approve the agreement with undertakings if a satisfactory undertaking is given.[12]

[36] If a copied State instrument for a transferring employee does not include a term that provides a procedure for settling disputes about matters arising under the instrument, then the instrument is taken to include the model term for settling disputes.[13]

[37] The model term for dealing with disputes for enterprise agreements is currently set out in Schedule 6.1 of the FW Regulations and can be found at Annexure C. The model term for dealing with disputes about matters arising under a copied State instrument is currently set out in Schedule 6.1A of the FW Regulations and can be found at Annexure D.

2.4 Closing Loopholes No.2 Act changes

[38] Part 5 of Schedule 1 to the Closing Loopholes No.2 Act amends the FW Act to empower the Commission to determine the model terms for enterprise agreements and copied State instruments.

[39] The FW Act currently provides that the FW Regulations must prescribe the model flexibility, consultation and dispute resolution terms.[14]

[40] The Revised Explanatory Memorandum to the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (**Closing Loopholes Bill**) states that 'the proposed amendments

[11] Explanatory Memorandum to Fair Work Bill 2008, at [783].
[12] Fair Work Act 2009 s.190(2).
[13] Fair Work Act 2009 s.768BK.
[14] Fair Work Act 2009 ss. 202(5), 205(3), 737, 768BK(1A).

would replace the existing requirements with requirements that the FWC, as Australia's expert and independent workplace relations tribunal, determine the model terms.'[15]

[41] The Revised Explanatory Memorandum to the Closing Loopholes Bill states:

> The amendments in Part 5 of Schedule 1 would be compatible with and promote the right to just and favourable working conditions of work and collective bargaining. The model terms act as a safety net ensuring that compliant terms dealing with consultation, flexibility and dispute resolution are included in all enterprise agreements, and a compliant term dealing with dispute settlement is included in copied State instruments. The model terms would not override terms agreed to between the parties to an agreement or instrument where the terms meet the requirements of the FW Act, minimising any concern that the model terms would limit the capacity of employees to determine just and favourable conditions.[16]

[42] The Commission must be constituted by a Full Bench to make the model terms.[17]

[43] In determining the model terms, the Commission must ensure that the model terms are consistent with the requirements set out in the FW Act:[18]

- Flexibility term: s.202(1)
- Consultation term: ss.205(1) and (1A)
- Dispute resolution term: s.186(6)

[44] New ss 202(6)(b), 205(4)(b), 737(2)(b) and 768BK(3) of the FW Act set out the matters the Commission must take into account in determining the model terms. These are:

(i) whether the model term is broadly consistent with comparable terms in modern awards,
(ii) best practice workplace relations as determined by the Commission,
(iii) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the Commission for consideration in determining the model term,
(iv) the object of the Act (see s 3),
(v) for the model flexibility and consultation terms, the objects of Part 2-4 (see s 171),
(vi) for the model consultation term, whether the model term would, or would be likely to have, the effect referred to in paragraph 195A(1)(a), (b), (c) or (d) (objectionable emergency management terms),
(vii) for the model term for dealing with disputes and the model term for term for dealing with disputes about matters arising under a copied State instrument, the operation of ss 739(3), (4), (5) and (6) and 740(3) and (4), and
(viii) any other matters the Commission considers relevant.

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[15] Revised Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 at [15].
[16] Ibid at [67].
[17] See s.616(4A) and Note 1 in Fair Work Act 2009 new ss. 202, 205, 737(1) and 768BK.
[18] Fair Work Act 2009 new ss.202(6)(a), 205(4)(a), 737(2)(a).

[45] The determinations of the model terms will be legislative instruments, but s.42 (disallowance) of the *Legislation Act 2003* does not apply.

[46] Despite the amendments made by Part 5 of Schedule 1 to the Closing Loopholes No.2 Act, the provisions in ss. 202, 205 and 737, as in force immediately before commencement continue to apply in relation to an enterprise agreement if:

(a) before commencement, the employer asks the employees to vote to approve the agreement; and
(b) by that vote, the employees approve the agreement; and
(c) the Commission approves the agreement.[19]

[47] Similarly, in relation to copied State instruments, s.768BK, as in force immediately before commencement, continues to apply in relation to a model term that is taken, before commencement, to be a term of a copied State instrument.[20]

[19] Closing Loopholes No.2 Act clause 107 of Part 18 of Schedule 1.
[20] Ibid at clause 108.

3. Analysis of the flexibility and dispute resolution terms in enterprise agreements

This section contains an analysis done by staff of the Commission on data provided by the Department of Employment and Workplace Relations from the Workplace Agreements Database (WAD). The data analysed relates to flexibility and dispute resolution terms in enterprise agreements approved between 1 January 2020 and 31 March 2024. The WAD does not collect data in relation to the consultation term.

3.1 Flexibility terms in enterprise agreements

[48] Tables 3.1.1 and 3.1.2 present data from the WAD in relation to flexibility terms in enterprise agreements approved between 1 January 2020 to 31 March 2024.

[49] Table 3.1.1 shows that approximately one third of the agreements contain a form of the model flexibility term. Additionally, a further 12.7% of the agreements contain the model flexibility term as the approval decision notes that the model flexibility term is incorporated into the agreement pursuant to s.202 of the FW Act. The data suggests that almost half of the agreements approved between 1 January 2020 to 31 March 2024 have a form of the model flexibility term.

Table 3.1.1: Model flexibility terms in enterprise agreements, 1 January 2020-31 March 2024, percent of approved agreements

	(%)
Agreement contains a form of the model flexibility term (either the award or agreement model term).	33.6
Fair Work Commission decision incorporates the model flexibility term into the agreement	12.7

Source: Department of Employment and Workplace Relations - Workplace Agreements Database

[50] Table 3.1.2 shows that close to half of the agreements allow specific terms of the agreement to be varied in an individual flexibility arrangement.

Table 3.1.2: Scope of flexibility terms in enterprise agreements, 1 January 2020-31 March 2024, percent of approved agreements

	(%)
Agreement contains a flexibility term that allows only specified terms in the agreement to be varied.	48.2

Source: Department of Employment and Workplace Relations - Workplace Agreements Database

3.2 Dispute resolution terms in enterprise agreements

[51] Tables 3.2.1, 3.2.2 and 3.2.3 present data from the WAD in relation to dispute resolution terms in enterprise agreements approved between 1 January 2020 to 31 March 2024.

[52] Analysis of the data shows that most agreements have a dispute resolution term that departs from the model. Table 3.2.1 shows that approximately 10% of the agreements use the model dispute term.

Table 3.2.1: Model dispute resolution terms in enterprise agreements, 1 January 2020-31 March 2024, percent of approved agreements

	(%)
Agreement contains the model dispute resolution term found in Schedule 6.1 of the Fair Work Regulations 2009.	10.7
Agreement contains a dispute resolution term that differs from the model term.	88.0

Source: Department of Employment and Workplace Relations - Workplace Agreements Database

[53] Table 3.2.2 shows that approximately a quarter of the agreements include a dispute resolution term in their agreement that allows for the resolution of disputes with regards to requests for flexible working arrangements or extended unpaid parental leave.

