This information statement sets out important information you need to know about employee and union collective agreements. If your agreement is a greenfields agreement, there is a separate information statement for these types of agreements available from our website.

You should read it carefully. If you have any questions about any of this information, you can call the Workplace Infoline on 1300 363 264, or visit www.workplaceauthority.gov.au

**What is a collective agreement?**

A collective agreement is a written agreement that covers a group of employees setting out the terms and conditions of their employment. These include things like how much you are paid, your hours of work, and other things relating to your job.

- An **employee collective agreement** is made between an employer and a group of employees and covers a group of employees.
- A **union collective agreement** is made between an employer and a union or unions and covers a group of employees.

A collective agreement may cover businesses run by more than one employer. A collective agreement will be assessed against the no disadvantage test which ensures that the agreement does not, on balance, reduce the overall terms and conditions of employment of the employees covered by the agreement. This generally involves a comparison between the terms of the agreement and the terms of a relevant award or former state award.

**What does a collective agreement do?**

- It replaces any industrial award or agreement that would have applied to you except for the following: a current ITEA, AWA, or any other collective agreement that already applies to you and that has not passed its nominal expiry date.
- It overrides employment conditions created by state or territory laws, if your collective agreement deals with those conditions, except it does not override state or territory laws covering occupational health and safety, workers compensation, child labour, equal employment opportunity and discrimination, or certain laws dealing with training arrangements.

**Who can make a collective agreement?**

An employer can make an employee collective agreement with employees employed in the employer’s business whose employment is to be covered by the agreement. This includes an employee who is currently covered by an individual transitional employment agreement (ITEA) or AWA that has passed its nominal expiry date whose employment would be covered by the collective agreement if they weren’t covered by the AWA or ITEA.

An employer can make a union collective agreement with one or more unions, provided that the union(s) is entitled to make the agreement on the basis of union membership and coverage.

Note: Your employer must also be in one of the categories of employers who can make workplace agreements under the Workplace Relations Act 1996. For more information please visit www.workplaceauthority.gov.au

**What steps are involved in making a collective agreement?**

**Step 1**

If your agreement is an employee collective agreement, you can ask someone to help you talk to your employer about making or varying the agreement. This person is called a bargaining agent. Your bargaining agent can ask for a certificate from the Workplace Authority which they can give to the employer. This certificate will not identify you, but will let your employer know that an employee has asked the bargaining agent to represent them in discussions about the agreement. Your employer can appoint a bargaining agent too.

Unless you withdraw your request, your employer must give your bargaining agent a reasonable opportunity to meet and confer with them about your agreement or variation for at least seven days before the agreement or variation is approved, ending on the day that the agreement is approved.

A bargaining agent can be a friend, relative, union representative, solicitor or any other person whose advice you trust. Bankrupts, people under the age of 18 and some others can not be appointed as bargaining agents.
Step 2
Your employer must provide all employees who will be covered by the agreement (this will include employees employed under an ITEA or AWA that has passed its nominal expiry date and who if not covered by an ITEA or AWA would be covered by the collective agreement) (called eligible employees) with:

- a copy of this information statement for at least seven days before the agreement is approved (see Step 3 below)
- ready access in writing to the final version of your collective agreement for at least seven days before the agreement is approved
- if your collective agreement includes the terms from another workplace agreement or an award then your employer should give you access to that other document in writing for at least seven days.

After all eligible employees to be covered by the collective agreement have been given all of the above documents you can tell your employer you want to waive the full seven day period, if you feel that you do not need further time to consider the documents. However, you must do this in writing and the waiver must be signed and dated by you. All eligible employees to be covered by the collective agreement must waive their right to the seven day consideration period for the waiver to be effective.

Step 3
For a union collective agreement the agreement must first be signed by the employer and the relevant union or unions, then (for both union and employee collective agreements) the employer must give all eligible employees to be covered by the agreement (as well as employees employed under an ITEA, or an AWA that has passed its nominal expiry date and whose employment would be covered the collective agreement if they were not covered by the ITEA or AWA) a reasonable opportunity to decide whether they want to approve the agreement.

