

(Fair Work Act 2009)

## **205 Enterprise agreements to include a consultation term etc.**

*Consultation term must be included in an enterprise agreement*

- (1) An enterprise agreement must include a term (a ***consultation term***) that:
  - (a) requires the employer or employers to which the agreement applies to consult the employees to whom the agreement applies about:
    - (i) a major workplace change that is likely to have a significant effect on the employees; or
    - (ii) a change to their regular roster or ordinary hours of work; and
  - (b) allows for the representation of those employees for the purposes of that consultation.
- (1A) For a change to the employees' regular roster or ordinary hours of work, the term must require the employer:
  - (a) to provide information to the employees about the change; and
  - (b) to invite the employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
  - (c) to consider any views given by the employees about the impact of the change.

*Model consultation term*

- (2) If an enterprise agreement does not include a consultation term, or if the consultation term is an objectionable emergency management term, the model consultation term is taken to be a term of the agreement.
- (3) The regulations must prescribe the ***model consultation term*** for enterprise agreements.

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## **50 Contravening an enterprise agreement**

A person must not contravene a term of an enterprise agreement.

Note 1: This section is a civil remedy provision (see Part 4-1).

Note 2: A person does not contravene a term of an enterprise agreement unless the agreement applies to the person: see subsection 51(1).

## **51 The significance of an enterprise agreement applying to a person**

- (1) An enterprise agreement does not impose obligations on a person, and a person does not contravene a term of an enterprise agreement, unless the agreement applies to the person.
- (2) An enterprise agreement does not give a person an entitlement unless the agreement applies to the person.

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## Part 4-1—Civil remedies

### Division 1—Introduction

#### 537 Guide to this Part

This Part is about civil remedies. Certain provisions in this Act impose obligations on certain persons. Civil remedies may be sought in relation to contraventions of these civil remedy provisions.

Subdivision A of Division 2 deals with applications for orders in relation to contraventions of civil remedy provisions and safety net contractual entitlements, and applications for orders to enforce entitlements arising under subsection 542(1).

Subdivision B of Division 2 sets out the orders that can be made by the Federal Court, the Federal Circuit Court or an eligible State or Territory Court in relation to a contravention of a civil remedy provision.

Division 3 sets out when proceedings relating to a contravention of a civil remedy provision may be dealt with as small claims proceedings.

Division 4 deals with general provisions relating to civil remedies, including rules about evidence and procedure.

Division 4A imposes obligations on responsible franchisor entities in relation to certain contraventions of civil remedy provisions by franchisee entities and on holding companies in relation to certain contraventions of civil remedy provisions by subsidiaries.

Division 5 deals with unclaimed money.

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#### 540 Limitations on who may apply for orders etc.

##### *Employees, employers, outworkers and outworker entities*

- (1) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:
  - (a) an employee;
  - (aa) a prospective employee;
  - (b) an employer;
  - (c) an outworker;
  - (d) an outworker entity.

##### *Employee organisations and registered employee associations*

- (2) An employee organisation or a registered employee association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision in relation to an employee, only if:
  - (a) the employee is affected by the contravention, or will be affected by the proposed contravention; and
  - (b) the organisation or association is entitled to represent the industrial interests of the employee.
- (3) However, subsection (2) does not apply in relation to:

- (a) items 4, 7 and 14 in the table in subsection 539(2); or
- (b) a contravention or proposed contravention of:
  - (i) an outworker term in a modern award; or
  - (ii) a term in an enterprise agreement that would be an outworker term if it were included in a modern award.

- (4) An employee organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of:
- (a) an outworker term in a modern award; or
  - (b) a term in an enterprise agreement that would be an outworker term if it were included in a modern award;
- only if the employee organisation is entitled to represent the industrial interests of an outworker to whom the term relates.

*Employer organisations*

- (5) An employer organisation may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation has a member who is affected by the contravention, or who will be affected by the proposed contravention.

*Industrial associations*

- (6) An industrial association may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:
- (a) the industrial association is affected by the contravention, or will be affected by the proposed contravention; or
  - (b) if the contravention is in relation to a person:
    - (i) the person is affected by the contravention, or will be affected by the proposed contravention; and
    - (ii) the industrial association is entitled to represent the industrial interests of the person.
- (7) If an item in column 2 of the table in subsection 539(2) refers to an industrial association then, to avoid doubt, an employee organisation, a registered employee association or an employer organisation may apply for an order, in relation to a contravention or proposed contravention of a civil remedy provision, only if the organisation or association is entitled to apply for the order under subsection (6).

*Regulations*

- (8) The regulations may prescribe a person for the purposes of an item in column 2 of the table in subsection 539(2). The regulations may provide that the person is prescribed only in relation to circumstances specified in the regulations.