



Positive Agreement Making for Employees

Presented by the Workplace
Authority



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Workplace Authority



Overview

- What is WorkChoices?
- The role of the Workplace Authority
- Types of industrial instruments
- How is a workplace agreement made?
- Agreement making protections
- Specific employee groups
- Further information & contact details



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What is WorkChoices?

- § A national workplace relations system
- § New wage setting body - The Australian Fair Pay Commission
- § The Australian Fair Pay and Conditions Standard
- § Simpler agreement making in workplaces
- § Awards will be simplified
- § Amended unfair dismissal laws



Who's covered?

YES

Constitutional corporations

Most employers in VIC, ACT and NT

Commonwealth authorities

Waterside, maritime and flight crew employers

NO

State government employers in NSW, QLD, WA, SA and TAS

Partnerships, sole traders (outside VIC, ACT, NT)

Non-constitutional corporations



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The role of the Workplace Authority

- § Provides advice and assistance on agreement making
- § Receives lodgements of all workplace agreements
- § Explains agreements to employees with specific needs
- § Issues certificates for bargaining agents and notices of transmission of business
- § Checks agreements for prohibited content



*Workplace Agreement
Information Service
1300 366 632*



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What is an Industrial Instrument?

- § A written document that deals with the terms and conditions of your employment relationship

- § Examples of industrial instruments:
 - Ø Awards
 - Ø Workplace Agreements – AWAs, collective agreements, State employment agreements

- § Covers areas such as:
 - Ø Hours of work
 - Ø Rates of pay
 - Ø Penalties and loadings
 - Ø Allowances
 - Ø Entitlements for meal and rest breaks



Why Does My Friend Get Paid More Than Me When We Do The Same Job?

§ Different industrial instruments apply at different workplaces

Example:

Paul works as a waiter at a **hotel**. His friend Jason also works as a waiter but at a **restaurant**. Paul earns \$16.22 an hour on all hours worked Monday to Sunday. Jason's rates of pay vary depending on the day and time he works. They range from \$17.31 to \$24.23 an hour

§ The different rates are determined by their industrial instrument even though the duties they perform are similar.



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Why Make a Workplace Agreement?

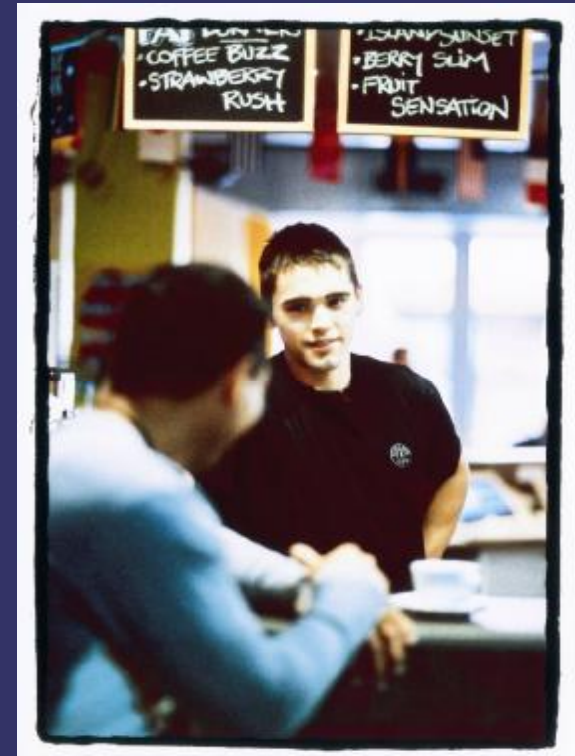
- § Workplace agreements allow for flexibility and individual differences – you can negotiate terms and conditions that suit you and the business you work for

- § What can you agree on?
 - Ø Flexible working conditions - eg: flexible hours of work, work from home, job sharing;
 - Ø Balance work and lifestyle;
 - Ø Family friendly arrangements;
 - Ø A better work environment;
 - Ø Better consultation with management;
 - Ø More opportunities for training and new skills;
 - Ø More career path options.