Table 3.2.2: Dispute resolution terms and s.65(5) and s.76(4) of the Fair Work Act 2009, 1 January 2020-31 March 2024, percent of approved agreements

	(%)
Agreement dispute resolution term allows for the resolution of disputes with regards to requests for flexible working arrangements or extended unpaid parental leave (sections 65(5) and sections 76(4) of the Fair Work Act 2009).	26.6

Source: Department of Employment and Workplace Relations - Workplace Agreements Database

[54] Table 3.2.3 shows that 83.6% of agreements that do not contain the model dispute resolution term allow for arbitration of disputes. Table 3.2.1 above shows that 10.7% of agreements contain the model dispute resolution term, which provides that the FWC may

arbitrate the dispute. Therefore, the data suggests that approximately 95% of agreements approved between 1 January 2020 to 31 March 2024 allow for arbitration.

[55] Table 3.2.3 shows that 83.6% of the agreements state that arbitration will be conducted by the FWC rather than a third party (7.4% of agreements state that arbitration will be conducted by a third party).

[56] Table 3.2.3 shows that for agreements that contain arbitration for disputes, approximately 80% of the agreements allow disputes to proceed automatically to arbitration without the need for additional consent to be given at the time of the dispute.

Table 3.2.3: Arbitration in dispute resolution terms in enterprise agreements, 1 January 2020-31 March 2024, percent of approved agreements

	(%)
Agreement contains a non-model dispute resolution term that provides for arbitration of disputes.	83.6
Agreement states that arbitration will be conducted by the FWC.	83.2
Agreement states that arbitration will be conducted by a third party, rather than FWC.	7.4
Agreement contains arbitration for disputes and the matter of consent to arbitrate is dealt with.	83.4
Agreement grants consent to arbitrate at the time the agreement was made, meaning disputes can proceed automatically to arbitration	78.4
Agreement requires mutual consent to arbitrate at the time of the dispute to proceed to arbitration.	5.2

Source: Department of Employment and Workplace Relations - Workplace Agreements Database

4. Analysis of differences in approved enterprise agreement terms as compared to model terms

This section identifies common differences in flexibility, consultation and dispute resolution terms found in enterprise agreements that depart from the existing model terms prescribed in the FW Regulations. Staff of the Commission have reviewed flexibility, consultation and dispute resolution terms contained within a small random sample of approximately 60 enterprise agreements approved between 1 January 2020 to 31 March 2024 and have set out key observations below based on this review.

4.1 Flexibility terms in enterprise agreements

[57] Staff have identified some common differences between flexibility terms in enterprise agreements compared to the model flexibility term as follows:

- changing the matters in an agreement that can be varied in an individual flexibility arrangement, compared to the five matters provided for in the model term,
- adding in additional safeguards in relation to the making of individual flexibility arrangements, such as requiring the arrangement to be translated into different languages applicable to the workforce,
- reducing the timeframe the employer must give the employee a copy of the individual flexibility arrangement after it has been agreed to, and
- reducing the timeframe of the notice period that an individual flexibility arrangement can be unilaterally terminated.

[58] Examples of flexibility terms in enterprise agreements that contain these common differences can be found at Annexure E.

4.2 Consultation terms in enterprise agreements

[59] Staff have identified some common differences observed between consultation terms in enterprise agreements compared to the model consultation term as follows:

- providing for additional parties to be involved in consultation, such as employee or employer organisations,
- providing for consultation on major changes to occur when changes are being 'considered' rather than when the employer has made a 'definite decision' to introduce the change,
- providing for the consultation term to be read in conjunction with other agreement provisions (where relevant),

- extending the consultation requirements for changes to regular roster or ordinary hours (s.205(1A)) to apply to all consultation required under the agreement,
- expanding the definition of what constitutes major change beyond what is provided for in the model term, and
- establishing a consultative committee in addition to the consultation provisions within the agreement.

[60] Examples of consultation terms in enterprise agreements that contain these common differences can be found at Annexure F.

4.3 Dispute resolution terms in enterprise agreements

[61] Staff have identified some common differences observed between dispute resolution terms in enterprise agreements compared to the model dispute resolution term as follows:

- including detailed steps and procedures for resolving the dispute at workplace level,
- including additional provisions around the performance of work whilst the dispute is being resolved, which are different to or in addition to the provisions in the model term,
- including additional provisions to ensure other parties, such as employee or employer organisations, have rights to participate in the dispute resolution process,
- providing for another independent party, other than the Commission, to settle the dispute,
- adding additional independent parties that may resolve the dispute in addition to the Commission, and
- including additional conditions on how the independent party may resolve the dispute.

[62] Examples of dispute resolution terms in enterprise agreements that contain these common differences can be found at Annexure G.

5. Analysis of standard clauses in modern awards

This section reproduces the discussion on standard clauses in modern awards contained in the Discussion Paper – Job Security published by the Commission on 18 December 2023. In determining the model terms for enterprise agreements, the Commission must take into account whether the model terms are broadly consistent with comparable terms in modern awards. The sections in the Discussion Paper – Job Security which related to the standard clauses on termination of employment and redundancy has been removed from the below extract.

[63] Modern awards include a range of standard clauses which are the same across the award system (with a few minor industry specific variations). The Full Bench during the 4 yearly review of modern awards considered standard provisions to be those that have arisen from previous test cases and are generally replicated in the same form across most awards.[21] These standard clauses relate to:

- Individual flexibility arrangements;
- Consultation about major workplace change;
- Consultation about changes to rosters or hours of work;
- Dispute resolution;
- Termination of employment;
- Redundancy.

[64] Annexure H provides a complete list of those modern awards that contain the standard clause and those that do not. Awards that contain the standard clause plus additional provisions are noted as 'additional provisions' in the table and counted in the standard clause total. In this section we set out the provisions, provide a brief history of the standard clauses in modern awards as well as any relevant Full Bench commentary.

5.1 Individual flexibility arrangements

[65] The standard individual flexibility arrangement (**IFA**) clause in modern awards enables an employer and employee to agree in writing to vary the application of the terms of the award relating to:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; or
- annual leave loading.

[21] *4 yearly review of modern awards – Plain language* [2016] FWC 4756 at [5].

[66] An IFA can be initiated by the employer or the employee but must be genuinely made without coercion or duress. The IFA must result in the employee being better off overall than if the agreement had not been made.

[67] Section 144(1) of the FW Act requires all modern awards to include a flexibility term. The Explanatory Memorandum to the FW Bill states:

> 94. Modern awards will contain a flexibility clause enabling employers and employees to agree on flexible arrangements varying how modern awards work. This will ensure that the needs of employers and employees are met. It will assist employees in balancing their work and family responsibilities and improve retention and participation of employees in the workforce. The simplification and increased flexibility associated with modernised awards, together with the reduced regulatory burden on business, are all consistent with the Government's agenda of increasing productivity.

[68] The award flexibility clause was inserted into all modern awards as part of the award modernisation process in 2008, as required by the Ministerial request of 28 March 2008. The award modernisation Full Bench identified that an award flexibility clause was a priority and published a model award clause as attachment C to a decision in June 2008.[22] In December 2008, the Full Bench made a further addition to the model clause requiring an employer to provide a written proposal to the employee and to take measures to ensure the employee understands the proposal.[23]

[69] The Ministerial request was amended on 18 December 2008.[24] The request included a requirement that any individual flexibility arrangement must result in the employee being better off overall and that the flexibility clause must prohibit an IFA from requiring the approval or consent of a non-party, except in relation to minors. The standard clause was modified by a Full Bench in April 2009.[25] References in the standard clause to 'no-disadvantage' were altered to 'better off overall' and a standard clause in relation to the approval or consent of a non-party was inserted into the award flexibility term.