The agreement is approved when, as detailed in the attached How and when form:

- your employer conducts a vote, and a majority of employees who make a valid vote decide to approve the agreement, or
- another approach is used, and a majority of employees decide they want to approve the agreement.

If the collective agreement is approved, it will apply to all the employees who are covered by it, not just those who voted for approving the agreement. Whilst employees on ITEAs and AWAs that have passed their nominal expiry date can participate in the approval of a collective agreement, their AWAs and ITEAs will need to be terminated in order for their employment to be covered by the collective agreement.

Step 4
Your employer must lodge a declaration and a copy of your signed collective agreement with the Workplace Authority within 14 days of the agreement being approved (as outlined at Step 3 above). Your collective agreement must be correctly signed so that it can be validly lodged.

For an employee collective agreement, the agreement must be signed by the employer and a representative of the employees or an appointed bargaining agent. For a union collective agreement, the agreement must be signed by the employer and the union(s) with which the employer made the agreement. In both cases the signatures must state the full name and address of each person signing the workplace agreement and an explanation of their authority to sign the agreement.

The Workplace Authority will send your employer a receipt stating the date of your employer’s lodgement. If the lodgement is for a union collective agreement, the Workplace Authority will also send a receipt to the union or unions who are party to the agreement as well as your employer. Your employer must take reasonable steps to provide copies of the receipt to all employees covered by the agreement within 21 days of receiving it.

Step 5
The Workplace Authority will then assess your collective agreement for the no disadvantage test (see below) and you will be advised of the outcome.

What is the no disadvantage test?

The no disadvantage test ensures that your collective agreement does not, on balance, reduce the overall terms and conditions of employment of the employees covered by the agreement. This generally involves a comparison between the terms of the agreement and the terms of a relevant award or former state award.

The Workplace Authority will assess each lodged collective agreement and if the collective agreement is varied at a later time, each collective agreement as varied.

Your employer will be asked to provide information when they lodge the collective agreement to assist the Workplace Authority to perform the no disadvantage test. You can ask your employer to provide you with a copy of relevant information that relates to your employment or you can contact the Workplace Infoline to get a copy of any relevant information.
information in relation to your employment that is lodged with your agreement. You may be contacted by the Workplace Authority for extra information to help with completing the test.

Once completed, the Workplace Authority will write to your employer and, in the case of a union collective agreement, the union(s) bound by the agreement to let them know whether or not your collective agreement has passed the no disadvantage test.

The employer must give copies of the notice from the Workplace Authority about whether the collective agreement passes the no disadvantage test to each employee covered by the agreement as soon as possible after the employer receives the letter.

When does a collective agreement start operating?

An employee collective agreement and a union collective agreement will not start operating until the Workplace Authority is satisfied that the agreement passes the no disadvantage test. Specifically the agreement will start to operate on the seventh day after the date of the notice from the Workplace Authority advising that the agreement has passed the no disadvantage test. Until your collective agreement starts to operate your employment will be covered by the industrial awards or agreements that currently apply to your employment.

In exceptional circumstances, where the Workplace Authority is satisfied that approval of the agreement would not be contrary to the public interest, an employee collective agreement or a union collective agreement may be taken to pass the no disadvantage test where it would otherwise fail.

A collective agreement will only operate if it has been validly approved by the employees and the signature requirements are met. These signature requirements are set out above. Also, a multiple business agreement can only operate if the Workplace Authority has authorised the making of the agreement.

What if my collective agreement does not pass the no disadvantage test?

If your collective agreement does not pass the no disadvantage test, the notice provided by the Workplace Authority will contain further information regarding the process to be followed to change your collective agreement to comply with the no disadvantage test. If your collective agreement is a union collective agreement the union(s) party to the agreement will also receive a copy of this notice.

Your employer may lodge a variation of the agreement in response to the no disadvantage test. The varied agreement will then be assessed to determine whether it passes the no disadvantage test. The Workplace Authority will then advise the employer in writing (and the relevant union(s), if the agreement is a union collective agreement) of the outcome. Your employer must provide relevant employees with a copy of this letter as soon as they can.

