



Australian Road Transport  
Industrial Organisation  
ABN: 63 734 697 902

# AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

*Respect, Respond and Represent*

## Fair Work Commission (FWC) – obtaining approval for an Enterprise Agreement

(ARTIO acknowledges that this document has been based on summary prepared by ACCI)

### Agreement Triage Process

- In late 2014, the FWC introduced an ‘agreements triage process’ for the stated purpose of greater consistency and timeliness in EBA approvals.
- The process involves a team of admin staff, called ‘member assist’, analysing the agreements on lodgement to review whether they meet the statutory requirements.
- Most agreements lodged in the last few months are taking at least 3, often 4, months for approval and then undertakings are regularly required

### Tips to avoid delays:

#### 1. Notice of employee representational rights (NERR)

- The notice must be in the form prescribed by the Regs – a new form was prescribed in April 2017
- The Commission has no discretion to approve an agreement where the NERR has been modified (although the government is considering some amendments in this area)

#### 2. F17 form

Voting processes:

- Provide as much detail as possible about the vote including when, where, who, method etc.
- Not enough to say “employees were advised” of the vote
- If possible, provide copies of the voting material
- What steps were taken to *explain* the terms of the agreement – ensure full details are provided

#### 3. Signature requirements

Agreements lodged must be signed by the employer and at least one representative of the employees and must also specify the following:

- The full name of each person who signs the agreement;
- The address of each person who signs the agreement; and
- The authority (i.e. position/title) of each person who signs the agreement

#### 4. Model terms

Use the most up-to-date version of the terms, if not they will be automatically included

#### 5. Undertakings are often sought for the following:

Agreement provisions are inconsistent with the NES, for example:

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- must expressly state that shiftworkers are “shiftworkers for the purposes of the NES”
- Public holidays provisions should include other gazetted public holidays
- Must not provide lesser redundancy entitlements for any length of service
- Apprentices must not be excluded from notice of termination of employment provisions

The agreement should be clear when stating that it “should be read in conjunction with the award”, whether it actually “incorporates the award”

6. A ‘pro forma’ draft undertaking is set out below:

**IN THE FAIR WORK COMMISSION**

**APPLICATION FOR APPROVAL OF ENTERPRISE AGREEMENT**

*Fair Work Act 2009—s.185*

Application by XXXXXXXX Pty Ltd

Agreement title: - **AG2018/XXXX - XXXXXXXX Pty Ltd Details Collective Agreement 2018**

**EMPLOYER UNDERTAKING**

*Fair Work Act 2009—s.190*

PURSUANT to section 190 of the *Fair Work Act 2009*, XXXXXXXX Pty Ltd hereby undertakes that:

1. The Road Transport and Distribution Award 2010 (RTD Award) and The Road Transport (Long Distance Operations) Award 2010 (LDO Award) are incorporated into and form part of the **AG2018/XXXX - XXXXXXXX Pty Ltd Details Collective Agreement 2018**
2. Any further undertakings required

Dated: xx month 2018

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**Signed by XXXXXXXX, title, on behalf of XXXXXXXX Pty Ltd**