[70] Modern awards which included the award flexibility clause came into effect on 1 January 2010. The award flexibility clause was varied on 15 April 2013 as part of the Transitional Review. The Transitional Review involved the review of all modern awards as required by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. Fifteen applications were made to vary the standard award flexibility provision in 10 modern awards. The Full Bench was not persuaded to increase the scope of the award flexibility clause to allow variation of any term of a modern award.[26] It did however vary the standard clause so that IFAs could only be made after the employee has commenced employment. It also extended the notice of termination of an IFA from 4 weeks to 13 weeks, noting that

[22] *Award Modernisation* [2008] AIRCFB 550 at Attachment C.
[23] *Award Modernisation* [2008] AIRCFB 1000 at [38].
[24] Ibid.
[25] *Award Modernisation* [2009] AIRCFB 345 at [11]-[12].
[26] *Modern Awards Review 2012—Award Flexibility* [2013] FWCFB 2170 at [99].

s.145 of the FW Act provides safeguards for where the requirements for a flexibility term have not been met.[27]

[71] During the 4 yearly review of modern awards, the standard award flexibility clause was redrafted as part of the plain language process including renaming the clause 'individual flexibility arrangements'.[28]

[72] The individual flexibility arrangements standard clause appears in 121 modern awards. The Textile Award contains additional provisions (giving the employee 7 working days to enable them to seek advice from the employee's union, and providing that the individual flexibility arrangements do not extend to outworkers).[29]

[73] The standard clause is as follows:

A. Individual flexibility arrangements

A.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application **of** the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

(a) arrangements for when work is performed; or
(b) overtime rates; or
(c) penalty rates; or
(d) allowances; or
(e) annual leave loading.

A.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

A.3 An agreement may only be made after the individual employee has commenced employment with the employer.

A.4 An employer who wishes to initiate the making of an agreement must:

(a) give the employee a written proposal; and
(b) if the employer is aware that the employee has, or should reasonably be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

[27] Ibid at [187].
[28] *4 yearly review of modern awards – Plain language – standard clauses* [2017] FWCFB 4419 at [12].
[29] *Textile, Clothing, Footwear and Associated Industries Award 2020,* cls5.4 and 5.10.

A.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

A.6 An agreement must do all of the following:

(a) state the names of the employer and the employee; and

(b) identify the award term, or award terms, the application of which is to be varied; and

(c) set out how the application of the award term, or each award term, is varied; and

(d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and

(e) state the date the agreement is to start.

A.7 An agreement must be:

(a) in writing; and

(b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

A.8 Except as provided in clause A.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

A.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.

A.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

A.11 An agreement may be terminated:

(a) at any time, by written agreement between the employer and the employee; or

(b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s. 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the FW Act).

A.12 An agreement terminated as mentioned in clause A.11(b) ceases to have effect at the end of the period of notice required under that clause.

A.13 The right to make an agreement under clause A is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

[74] Section 653(1)(b) of the FW Act requires the General Manager to conduct research into the extent to which IFAs under modern awards are being agreed to and the content of those arrangements. The research is to be conducted in relation to the first three years after the commencement of the FW Act and in each subsequent 3 year period (s.653(1A)). The April 2013 Transitional Review decision in relation to award flexibility provides some discussion of the General Manager's 2012 IFA Report.[30]

[75] In conducting the review and research, s 653(2) of the FW Act requires that the General Manager must consider the effect on the employment of women, part-time employees, persons from non-English speaking backgrounds, mature age persons, young persons and any other person prescribed by the regulations.

[76] The 2021 General Manager's Report[31] highlights the extent to which IFAs are being made and the content of those arrangements:

- The prevalence of IFAs is low but spread across a number of industries
- IFAs were more frequently initiated by employees than employers. Firms reported that IFAs were either mostly signed by females or found no discernible difference between females and males.
- Whether IFAs are made to vary the effect of award or enterprise agreement provisions depends on the industry in which it is made and the predominant instrument used in that industry.
- The most common reasons for initiating an IFA are to change an employee's hours of work and to address issues with overtime and penalties that result from the change.
- Variations requested by employers were changes to start/finish times; change in shifts and change in the days worked. For employees, it was also changes to start/finish times; change in days worked; and also reduction in number of days worked.
- Variations requested in IFAs and refused included working from home.
- The use of IFAs for regulating working from home during COVID-19 was uncommon.

[30] *Modern Awards Review 2012—Award Flexibility* [2013] FWCFB 2170 at [54].
[31] Murray Furlong, *General Manager's report into individual flexibility arrangements under section 653 of the Fair Work Act 2009*, November 2021.

5.2 Consultation about major workplace change

[77] The standard consultation about major workplace change clause requires the employer to consult with employees about a major workplace change that is likely to have a significant effect on the employees. The employer must consider the matters raised by the employees but does not require the consent of the employees to make the change.

[78] Consultation about major workplace change clauses were inserted into all modern awards following the award modernisation process in 2008. In September 2008[32] the Award Modernisation Full Bench decided to adopt an award provision requiring employers to notify employees and their representatives of significant workplace change and to discuss the change. In a decision of December 2008,[33] and in response to a number of submissions from employers and employer bodies critical of the consultation clause in exposure drafts, the Full Bench noted that a clause in almost identical terms had appeared in most of the Commission's awards for many years and no issue of substance had been raised concerning its operation during that period. The Full Bench stated that there is potential for real benefit to those employers and their employees if both parties approach consultation constructively.[34]

[79] The standard major workplace change clause was revised during the plain language process of the 4 yearly review of modern awards.[35] The plain language version of the clause appears in all 121 modern awards of general application. The *Cleaning Services Award 2020* and *Security Services Award 2020* also contain a 'Consultation about change of contract' clause noted as 'additional provisions' in Annexure C. The standard clause is as follows:

B. Consultation about major workplace change

B.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- **(a)** give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- **(b)** discuss with affected employees and their representatives (if any):
  - **(i)** the introduction of the changes; and
  - **(ii)** their likely effect on employees; and
  - **(iii)** measures to avoid or reduce the adverse effects of the changes on employees; and
- **(c)** commence discussions a soon as practicable after a definite decision has been made.

[32] *Award Modernisation* [2008] AIRCFB 717 at [18].
[33] *Award Modernisation* [2008] AIRCFB 1000.
[34] Ibid at [41].
[35] *4 yearly review of modern awards – Plain language – standard clauses* [2017] FWCFB 4419 at [66]-[92].

B.2 For the purposes of the discussion under clause B.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- **(a)** their nature; and
- **(b)** their expected effect on employees; and
- **(c)** any other matters likely to affect employees.

B.3 Clause B.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

B.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause B.1(b).

B.5 In clause B significant effects, on employees, includes any of the following:
- **(a)** termination of employment; or
- **(b)** major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- **(c)** loss of, or reduction in, job or promotion opportunities; or
- **(d)** loss of, or reduction in, job tenure; or
- **(e)** 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.

B.6 Where this award makes provision for alteration of any of the matters defined at clause B.5, such alteration is taken not to have significant effect.

5.3 Consultation about changes to rosters or hours of work

[80] A standard consultation about changes to rosters or hours of work clause was inserted into all modern awards in December 2013[36] following the enactment of the *Fair Work Amendment Act 2013* which amended the FW Act by inserting section 145A.