If the Workplace Authority decides that the varied agreement:

• passes the no disadvantage test - the varied agreement will start operating on the seventh day after the date of issue of the notice,
• does not pass the no disadvantage test - the agreement will not operate.

Your employer cannot dismiss you, or threaten to dismiss you, because your collective agreement does not pass the no disadvantage test.

When does a collective agreement stop operating?

Your collective agreement stops operating in relation to your employment in three situations:

1. it is terminated
2. it is replaced by another collective agreement after its nominal expiry date, or
3. it is declared to be of no effect by a relevant Court.

All collective agreements must have what is called a nominal expiry date. If your collective agreement passes its nominal expiry date and a new workplace agreement is not made, your existing collective agreement will continue to apply. As discussed below, the fact that the nominal expiry date of a collective agreement has passed will mean that the agreement can be replaced by another collective agreement or terminated in different ways.

The nominal expiry date of your agreement is generally either:

• a set date mentioned in the agreement (up to five years from the date of lodgement), or
• if no such date is specified, five years after the date of lodgement of the agreement.

A shorter nominal expiry date of up to 2 years will apply if the employee collective agreement or union collective agreement passed the no disadvantage test due to exceptional circumstances.
How is a collective agreement varied?

The procedure for varying your collective agreement follows the same steps as the procedure for making a collective agreement (See page 1). However, there are some differences as set out below:

• at step 2 you must be given a copy of the variation agreement, and.
• at steps 2 and 3, for the purpose of varying a collective agreement, eligible employees means employees who are covered by the collective agreement and those employees who will be covered by the collective agreement as varied (including those employees employed under an ITEA or AWA that has passed its nominal expiry date and who would be covered by the agreement as varied if they were not employed under an ITEA or AWA).

How is a collective agreement terminated?

There are three ways in which a collective agreement can be terminated:

1. By agreement:
If the employees covered by your collective agreement and your employer want to end the agreement at any time, you can agree to terminate the agreement. The procedure for terminating the agreement this way follows the same steps as the procedure for making a collective agreement (see page 2). However, there are some differences as set out below:

• at steps 2 and 3, for the purpose of terminating a collective agreement by agreement, eligible employees means employees who are covered by the collective agreement
• at step 2 - your employer must give you this information statement for the full seven days as this period cannot be shortened
• you do not have to be given a copy of a termination agreement and a copy of the signed termination agreement does not have to be lodged with your employer’s declaration to the Workplace Authority. The termination of the collective agreement still must be validly approved by the employees.

2. Termination as provided for by the agreement:
If your collective agreement has a procedure for how it can be terminated after its nominal expiry date has passed, your employer, or a union who is party to the agreement or a majority of employees who are covered by the agreement can terminate the agreement by giving 14 days’ written notice in the prescribed form to the other party or parties to the agreement and following that termination procedure (note multiple business agreements cannot be terminated this way), or

3. By the Australian Industrial Relations Commission:
If the nominal expiry date of the collective agreement has passed, the Commission (on application by the employer, a majority of employees subject to the agreement, or in the case of a union collective agreement - the union(s) party to the agreement) may terminate the collective agreement if it is satisfied that termination would not be contrary to the public interest.

If your collective agreement is terminated, your minimum terms and conditions of employment will be any applicable award or industrial agreement or the Australian Fair Pay and Conditions Standard.

For further information on the arrangements that would apply to you upon termination of your agreement, you should seek clarification from your employer or contact the Workplace Infoline on 1300 363 264 or visit www.workplaceauthority.gov.au

Other important information

What is the Australian Fair Pay and Conditions Standard?

Your employer must comply with the minimum terms and conditions in the Australian Fair Pay and Conditions Standard (the Standard) at all times, including when your collective agreement is in operation. The five key employment conditions in the Standard are:

1. Guaranteed basic rates of pay and guaranteed casual loadings.
A Federal Minimum Wage or guaranteed basic rate of pay under an applicable Australian Pay and Classification Scale. For casual employees, a casual loading of 20% is guaranteed.

