

**CHECK LIST - INDUSTRIAL AGREEMENTS**

APPLICATION NO. ....

**Note: Legislative references in Items 1 to 16 refer to the *Industrial Relations Act 1979***

<p><b><u>1. Check for cancelled or expired Industrial Agreements relating to this Industrial Agreement</u></b> (Specify title and number of expired agreement/s to be cancelled)</p> <p>.....</p> <p>.....</p>
<p><b><u>2. Application Served</u></b></p> <p>Has the application been served on the Council, the Chamber, the Mines and Metals Association and the Minister? (s 29A) ..... Yes .....No</p>
<p><b><u>3. Arrangement</u></b></p> <p>Are the provisions appropriately grouped, ie leave provisions together, etc? ..... Yes .....No</p> <p>Are there appropriate Division headings? ..... Yes .....No</p>
<p><b><u>4. Parties Bound</u></b></p> <p>Check titles of employers accurately cited ..... Yes ..(Cl .....) .....No</p> <p>Are unions registered under the Industrial Relations Act 1979? ..... Yes .....No</p> <p>Is registered name correctly listed? ..... Yes ..(Cl .....) .....No</p> <p>Is there a clause identifying the parties to the proposed industrial agreement? ..... Yes ..(Cl .....) .....No</p> <p>Are the parties named as signatories correctly?..... Yes ..(Cl .....) .....No</p>
<p><b><u>5. Area and Scope Clause</u></b></p> <p>Check for sense and is the area and term specified (s 41(5))? ..... Yes .....No</p> <p>Are the parties cited in the clause? ..... Yes ..(Cl .....) .....No</p>
<p><b><u>6. Title Clause</u></b></p> <p>Check for sense and accuracy ..... Yes .....No</p> <p>Does it include a reference to any award? ..... Yes ..(Cl .....) .....No</p> <p>Is there a previous agreement? ..... Yes .....No</p> <p>If so, should it be cancelled? ..... Yes .....No</p> <p>OR, does it save the provisions of the first agreement? ..... Yes .....No</p>
<p><b><u>7. Number of Employees</u></b></p> <p>Does the agreement include an estimated of the number of employees who will be covered upon registration? (s 41A(1)(c))..... Yes ..(Cl .....) .....No</p> <p>Are some or all of the employees members of, or eligible to be members of, the organisations or associations of employees who are party to this agreement? (s 41A(2)) ..... Yes ..(Cl .....) .....No</p>

**8. Term of Agreement: Duration**

Does the agreement specify a nominal expiry date that is, no later than 3 years after the date the agreement comes into operation? (s 41A(1)(a))..... Yes ..(Cl ..... ) .....No

**9. Section 42G: Order in terms of an agreement**

Has an order been made by the Commission under s 42G?..... Yes ..(Cl ..... ) .....No  
If so, does the agreement include that provision or provisions specified in the order?  
(s 41G(1)(b))..... Yes .....No

**10. Dispute Settlement Procedure Clause \***

Is there a dispute settlement clause?..... Yes ..(Cl ..... ) .....No  
Does it comply with s 48A(1)(a) ? ..... Yes .....No

**11. Right of Entry Clause \***

Is there a right of entry clause?..... Yes ..(Cl ..... ) .....No  
NOTE: Section 49N does not require a right of entry clause to be in the industrial agreement, but if there is, the terms of the clause must not be additional to, or inconsistent with the powers of entry under Division 2G of Part II.  
If there is a clause, is the clause additional to or inconsistent with ss 49G ,49H, 49J, 49K and 49L?..... Yes .....No

**12. Right of Entry to investigate breaches Clause \***

Is there a right of entry to investigate breaches clause?..... Yes ..(Cl ..... ) .....No  
Is the award provision inconsistent with or additional to the requirements of s 49I?..... Yes .....No  
NOTE: Section 49I does not require a right of entry to inspect breaches of the Industrial Relations Act, the Long Service Leave Act, the MCE Act, the Occupational Safety and Health Act, the Mines Safety and Inspection Act, or an award, order, industrial agreement or EEA clause to be in the agreement, but if there is, the terms of the clause must not be additional to, or inconsistent with the powers of entry and inspection under Division 2G of Part II. (s 49N)

**13. Keeping of and access to Employment Records**

Is there a keeping of and access to employment records clause? ..... Yes ..(Cl ..... ) .....No  
Is the award provision inconsistent with or additional to the requirements of ss 49D and 49E?..... Yes .....No  
NOTE: Sections 49D and 49E does not require a keeping of and access to employment records clause to be in the agreement, but if there is, the right of inspection of those records created by the clause must not be additional to, or inconsistent with the powers of entry and inspection under Division 2F of Part II. (s 49N)

**14. Superannuation Entitlement \***

Has a Superannuation clause been included in the agreement? If so does the agreement comply with s 48B(2)? ..... Yes ..(Cl ..... ) .....No

- (i) Permits employee to nominate a complying fund or scheme;
- (ii) Employer to notify employee of their entitlement to nominate a complying fund or scheme;
- (iii) Employer to pay to a complying fund until employee nominates one; (s 48B(2)(c)(i) and (ii));
- (iv) Parties to be bound by the nomination of the employee;
- (v) Employer shall not unreasonably refuse employee's request to change complying funds or schemes.