[81] Section 145A of the FW Act provides that a modern award must include a term requiring employers to consult employees about a change to their regular roster or ordinary hours of work, and was one of a number of measures intended to assist employees to balance work and family or caring responsibilities with the intent that the employee's views about the impact of the change be considered by the employer before the change is implemented or a definite decision is made.[37]

[82] The Revised Explanatory Memorandum to the Fair Work Amendment Bill 2013 states that '[t]he amendments will ensure that employers cannot unilaterally make changes that

[36] *Consultation clause in modern awards* [2013] FWCFB 10165.
[37] Ibid at [36]-[38].

adversely impact upon their employees without consulting on the change and considering the impact of those changes on those employees' family and caring responsibilities'.[38]

[83] The employer is required to provide employees with information about a change to regular roster or ordinary hours of work and invite employees to give their views on the impact of the proposed change (particularly any impact upon the employees; family and caring responsibilities) and consider those views.

[84] In formulating the standard clause, the Full Bench in its December 2013 decision,[39] considered the meaning of the word 'consult' and noted that the precise content of an obligation to consult will depend on the 'extent and significance' of a proposed change in terms of its impact on affected employees. The Full Bench also noted that although the right to be consulted is a substantive right, it doesn't confer a power of veto and that consultation does not amount to joint decision making.

[85] The Full Bench also considered the relationship between the obligation to consult and other provisions in modern awards and disagreed with the contention put forward by some parties that the obligation to consult is displaced by other provisions in the modern award. For example, it was contended that where an award contains a provision that allows an employer to vary an employee's regular roster by giving a specified period of notice, the obligation to consult would not apply. The Full Bench stated that such a proposition is not consistent with s.145A or its legislative purpose and would render s 145A nugatory.

[86] As part of the 4 yearly review of modern awards, the standard consultation about changes to roster or hours of work clause was redrafted into plain language.[40] The plain language version of the standard clause currently appears in all 121 general modern awards. The Textile Award contains an additional provision which provides for translation of the information into an appropriate language.

[87] The standard clause is as follows:

[38] Revised Explanatory Memorandum, Fair Work Amendment Bill 2013 (Cth) at [45].
[39] *Consultation clause in modern awards* [2013] FWCFB 10165, at [30]-[32].
[40] *4 yearly review of modern awards – Plain language – standard clauses* [2017] FWCFB 4419 at [93]-[99].

C. Consultation about changes to rosters or hours of work

C.1 Clause C applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

C.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).

C.3 For the purpose of the consultation, the employer must:

(a) provide to the employees and representatives mentioned in clause C.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(b) invite the employees to give their views about the impact of the proposed change on them (including any **impact** on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

C.4 The employer must consider any views given under clause C.3(b).

C.5 Clause C is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

[88] A couple of the recommendations set out in Annexure A call for a requirement of genuineness on the part of the employer when considering the impacts on the employee because of proposed roster changes.

[89] Recommendation 5 of The Senate Select Committee's interim report on Work and Care (Oct 2022) recommends 'amending section 145A of the Act to require employers genuinely consider employee views about the impact of proposed roster changes, and take the views of the employee, including working carers, into consideration when changing rosters and other work arrangements'.[41]

[90] Recommendation 21 of The Senate Select Committee on Work and Care – Final Report (March 2023) relevantly recommends that the Australian Government supports a review by the FWC of current industrial awards including requiring that employers genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee.

5.4 Dispute resolution

[91] Section 146 of the FW Act requires modern awards to include a term for settling disputes.

[41] Select Committee on Work and Care, *Interim report*, October 2023, at [6.54].

[92] The standard dispute resolution clause sets out the procedure for settling disputes about any matters arising under the award or in relation to the NES. It is a tiered procedure requiring discussions firstly at the workplace level between the employee and relevant supervisor and then, if necessary, more senior levels of management. If there is no resolution, either party can refer the matter to the Commission.

[93] The dispute resolution clause was inserted into modern awards following the 2008 award modernisation process. In September 2008 the Full Bench decided[42] to include a clause intended to be simple, to emphasise the importance of resolution at the workplace, to encourage parties to agree on a process that would suit them if the dispute reached the Commission and to provide the Commission with the discretion and power to ensure settlement of the dispute. The clause was finalised in a decision[43] in December 2008. The Full Bench clarified that the operation of the clause was not intended to be confined to issues concerning one employee only and that if the dispute affects a group of employees, for the purposes of the procedure, each member of the group may be represented by the same representative.[44]

[94] The standard dispute resolution clause was redrafted during the 4 yearly review of modern awards as part of the plain language process as follows: [45]

D. Dispute resolution

D.1 Clause D sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.

D.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

D.3 If the dispute is not resolved through discussion as mentioned in clause D.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

D.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses D.2 and D.3, a party to the dispute may refer it to the Fair Work Commission.

D.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.

[42] *Award Modernisation* [2008] AIRCFB 717.
[43] *Award Modernisation* [2008] AIRCFB 1000.
[44] Ibid at [45].
[45] *4 yearly review of modern awards – plain language re-drafting – standard clauses* [2017] FWCFB 4419 at [100]-[122].

D.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.

D.7 A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause D.

D.8 While procedures are being followed under clause D in relation to a dispute:
(a) work must continue in accordance with this award and the Act; and
(b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

D.9 Clause D.8 is subject to any applicable work health and safety legislation.

NOTE 1: In addition to clause D, a dispute resolution procedure for disputes regarding the NES entitlement to request flexible working arrangements is contained in section 65B of the Act.
NOTE 2: In addition to clause D, a dispute resolution procedure for disputes regarding the NES entitlement to request an extension to unpaid parental leave is contained in section 76B of the Act.[46]

[95] The standard dispute resolution clause appears in all 121 general modern awards. Eighteen modern awards contain an additional clause in relation to dispute resolution leave.

[46] Note 1 and Note 2 were recently added to the standard dispute resolution clause with effect from 1 August 2023 as a result of the flexible work and unpaid parental leave amendments to the FW Act.

Annexure A: Model flexibility term

Fair Work Regulations 2009
Schedule 2.2—Model flexibility term
(regulation 2.08)

Model flexibility term

(1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  (a) the agreement deals with 1 or more of the following matters:
    (i) arrangements about when work is performed;
    (ii) overtime rates;
    (iii) penalty rates;
    (iv) allowances;
    (v) leave loading; and
  (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  (c) the arrangement is genuinely agreed to by the employer and employee.

(2) The employer must ensure that the terms of the individual flexibility arrangement:
  (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  (c) result in the employee being better off overall than the employee would be if no arrangement was made.

(3) The employer must ensure that the individual flexibility arrangement:
  (a) is in writing; and
  (b) includes the name of the employer and employee; and
  (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  (d) includes details of:
    (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    (ii) how the arrangement will vary the effect of the terms; and
    (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  (e) states the day on which the arrangement commences.

(4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

(5) The employer or employee may terminate the individual flexibility arrangement:
  (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  (b) if the employer and employee agree in writing—at any time.

Annexure B: Model consultation term

Fair Work Regulations 2009
Schedule 2.3—Model consultation term
(regulation 2.09)

Model 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 in relation to its enterprise that is likely to have a significant effect on the employees; or
  (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major change

(2) For a major change referred to in paragraph (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 employees may appoint a representative for the purposes of the procedures in this term.