2. Hours of work.
Maximum ordinary hours of work limited to 38 hours per week (which can be averaged over up to twelve months) and reasonable additional hours.

3. Annual leave.
Four weeks paid annual leave per year (five weeks for some continuous shift employees), except casual workers. Up to two weeks of this leave can be cashed out at the employee’s written election where their workplace agreement allows for it.*
4. Personal leave.
Ten days paid personal/carer’s leave per year and two days paid compassionate leave for each relevant occasion, except casual workers.* Where this paid personal leave has been used up, two days unpaid carer’s leave for each carer’s leave occasion. This unpaid leave is available to casuals.

5. Unpaid parental leave.
For all employees other than certain casual employees, up to 52 weeks unpaid parental leave (maternity, paternity and adoption).

* These conditions set out above are based on a full-time employee working up to 38 hours per week and apply on a pro-rata basis according to the hours worked by the employee.

Any clauses of your agreement that seeks to exclude an entitlement provided for by the Standard will be of no effect and cannot be enforced. If you have any concerns that you are not being provided with the minimum conditions provided for by the Standard, please contact the Workplace Infoline on 1300 363 264 or the Workplace Ombudsman on 133 724 200.

Is there anything that should not be included in my agreement?
Yes. Prohibited content cannot be included in a collective agreement. Any prohibited content in a collective agreement has no effect and cannot be enforced. Employers can be fined if they recklessly lodge an collective agreement containing prohibited content.

For more detailed information about what terms contain prohibited content please visit www.workplaceauthority.gov.au

Why are workplace agreements for some Victorian employees different?
If you work in Victoria and your employer is not a ‘constitutional corporation’ (for example, they are not a company), your collective agreement must contain guarantees of minimum wage rates and casual loadings. If it doesn’t, the collective agreement will be void.
How and when (tick as appropriate)

This form sets out the details of how and when the:

☐ Approval  ☐ Variation  ☐ Termination of a collective agreement will take place.

Your employer must allow you a reasonable opportunity to decide whether you want to approve the making, variation or termination of the collective agreement.

On this date _______ / _______ / ________, the employer _______________________________ will:

DD  MM  YY  EMPLOYER

If approval is to be by vote, please write how the vote will be conducted in the blue box.

Hold a vote to approve the making, variation or termination of the collective agreement by:

If a majority of relevant employees (see below) who cast a valid vote decide that they want to approve the making, variation or termination of the collective agreement, it will be approved.

“Relevant employees” means, in the case of:

• Making the agreement – employees who are covered by the collective agreement (this will include employees employed under an ITEA or AWA that has passed its nominal expiry date and whose employment would be covered by the collective agreement if they were not employed under an ITEA or AWA)

• Varying the agreement – employees who are covered by the collective agreement and those employees who will be covered by the collective agreement as varied (including those employees employed under an ITEA or AWA that has passed its nominal expiry date whose employment would be covered by the agreement as varied if they were not employed under an ITEA or AWA)

• Terminating the agreement – employees who are covered by the collective agreement.

OR

If another approval method is used, please write the description of the method being used in the blue box.

Use the following method to approve the making, variation or termination of the collective agreement:

If a majority of relevant employees decide that they want to approve the making, variation or termination of the collective agreement, then it will be approved.

“Relevant employees” has the same meaning as set out in the section above about holding a vote.

Instructions for employers: when making, varying or terminating the collective agreement, the following employees must be given a copy of this Information Statement with the ‘How and when’ completed.

• For making the agreement – employees who are covered by the collective agreement (this will include employees employed under an ITEA or AWA that has passed its nominal expiry date and whose employment would be covered by the collective agreement if they were not employed under an ITEA or AWA)

• For varying the agreement – employees who are covered by the collective agreement and those employees who will be covered by the collective agreement as varied (including those employees employed under an ITEA or AWA that has passed its nominal expiry date whose employment would be covered by the varied agreement if they were not employed under an ITEA or AWA)

• For terminating the agreement – employees who are covered by the collective agreement

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