



# DETERMINATION

*Fair Work Act 2009*

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

## **Model terms for enterprise agreements and copied State instruments**

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

VICE PRESIDENT GIBIAN  
DEPUTY PRESIDENT DOBSON  
DEPUTY PRESIDENT BUTLER

SYDNEY, 20 FEBRUARY 2025

*Commission to determine model terms for enterprise agreements and the copied State instrument model term for settling disputes – Model Flexibility Term for enterprise agreements – s 202(5) Fair Work Act 2009 (Cth).*

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

- (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 arrangement 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 the matter or matters it deals with; and
  - (c) the arrangement is genuinely agreed to by the employer and employee, without coercion or duress.
- (2) An individual flexibility arrangement may only be made after the individual employee has commenced employment with the employer.
- (3) An employer who wishes to initiate the making of an individual flexibility arrangement 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 to ensure that the employee understands the proposal.
- (4) If the employer proposes to enter into an individual flexibility arrangement with an employee, the employer must meet with the employee to discuss the proposal prior to entering the individual flexibility arrangement if the employee requests such a meeting.
- (5) 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 have been if no individual flexibility arrangement were agreed to.
- (6) 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, is 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; and
  - (f) describes how the individual flexibility arrangement can be terminated.
- (7) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (8) The employer or employee may terminate the individual flexibility arrangement:
- (a) at any time, by agreement in writing between the employer and the employee; or
  - (b) by the employer or the employee giving 28 days written notice to the other party.
- (9) An individual flexibility arrangement terminated in accordance with clause (8)(b) ceases to have effect at the end of the period of notice required under that clause.
- (10) The employer or employee may use the dispute settlement procedure in this enterprise agreement to deal with disputes that may arise concerning the matters dealt with in the individual flexibility arrangement.

Note: In addition to this clause, the National Employment Standards of the Fair Work Act 2009 give some employees the right to request flexible working arrangements in certain circumstances.



VICE PRESIDENT

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