(4) If:
  (a) a relevant employee appoints, or relevant employees appoint, a 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) As soon as practicable after making its decision, the employer must:
  (a) discuss with the relevant employees:
    (i) the introduction of the change; and
    (ii) the effect the change is likely to have on the employees; and
    (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    (i) all relevant information about the change including the nature of the change proposed; and
    (ii) information about the expected effects of the change on the employees; and
    (iii) any other matters likely to affect the employees.

(6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

(8) If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.

(9) In this term, a major 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 to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

(10) For a change referred to in paragraph (1)(b):
- (a) the employer must notify the relevant employees of the proposed change; and
- (b) subclauses (11) to (15) apply.

(11) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(12) If:
- (a) a relevant employee appoints, or relevant employees appoint, a 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.

(13) As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant employees:
  - (i) all relevant information about the change, including the nature of the change; and
  - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
  - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

(14) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

(15) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

(16) In this term:

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

Annexure C: Model term for dealing with disputes for enterprise agreements

Fair Work Regulations 2009
Schedule 6.1 – Model term for dealing with disputes for enterprise agreements
(regulation 6.01)

Model term

(1) If a dispute relates to:
(a) a matter arising under the agreement; or
(b) the National Employment Standards;
this term sets out procedures to settle the dispute.

(2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

(3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

(4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.

(5) The Fair Work Commission may deal with the dispute in 2 stages:
(a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
(b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
(i) arbitrate the dispute; and
(ii) make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.
A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

(6) While the parties are trying to resolve the dispute using the procedures in this term:
(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
(b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
(i) the work is not safe; or

(ii) applicable occupational health and safety legislation would not permit the work to be performed; or
(iii) the work is not appropriate for the employee to perform; or
(iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

(7) The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

Annexure D: Model term for dealing with disputes about matters arising under copied State instrument

Fair Work Regulations 2009
Schedule 6.1A – Model term for dealing with disputes about matters arising under copied State instrument
(regulation 6.03B)

Model term

(1) This term sets out procedures to settle a dispute about a matter arising under a copied State instrument.

(2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

(3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

(4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.

(5) The Fair Work Commission may deal with the dispute in 2 stages:
(a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
(b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
(i) arbitrate the dispute; and
(ii) make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.
A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5-1 of the Act. Therefore, an appeal may be made against the decision.

(6) While the parties are trying to resolve the dispute using the procedures in this term:

(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
(b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    (i) the work is not safe; or
    (ii) applicable work health and safety legislation would not permit the work to be performed; or
    (iii) the work is not appropriate for the employee to perform; or
    (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

(7) The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this term.

Annexure E: Examples of flexibility terms in enterprise agreements

Example 1:

6. Individual Flexibility

6.1 Notwithstanding any other provision of this Agreement, the Company and an individual employee may agree to vary the application of certain terms of this Agreement to meet the genuine needs of the Company and the individual employee. The terms the Company and the individual employee may agree to vary the application of are those concerning:

(a) arrangements for when work is performed;
(b) overtime rates;
(c) penalty rates;
(d) allowances; and
(e) leave loading.

6.2 The Company and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the Company.

6.3 The agreement between the Company and the individual employee must:

(a) be confined to a variation in the application of one or more of the terms listed in clause 6.1;
(b) be about permitted matters under section 172 of the Fair Work Act 2009;
(c) not be unlawful terms under section 194 of the Fair Work Act 2009; and
(d) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

6.4 The agreement between the employer and the individual employee must also:

(a) be in writing, name the parties to the agreement and be signed by the Company and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
(b) state each term of this Agreement that the Company and the individual employee have agreed to vary;
(c) detail how the application of each term has been varied by agreement between the Company and the individual employee;
(d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
(e) state the day the arrangement commences to operate.

6.5 The Company must give the individual employee a copy of the agreement within 14 days after it is agreed and keep the agreement as a time and wages record.

6.6 Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the Company and the individual employee.

6.7 Where the Company is seeking to enter into an agreement it must provide a written proposal to the employee. Where the employee's understanding of written English is limited the Company must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

6.8 The agreement may be terminated:

(a) by the Company or the individual employee giving 28 days' notice, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the Company and the individual employee.

6.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between the Company and an individual employee contained in any other term of this Agreement.

Example 2:

8. Flexibility Term

8.1 The Company and a Team Member may agree to make an individual flexibility arrangement to vary the effect of the terms of this Agreement (IFA) if:

(a) it is made with an existing Team Member and is not a condition of engagement for new Team Members;

(b) the IFA deals with the following matter:

Clause number	Description
Paragraph 2.1 of Appendix 2	First aid allowance

(c) prior to the Company entering into an IFA, the Company consults with the Union about the IFA (unless the Team Member objects);

(d) it meet the genuine needs of a Team Member and the Company; and

(e) it is genuinely agreed to by the Team Member and the Company. To ensure genuine agreement, the Company must advise the Union prior to an IFA being entered into and allow the Team Member and the Union delegate paid time to discuss the proposed IFA.

8.2 The Company must ensure that the terms of the IFA:

(a) are about permitted matters under section 172 of the Act;

(b) are not unlawful under section 194 of the Act; and

(c) result in the Team Member being better off overall than if no IFA had been made.

8.3 The Company must ensure that the IFA:

(a) does not disadvantage or discriminate against the Team Member, or other Team Members or a group of Team Members, whether directly or indirectly;

(b) is in writing and signed by the Company and the Team Member (and if the Team Member is under 18 years of age by their parent or guardian) in the presence of a Union delegate;

(c) includes the details of:

(i) the terms of the Agreement that will be varied by the IFA; and

(ii) how the IFA will vary the effect of the terms of this Agreement; and
(iii) how the Team Member will be better off overall in relation to the terms and conditions of their employment as a result of the IFA; and

(d) is translated into a language that the Team Member understands;

(e) is given to the Team Member and the Union within 7 days of it being agreed to.

8.4 The Company or the Team Member may terminate the IFA:

(a) by either party, by giving 28 days written notice; or

(b) at any time by mutual written agreement.

Example 3:

11 FLEXIBILITY

11.1 An Employee and the Employer may agree to an arrangement (IFA, meaning 'individual flexibility agreement') varying the effect of certain terms of this Agreement in relation to the Employee and Employer, in order to meet the genuine needs of the Employee and Employer.
11.2 Where the Employer wants to enter into an IFA it must provide a written proposal to the Employee. Where the Employee's understanding of written English is limited, the Employer must take measures, including translation into an appropriate language, to ensure the Employee understands the proposal.
11.3 The Employer must ensure that any IFA is genuinely agreed to by the Employer and the Employee and that the terms of the IFA:

11.3.1 are about permitted matters under section 172 of the Act;
11.3.2 are not unlawful terms under section 194 of the Act;
11.3.3 result in the Employee being better off overall than the Employee would be if no IFA was made;
11.3.4 do not result in a reduction in health and safety at work; and
11.3.5 relate only to:

- time between which ordinary hours are worked;
- salary sacrifice agreements; or
- a reduction in ordinary hours.

11.4 The Employer must also ensure that any such IFA:

11.4.1 is in writing (including details of the terms of the Agreement that will be varied, how the IFA will vary the effect of the Agreement terms, how the Employee will be better off overall in relation to the terms and conditions of their employment as a result of the IFA, and the day on which the IFA commences);
11.4.2 includes the name of the Employer and Employee;
11.4.3 is signed by the Employer and Employee and, if the Employee is under 18, by a parent or guardian of the Employee;
11.4.4 is provided to the Employee within 14 days after it is agreed to; and

11.4.5 can be terminated by either party giving written notice of not more than 28 days, or at any time by both parties agreeing in writing.

