

ACTUS WORKPLACE LAWYERS

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Explanation of the terms of a proposed enterprise agreement

Employers continue to run into problems with the onerous requirements in the Fair Work Act to ensure that the terms of a proposed enterprise agreement are explained to the employees ahead of the vote to approve the agreement.

Subsection 180(5) of the Act requires that an employer must take “all reasonable steps” to explain the terms of a proposed enterprise agreement to the employees, and the effect of the terms. This requirement needs to be addressed carefully to avoid problems at the approval stage.

When a union wishes to challenge the approval of an enterprise agreement it does not support, often the union will argue that the employer’s explanation about the terms of the agreement was inadequate.

As set out in the Fair Work Commission’s [Statement of Principles on Genuine Agreement](#), where a proposed enterprise agreement will replace an earlier agreement, the explanation should:

- Explain the differences in entitlements between the proposed agreement and the existing agreement; and
- Explain the differences in entitlements between the proposed agreement and relevant modern award provisions.

The above requirements can be addressed by preparing an explanation document with different columns dealing with the above issues. Alternatively, the explanation document can contain two tables – one dealing with the differences between the previous enterprise agreement and the new agreement and the other comparing the provisions in the proposed agreement to the relevant award provisions. Care must be taken to ensure that the explanation document is not misleading in any way.

Paragraph 180(5)(b) of the Fair Work Act requires the explanation of the proposed enterprise agreement to be provided in an appropriate manner taking into account the particular circumstances and needs of the employees, including employees from culturally and linguistically diverse backgrounds, young employees and employees who did not have a bargaining representative. To assist in addressing these requirements, employee briefings are often worthwhile, so that employees have the opportunity to ask questions about the proposed agreement.

For further advice or assistance on any enterprise bargaining issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.