The Six Types of Workplace Agreements

1. Employee Collective Agreements
2. Union Collective Agreements
3. Australian Workplace Agreements
4. Union Greenfield Agreements
5. Employer Greenfield Agreements
6. Multiple Business Agreements



Making a Workplace Agreement

Things to remember:

- The Standard
- Protected Conditions
- Agreement Making Protections
- Nominal Expiry Date
- Dispute Settlement Procedure
- Bargaining Agents





The Fair Pay and Conditions Standard

- 1. Minimum wages** (including casual loadings)
 1. Australian Pay and Classification Scales (Scales)
 2. The Federal Minimum Wage
- 2. 38 hour working week** (or averaged by written agreement) and reasonable additional hours
** (Does not apply to a NAPSA or pre-reform award for 3 years)*
- 3. 4 weeks annual leave/ 5 weeks for shift workers** (pro rata / maximum 2 weeks can be cashed out)
- 4. 10 days personal/carers leave** (cumulative but care's leave is capped annually)
- 5. 52 weeks unpaid parental leave** (maternity, paternity and adoption)



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Protected Conditions

All workplace agreements are taken to include the protected conditions unless the agreement changes or removes them

- § Rest Breaks
- § Incentive Based Payments and Bonuses
- § Annual Leave Loading
- § Public Holidays
- § Allowances
- § Loading and Penalty Rates
- § Outworkers





Nominal Expiry Date of Agreements

- § All workplace agreements should include a nominal expiry date, (NED)
- § If a workplace agreement does not include an NED, it will be set as a maximum of five years – except for an Employer Greenfields agreement which has a maximum NED of 1 year
- § An agreement will continue to operate after the NED until it is replaced by another workplace agreement or it is terminated
- § Just because your workplace agreement ends does not mean that your employment ends



Dispute Settlement Procedure (DSP)

- § Every workplace agreement must have a dispute settlement procedure
- § To allow for workplace disputes to be resolved at a workplace level
- § Where an agreement is lodged without a dispute settlement procedure, the model process in the *Workplace Relations Act* is automatically included in the agreement



Minimum Legal Requirements and Protected Conditions

The Standard will apply	Protected award matters will be included, unless you specifically exclude or modify each clause	Required Content must be included (or will be automatically included)	Cannot be included
Basic rates and casual loading Hours Annual leave Personal/carer's leave Parental leave	Rest breaks Incentive payments and bonuses Annual leave loading Public holidays Allowances Overtime Shiftwork Penalty rates Outworker conditions	Parties to the agreement Nominal expiry date Dispute settling procedure	Prohibited content





But I Have An Agreement Already...

Workplace agreements made before the 27th March, 2006:

- § Are known as pre-reform agreements
- § These agreements are commonly AWAs, certified agreements or State employment agreements (ie: formerly enterprise bargaining agreements)
- § These agreements remain valid and continue to operate until either:
 - Ø Terminated or
 - Ø Replaced by a new WorkChoices workplace agreement





Agreement Making Protections

- § The right to a minimum of 7 days to consider the proposed agreement
- § The right to receive an Workplace Authority Information Statement
- § The right to appoint a bargaining agent (for employee collectives and AWAs)
- § Additional protections for young employees
- § Coercion and duress are prohibited
- § False or misleading statements are prohibited
- § Discrimination based on union membership or non-membership is prohibited