11.5 Where any of the requirements of this clause are not met, the IFA is of no effect.

11.6 The Employer must not exert undue influence or undue pressure on an Employee in relation to the making of an IFA.

11.7 Union members are entitled to be represented by their Union at every stage of this process. Employees who are not Union members may also choose to be represented.

11.8 If an Employee has nominated the Union (or other person) as their representative, the Union (or other person) must be given reasonable opportunity to participate in negotiations or discussions regarding the proposed making, variation or termination of an IFA. Participation by the Union (or any other representative) does not mean that their consent is required prior to reaching agreement in relation to an IFA.

11.9 No IFA agreed to under this Agreement may operate retrospectively.

11.10 The Employer will provide an Employee Representative with details of any or all IFAs agreed to in accordance with the provisions of this clause if reasonably requested to do so. A request will be reasonable if the request relates to the Employee representative's role in representing Employees covered by the Agreement.

11.11 For the avoidance of doubt, except in relation to clause 11.4.3 where this concerns parents and guardians of Employees who are less than 18 years of age, nothing in this Agreement requires any IFA agreed to by the Employer and Employee under this Agreement to be approved, or consented to, by another person.

Annexure F: Examples of consultation terms in enterprise agreements

Example 1:

9. CONSULTATION REGARDING WORKPLACE CHANGE

9.1. Employer's duty to consult in good faith

9.1.1. Where the Employer is:

(a) considering major workplace changes that are likely to have a significant effect on employees; or

(b) proposes to introduce a change to the regular or ordinary hours or rosters of work of employees;

the Employer must consult in good faith with the Union, employees who may be affected and any nominate employee representative, prior to making a final decision.

9.1.2. As soon as a final decision has been made, the Employer must notify the Union and the employees affected, and any nominated employee representatives, in writing, and explain the effects of the decision.

9.1.3. In this clause:

9.1.3.1. Consult in good faith includes obligation to meet disclose relevant information including the nature of such considered changes and the expected effects of such changes (including on employees' family or caring responsibilities), genuinely consider proposals to avert or mitigate the adverse effects of any changes on employees and promptly respond with reasons, and to refrain from capricious or unfair conduct that undermines consultation.

9.1.3.2. Major workplace changes include termination of employment and the restructuring or transfer of jobs, changes to the hours of work, location or duties of employees' work, changes to the composition, operation, size or skill-set of the workforce, the elimination or diminution of job opportunities, promotion opportunities or job tenure, and changes to the legal or operational structure of the Employer or business.

Example 2:

8. CONSULTATION

8.1. Consultation regarding major workplace change

a) Company to notify

i. Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on Employees, the Company must notify the Employees who may be affected by the proposed changes and their representatives, if any.

ii. ***Significant effects*** include termination of employment of 2 or more Employees; major changes in the composition, operation or size of the employer's workforce or to the skills required of employees; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of Employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

iii. Where an Employee appoints a representative for the procedures in this term, and advises the Company of the identity of such representative, the Company must recognise that representative.

b) Company to discuss change

i. The Company must discuss with the Employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on Employees and measures to avert or mitigate the adverse effects of such changes on Employees.

ii. The Company must give prompt and genuine consideration to matters raised by the Employees and/or their representatives in relation to the changes.

iii. The discussions must commence as soon as practicable after a definite decision has been made by the Company to make the changes referred to in clause 8.1(a).

iv. For the purposes of such discussion, the Company must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect Employees provided that the Company is not required to disclose confidential or commercially sensitive information.

c) "*relevant employees*" means the Employees who may be affected by a change referred to in subclause (a).

8.2. Consultation about changes to rosters or hours of work

a) Where the Company proposes to change an Employee's regular roster or ordinary hours of work, the Company must consult with the Employee or Employees affected and their representatives, if any, about the proposed change.

b) Where an Employee appoints a representative for the procedures in this term, and advises the Company of the identity of such representative, the Company must recognise that representative.

c) The Company must:

i. commence discussions as early as practicable after proposing to introduce the changes referred to in clause 8.2(a);

ii. provide to the Employee or Employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the Employee's regular roster or ordinary hours of work and when that change is proposed to commence, information about what the Company reasonably believes will be effects of the change on Employees and information about any other matters that the Company reasonably believes are likely to affect the employees) but the Company is not required to disclose confidential or commercially sensitive information;

iii. invite the Employee or Employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and

iv. give prompt and genuine consideration to any views about the impact of the proposed change that are given by the Employee or Employees concerned and/or their representatives.

d) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.

e) "*relevant employees*" means the Employees who may be affected by a change referred to in subclause (a).

Example 3:

2.0 Consultation and Dispute Resolution

2.1 Consultation

The parties agree to the formation of a consultative committee that will consist of both employee and management representation.

The aim of the consultative committee is to have proper and genuine consultation between the employees and management, about matters which affect them. The intent of "proper and genuine consultation" is to try to jointly problem solve any operational, safety or industrial issues, as opposed to employees simply being told of decisions. However, nothing in this commitment shall remove management prerogative from making decisions should the joint problem solving be unsuccessful. Matters which can be raised at the consultative committee shall not be limited to those matters listed previously, and can be raised by either management or the employees.

As a guideline, the general functions of the Committee shall be;

(1) to discuss, recommend and report to management and the employees on any reasonable subject, which the committee deems will assist in improving the relationship between the Company and the employees and the delivery of quality services to the customers of the Company. Such subjects to include, but not to be limited to, work practices and performance, quality and service, employee morale and development, and occupational health and safety.

(2) to promote a cooperative approach to the achievement of the business objectives of the Company, and

(3) subject to the requirements of commercial confidentiality, the Company shall make available, where appropriate, information to assist the committee for the effective resolution of matters and for the genuine participation of employees in consultations.

2.2 Consultation regarding major change

(1) This clause applies if:

(a) the Company has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and

(b) the change is likely to have a significant effect on employees.

(2) The Company must notify the relevant employees of the decision to introduce the major change.

(3) The relevant employees may appoint a representative for the purposes of the procedures in this clause.

(4) If:

(a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and

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

the Company must recognise the representative.

(5) As soon as practicable after making its decision, the Company must:

(a) discuss with the relevant employees:

(i) the introduction of the change; and

(ii) the effect the change is likely to have on the employees; and

(iii) measures the Company is taking to avert or mitigate the adverse effect of the change on the employees; and

(b) for the purposes of the discussion - provide, in writing, to the relevant employees:

(i) all relevant information about the change including the nature of the change proposed; and

(ii) information about the expected effects of the change on the employees; and

(iii) any other matters likely to affect the employees.

(6) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees.

(7) The Company must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

(8) In this clause, a major 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 to the composition, operation or size of the Company's workforce or to the skills required of employees; or

(c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

(d) the alteration of hours of work; or

(e) the need to retrain employees; or

(f) the restructuring of jobs.

(9) In this term, relevant employees means the employees who may be affected by the major change.

2.3 Consultation regarding changes to rosters or hours of work

(1) Clause 2.3 applies if the Company proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

(2) The Company must consult with any employees affected by the proposed change and their representatives (if any).

(3) Where a proposed roster change would result in a change to the day on/off pattern the Company will consult with a representative group of employees and invite input to the proposed change.

(4) For the purpose of the consultation, the Company must:

(a) provide to the employees and representatives mentioned in clause 2.3(2), or the representative group mentioned in clause 2.3(3), information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

(5) Where practical the Company will allow sufficient time for employees to consider the impact of the changes however nothing in this clause will delay the implementation of roster changes.

(6) Employees may propose improvements for the Company to consider. The Company will provide a response to any improvements put forward by the employee group and will consider any views given under clause 2.3(4)(b). The acceptance of any employee proposal is at the sole discretion of the Company and is conditional on those proposals being of equivalent total cost and service standard to the change proposed by the Company.

(7) Clause 2.3 is to be read in conjunction with any other provisions of this Agreement concerning the scheduling of work or the giving of notice.

Annexure G: Examples of dispute resolution terms in enterprise agreements

Example 1:

13 Dispute resolution procedure

13.1 In the event of a dispute in relation to a matter arising under this Agreement, or the NES (except for disputes related to reasonable grounds for refusal of requests for flexible working arrangements or additional unpaid parental leave), the parties to the dispute must first try to resolve the dispute at the workplace through discussion between the Employee or Employees concerned and the relevant supervisor.
13.2 If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the Employee or Employees concerned and more senior levels of management, as appropriate.
13.3 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 13.1 and 13.2, a party to the dispute may refer it to the FWC for assistance through mediation, conciliation, expressing an opinion or making a recommendation.
13.4 If the dispute remains unresolved, the dispute may be referred to the FWC for arbitration. If arbitration is necessary, the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective. The decision of the FWC will bind the parties, subject to either party exercising a right of appeal.
13.5 The parties may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
13.6 While procedures are being followed under this clause, work must continue in accordance with this Agreement and the Act unless an Employee has a reasonable concern about an imminent risk to his or her health and safety. If such concern exists, the employee must not unreasonably fail to comply with a direction of the Employer to perform other available work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Example 2:

50 Dispute resolution process

(a) Management and Employees are committed to working together to resolve disputes in-house, whenever possible.

(b) The Company respects the right of Employees to be represented by their union or another representative of their choice during the dispute resolution process.

(c) Any dispute, grievance or claim arising from this Agreement and its application, or the National Employment Standards shall be dealt with in the following manner:

Note: A union representative or representative of the Employee's choice may represent the Employee concerned during any stage of the dispute resolution process.

(i) Should any matter arise which gives cause for concern to an Employee, the Employee should meet with their immediate supervisor to discuss the matter.

(ii) If the matter remains unresolved it shall be referred to the immediate supervisor's manager.

(iii) If the matter remains unresolved it shall be referred to the relevant Head of Department and Head of Human Resources to resolve the matter.

(iv) If the matter remains unresolved it may be referred to the Fair Work Commission for resolution.

(v) The Fair Work Commission may deal with the dispute in 2 stages:

a. the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

b. if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

- arbitrate the dispute; and
- make a determination that is binding on the parties.

Note: If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the FW Act.

(vi) A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the FW Act. Therefore, an appeal may be made against the decision.

While the above procedure is being followed, work will continue in accordance with this Agreement and the status quo which existed prior to the event that gave rise to the dispute. The parties shall, at all times, act in good faith and without undue delay to resolve disputes.

Example 3:

28. Dispute Resolution Procedure

If there is a dispute over the application of this Agreement or the NES between an employee or employees and the Company the dispute resolution procedure set out in this clause shall apply. The aim of this procedure is to ensure that the dispute is settled as quickly as possible.
During each stage of the dispute resolution procedure either the employee(s) or the Company may choose to be accompanied or represented by another person of their choice.
This term sets out procedures to settle the dispute:

1st step: The parties to the dispute must try to resolve the dispute at the workplace level. The matter is discussed between the employee(s) and his immediate supervisor.
2nd step: If settlement is not reached, the matter is discussed between the immediate supervisor, the employee and any representative of the employee. If settlement is not reached, the Manager will become involved.
3rd step: If settlement is not reached, the matter is referred to more senior management of the Company and any more senior representative of the employee.
4th step: If, after the attempts at the workplace level to resolve the dispute have failed, the matter in dispute may be referred to Fair Work Commission ('FWC') for resolution by conciliation.
5th step: If the matter is not resolved by conciliation, the FWC may, subject to the agreement of both the employee(s) and the Company at the time, resolve the matter in dispute by arbitration of the application of the Agreement. The parties may identify a particular member of the FWC who will arbitrate the matter in dispute and failing agreement will be before a member allocated by the FWC. A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
Every effort will be made to ensure settlement of a grievance at the earliest possible stage and at each stage an agreed time for resolution of the problem will be made before progression to the next step.
While the parties are trying to resolve the dispute using the procedures in this term:
a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

i. the work is not safe; or
ii. applicable environmental, health and safety legislation would not permit the work to be performed; or
iii. the work is not appropriate for the employee to perform; or
iv. there are other reasonable grounds for the employee to refuse to comply with the direction.