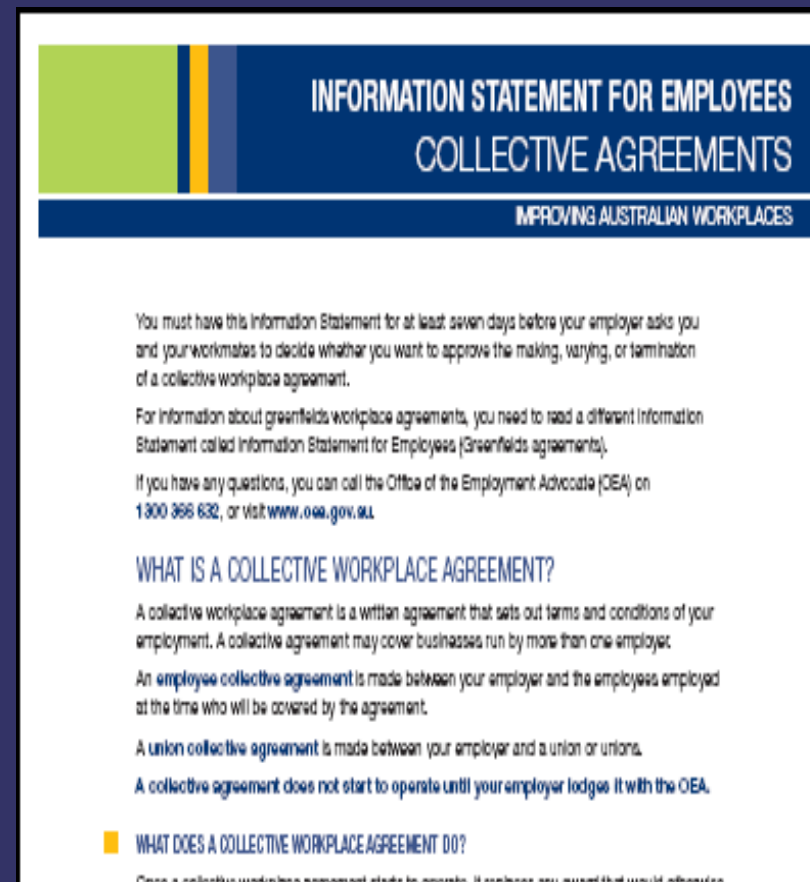
Workplace Agreements – The Offer Process

§ Information Statements:

Your employer must give you a copy of the relevant Information Statement for Employees at least seven days before the agreement is approved. **You may elect to waive this time period in writing.**

§ Seven Day ‘Ready Access Period’:

If you are offered a workplace agreement you should have at least seven days to consider a proposed workplace agreement before it is approved. **You may elect to waive this time period in writing.**



The image shows the cover page of an 'Information Statement for Employees Collective Agreements'. The title is in white text on a dark blue background. Below the title, it says 'IMPROVING AUSTRALIAN WORKPLACES'. The main body of the page is white with black text. It contains several paragraphs of information, including a section titled 'WHAT IS A COLLECTIVE WORKPLACE AGREEMENT?' and another titled 'WHAT DOES A COLLECTIVE WORKPLACE AGREEMENT DO?'. The text explains that employers must provide this statement at least seven days before an agreement is made, and that employees can waive this period in writing. It also defines what a collective workplace agreement is and how it is made.

**INFORMATION STATEMENT FOR EMPLOYEES
COLLECTIVE AGREEMENTS**

IMPROVING AUSTRALIAN WORKPLACES

You must have this Information Statement for at least seven days before your employer asks you and your workmates to decide whether you want to approve the making, varying, or termination of a collective workplace agreement.

For information about greenfields workplace agreements, you need to read a different Information Statement called Information Statement for Employees (Greenfields agreements).

If you have any questions, you can call the Office of the Employment Advocate (OEA) on 1 800 368 632, or visit www.oea.gov.au.

WHAT IS A COLLECTIVE WORKPLACE AGREEMENT?

A collective workplace agreement is a written agreement that sets out terms and conditions of your employment. A collective agreement may cover businesses run by more than one employer.

An employee collective agreement is made between your employer and the employees employed at the time who will be covered by the agreement.

A union collective agreement is made between your employer and a union or unions.

A collective agreement does not start to operate until your employer lodges it with the OEA.

WHAT DOES A COLLECTIVE WORKPLACE AGREEMENT DO?

Once a collective workplace agreement starts to operate, it replaces any award that would otherwise apply to the employees covered by the agreement.





What Must Happen?

OFFER

Employees must be given a copy of the agreement & information statement



APPROVE

After 7 days consideration, the agreement may be approved



LODGE

Within 14 days agreement must be lodged with Workplace Authority.
Employer must give a copy of the lodged AWA to the employee.



AGREEMENT IN OPERATION

Workplace Authority issues receipt



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Do I Have to Sign An AWA?