The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

Annexure H: Modern awards that contain the model term/standard clause

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000115	*Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*	✓	✓	✓	✓	✓	✓
MA000018	*Aged Care Award 2010*	✓	✓	✓	✓	✓	✓
MA000046	*Air Pilots Award 2020*	✓	✓	✓	✓	x	Additional provisions
MA000047	*Aircraft Cabin Crew Award 2020*	✓	✓	✓	✓	✓	Additional provisions
MA000048	*Airline Operations—Ground Staff Award 2020*	✓	✓	✓	✓	✓	✓
MA000049	*Airport Employees Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000092	*Alpine Resorts Award 2020*	✓	✓	✓	✓	✓	✓
MA000060	*Aluminium Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000098	*Ambulance and Patient Transport Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000080	*Amusement, Events and Recreation Award 2020*	✓	✓	✓	✓	✓	✓
MA000118	*Animal Care and Veterinary Services Award 2020*	✓	✓	✓	✓	x	✓
MA000114	*Aquaculture Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000079	*Architects Award 2020*	✓	✓	✓	✓	x	✓
MA000054	*Asphalt Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000019	*Banking, Finance and Insurance Award 2020*	✓	✓	✓	✓	✓	✓
MA000001	*Black Coal Mining Industry Award 2020*	✓	✓	✓	✓	x	x
MA000078	*Book Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000091	*Broadcasting and Recorded Entertainment Award 2020*	✓	✓	✓	✓	✓	✓
MA000020	*Building and Construction General On-site Award 2020*	✓	✓	✓	Additional provisions	Additional provisions	x
MA000021	*Business Equipment Award 2020*	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000095	*Car Parking Award 2020*	✓	✓	✓	✓	✓	✓
MA000055	*Cement, Lime and Quarrying Award 2020*	✓	✓	✓	✓	✓	✓
MA000070	*Cemetery Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000120	*Children's Services Award 2010*	✓	✓	✓	✓	✓	✓
MA000022	*Cleaning Services Award 2020*	✓	Additional provisions	✓	Additional provisions	✓	Additional provisions
MA000002	*Clerks—Private Sector Award 2020*	✓	✓	✓	✓	✓	✓
MA000045	*Coal Export Terminals Award 2020*	✓	✓	✓	✓	✓	x
MA000083	*Commercial Sales Award 2020*	✓	✓	✓	✓	✓	✓
MA000056	*Concrete Products Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000023	*Contract Call Centre Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000110	*Corrections and Detention (Private Sector) Award 2020*	✓	✓	✓	✓	✓	✓
MA000024	*Cotton Ginning Award 2020*	✓	✓	✓	✓	✓	✓
MA000085	*Dredging Industry Award 2020*	✓	✓	✓	✓	Additional provisions	x
MA000096	*Dry Cleaning and Laundry Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000075	*Educational Services (Post-Secondary Education) Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000076	*Educational Services (Schools) General Staff Award 2020*	✓	✓	✓	✓	✓	✓
MA000077	*Educational Services (Teachers) Award 2020*	✓	✓	✓	✓	Additional provisions	Additional provisions
MA000088	*Electrical Power Industry Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000025	*Electrical, Electronic and Communications Contracting Award 2020*	✓	✓	✓	✓	✓	Additional provisions
MA000003	*Fast Food Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000111	*Fire Fighting Industry Award 2020*	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000094	*Fitness Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000073	*Food, Beverage and Tobacco Manufacturing Award 2020*	✓	✓	✓	✓	✓	✓
MA000105	*Funeral Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000101	*Gardening and Landscaping Services Award 2020*	✓	✓	✓	✓	✓	✓
MA000061	*Gas Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000004	*General Retail Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000026	*Graphic Arts, Printing and Publishing Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000005	*Hair and Beauty Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000027	*Health Professionals and Support Services Award 2020*	✓	✓	✓	✓	✓	✓
MA000006	*Higher Education Industry—Academic Staff—Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000007	*Higher Education Industry—General Staff—Award 2020*	✓	✓	✓	✓	✓	✓
MA000008	*Horse and Greyhound Training Award 2020*	✓	✓	✓	✓	✓	✓
MA000028	*Horticulture Award 2020*	✓	✓	✓	✓	✓	✓
MA000009	*Hospitality Industry (General) Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000064	*Hydrocarbons Field Geologists Award 2020*	✓	✓	✓	✓	✓	✓
MA000062	*Hydrocarbons Industry (Upstream) Award 2020*	✓	✓	✓	✓	✓	✓
MA000029	*Joinery and Building Trades Award 2020*	✓	✓	✓	✓	✓	Additional provisions
MA000067	*Journalists Published Media Award 2020*	✓	✓	✓	✓	✓	✓
MA000099	*Labour Market Assistance Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000116	*Legal Services Award 2020*	✓	✓	✓	✓	✓	✓
MA000081	*Live Performance Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000112	*Local Government Industry Award 2020*	✓	✓	✓	Additional provisions	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000117	*Mannequins and Models Award 2020*	✓	✓	✓	✓	✓	Additional provisions
MA000010	*Manufacturing and Associated Industries and Occupations Award 2020*	✓	✓	✓	Additional provisions	✓	Additional provisions
MA000093	*Marine Tourism and Charter Vessels Award 2020*	✓	✓	✓	✓	✓	✓
MA000050	*Marine Towage Award 2020*	✓	✓	✓	✓	x	✓
MA000086	*Maritime Offshore Oil and Gas Award 2020*	✓	✓	✓	✓	x	x
MA000030	*Market and Social Research Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000059	*Meat Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000031	*Medical Practitioners Award 2020*	✓	✓	✓	✓	✓	✓
MA000011	*Mining Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000104	*Miscellaneous Award 2020*	✓	✓	✓	✓	✓	✓
MA000032	*Mobile Crane Hiring Award 2020*	✓	✓	✓	✓	✓	x
MA000033	*Nursery Award 2020*	✓	✓	✓	✓	✓	✓
MA000034	*Nurses Award 2020*	✓	✓	✓	✓	✓	✓
MA000072	*Oil Refining and Manufacturing Award 2020*	✓	✓	✓	✓	✓	✓
MA000063	*Passenger Vehicle Transportation Award 2020*	✓	✓	✓	✓	✓	✓
MA000035	*Pastoral Award 2020*	✓	✓	✓	✓	✓	✓
MA000097	*Pest Control Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000069	*Pharmaceutical Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000012	*Pharmacy Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000036	*Plumbing and Fire Sprinklers Award 2020*	✓	✓	✓	✓	✓	x
MA000051	*Port Authorities Award 2020*	✓	✓	✓	✓	✓	✓
MA000052	*Ports, Harbours and Enclosed Water Vessels Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000074	*Poultry Processing Award 2020*	✓	✓	✓	✓	✓	✓
MA000057	*Premixed Concrete Award 2020*	✓	✓	✓	✓	✓	✓
MA000108	*Professional Diving Industry (Industrial) Award 2020*	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000109	*Professional Diving Industry (Recreational) Award 2020*	✓	✓	✓	✓	✓	✓
MA000065	*Professional Employees Award 2020*	✓	✓	✓	✓	x	✓
MA000013	*Racing Clubs Events Award 2020*	✓	✓	✓	✓	✓	✓
MA000014	*Racing Industry Ground Maintenance Award 2020*	✓	✓	✓	✓	✓	✓
MA000015	*Rail Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000106	*Real Estate Industry Award 2020*	✓	✓	✓	✓	x	✓
MA000058	*Registered and Licensed Clubs Award 2020*	✓	✓	✓	✓	✓	✓
MA000119	*Restaurant Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000039	*Road Transport (Long Distance Operations) Award 2020*	✓	✓	✓	✓	Additional provisions	✓
MA000038	*Road Transport and Distribution Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000107	*Salt Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000068	*Seafood Processing Award 2020*	✓	✓	✓	✓	✓	✓
MA000122	*Seagoing Industry Award 2020*	✓	✓	✓	✓	✓	x
MA000016	*Security Services Industry Award 2020*	✓	Additional provisions	✓	✓	✓	Additional provisions
MA000040	*Silviculture Award 2020*	✓	✓	✓	✓	✓	✓
MA000100	*Social, Community, Home Care and Disability Services Industry Award 2010*	✓	✓	✓	✓	✓	✓
MA000082	*Sporting Organisations Award 2020*	✓	✓	✓	✓	✓	✓
MA000121	*State Government Agencies Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000053	*Stevedoring Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000084	*Storage Services and Wholesale Award 2020*	✓	✓	✓	✓	✓	✓
MA000087	*Sugar Industry Award 2020*	✓	✓	✓	Additional provisions	✓	Additional provisions
MA000103	*Supported Employment Services Award 2020*	✓	✓	✓	✓	✓	✓
MA000066	*Surveying Award 2020*	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000041	*Telecommunications Services Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000017	*Textile, Clothing, Footwear and Associated Industries Award 2020*	Additional provisions	✓	Additional provisions	Additional provisions	✓	Additional provisions
MA000071	*Timber Industry Award 2020*	✓	✓	✓	Additional provisions	Additional provisions	Additional provisions
MA000042	*Transport (Cash in Transit) Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000102	*Travelling Shows Award 2020*	✓	✓	✓	✓	✓	✓
MA000089	*Vehicle, Repair, Services and Retail Award 2020*	✓	✓	✓	✓	✓	✓
MA000043	*Waste Management Award 2020*	✓	✓	✓	Additional provisions	✓	✓
MA000113	*Water Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000090	*Wine Industry Award 2020*	✓	✓	✓	✓	✓	✓
MA000044	*Wool Storage, Sampling and Testing Award 2020*	✓	✓	✓	✓	✓	✓
	Number of modern awards that contain the standard term	**121**	**121**	**121**	**121**	**113**	**113**