- § **Existing employee** – You may choose to sign or not sign
 - ∅ Current terms and conditions of employment would continue if you do not sign
- § **New employee** – You may choose to sign or not sign
 - ∅ If you are a new employee, your employer can generally make the offer of a job conditional on signing an AWA





AWA Scenario

- § Frank is 17 years old and works for Improved Conditions Pty Ltd
- § Frank's employer offers him a new AWA
- § Frank is given the AWA on Monday and is asked to sign and return it by Wednesday
- § Frank signs and returns the AWA and Improved Conditions Pty Ltd lodges the original AWA with the Workplace Authority on Thursday
- § Is there a problem?



AWA Scenario - Issues

17 years of age	The AWA also requires the signature of an appropriate adult
Offered a new AWA	Must be provided with an Information Statement at least 7 days before approval – unless they choose to waive this time period in writing
Consideration period	Must have at least 7 days to consider the agreement – unless they choose to waive this time period in writing
Lodges original AWA	Only a copy of the agreement is required





Sarah is working in a local women's fashion store



Her workplace agreement entitles her to 22 days annual leave per year

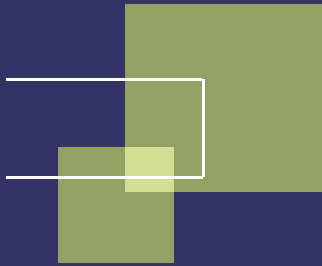


As her workplace agreement is more favourable than the Standard, the more generous entitlements will prevail.



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Nathan is working as a mechanic.



Nathan has been working there for 2 years and his workplace agreement entitles him to 60.8 hours (8 days) paid personal/carer's leave each year.



As his workplace agreement is less favourable than the Standard, the Standard will prevail. Nathan will be entitled to 10 days paid personal/carer's leave per year.





Kelly's story

- § I'm saving up to buy my first car. My employer has told me that I can cash out some of my annual leave to get the extra cash that I need. Can me and my employer make an agreement to do this?
- § Kelly is entitled to cash out up to 2 weeks of her annual leave per year.
- § Kelly and her employer must have entered into a workplace agreement and the agreement must contain a term that allows Kelly to cash out her annual leave.
- § Kelly must give to her employer a written election to cash out annual leave
- § Kelly must have accumulated the amount that she wishes to cash out. It is not possible to cash out annual leave in advance.
- § The rate of pay at which the annual leave is paid must be at least the rate of pay that Kelly is entitled to receive at the time of making the election.
- § Kelly's employer cannot force or put pressure on her to cash out an entitlement to take an amount of annual leave.





When Does My Workplace Agreement End?

Methods of termination:

- ∅ By agreement between the parties; or
- ∅ Unilateral termination after NED, either
 - § In accordance with terms of workplace agreement or
 - § By giving 90 days notice
- ∅ When it is replaced by another agreement; or
- ∅ If a Court declares the agreement void.
- § Even though your workplace agreement ends, this does not mean your employment ends.





Employees With Specific Needs

- § Part of the Workplace Authority's role is to encourage employers to take account of different employee's specific needs
- § The Workplace Authority has established specific Diversity Teams in each State and Territory to provide advice and assistance on issues surrounding specific employee groups
- § The *Workplace Relations Act* also contains specific features that assist employees with specific needs
- § Assistance can include:
 - ∅ Providing general agreement making advice to all parties;
 - ∅ Assisting diversity groups in understanding workplace agreement content;
 - ∅ Assisting parties in preventing and eliminating discrimination in workplace agreements;
 - ∅ Assisting parties to create diversity friendly workplace agreements.





Employee Protections

The Workplace Ombudsman will provide protection for employees by monitoring compliance with the new legislation and enforcing the new penalty provisions.

The Workplace Ombudsman can enforce penalties for breaches of employee entitlements.

Workplace Ombudsman contact details:

Telephone: **1300 724 200**

Website: **www.ows.gov.au**



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Further Information

§ Workplace Authority:

- www.workplaceauthority.gov.au
- 1300 366 632