**15. Parent Award/s**

Is there a reference to parent award/s? ..... Yes ..(Cl .....) .....No

If so, does the agreement provide that –

- (i) Agreement to be read in conjunction with award/s? ..... Yes .....No
- (ii) In event of any inconsistency the agreement is to prevail? ..... Yes .....No
- (iii) Where agreement is silent, award/s provisions apply? ..... Yes .....No

**16. Enterprise Order**

Is there a current enterprise order? ..... Yes .....No

If so, is the Commission able to register an industrial agreement in substitution for the enterprise order? (s 42K(5))

- (i) Has the application to register the industrial agreement been made by all the specified persons in the order under s 42J(5)? OR..... Yes .....No
- (ii) Has the term of the enterprise order has expired? ..... Yes .....No

Is the Commission able to cancel the enterprise order? (s 42K(6)) ..... Yes .....No

**17. Discriminatory Provisions**

Do any clauses contain language that is not gender neutral? (e.g. "his and her" should be replaced with "their")..... Yes ..(Cl .....) .....No

Are there any provisions that may directly or indirectly discriminate? ..... Yes ..(Cl .....) .....No

**18. Outdated Language or Provisions**

Do any provisions use outdated language, such as "worker" instead of "employee"?..... Yes ..(Cl .....) .....No

**19. Minimum Leave Conditions – Minimum Conditions of Employment Act**

Sick Leave –

Is sick leave been included in the agreement? ..... Yes ..(Cl .....) .....No

If so:(i) An employee is entitled to paid sick leave each year for the number of hours the employee is required ordinarily to work in a 2 week period during that year, up to 76 hours; (s 19(1)) ..... Yes ..(Cl .....) .....No

(ii) Entitlement accrues pro rata on a weekly basis; (s 19(2)) ..... Yes ..(Cl .....) .....No

(iii) Proof of payment for sick leave to satisfy a reasonable person of the entitlement. (s 22)..... Yes ..(Cl .....) .....No

Carer's Leave –

Has carer's leave been included in the agreement? (s 20A)..... Yes ..(Cl .....) .....No

An employee is entitled to use, each year, up to 5 days of the employee's entitlement of sick leave for that year to be the primary care giver of a member of the employee's family or household who is ill or injured and in need of immediate care and attention.

Annual Leave –

Has annual leave been included in the agreement? ..... Yes ..(Cl .....) .....No

If so:(i) An employee is entitled for each year of service, to paid annual leave for the number of hours the employee is required ordinarily to work in a 4 week period during that year, up to 152 hours; (s 23(1))..... Yes ..(Cl .....) .....No

(ii) Entitlement accrues pro rata on a weekly basis; (s 23(2)) ..... Yes ..(Cl .....) .....No

(iii) Deduction may be made for misconduct. (s 24(3)) ..... Yes ..(Cl .....) .....No

**19. Minimum Leave Conditions – Minimum Conditions of Employment Act (cont)**

Bereavement Leave –

Has paid bereavement leave been included in the agreement? (s 27)..... Yes ..(Cl ..... ) .....No

An employee is entitled to paid bereavement leave of up to 2 days on the death of a member of the family or household.

Public Holidays –

Have public holidays been included in the agreement? ..... Yes ..(Cl ..... ) .....No

Does the clause comply with s 30?..... Yes ..(Cl ..... ) .....No

Parental Leave –

Has parental leave been included in the agreement? (s 33) ..... Yes ..(Cl ..... ) .....No

A full time employee is entitled to take up to 52 consecutive weeks of unpaid leave in respect of –

- (i) the birth of a child to the employee or the employee's spouse or de facto partner; OR
- (ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

NOTE: Entitlements to carer's leave, bereavement leave and parental leave (adoption leave) have been extended from de facto spouse to de facto partner.

Redundancy – Introduction of Change

Is there a redundancy clause and/or introduction of change clause which requires that employers have discussions with employees prior to termination of employment? ..... Yes ..(Cl ..... ) .....No

Does the redundancy clause comply with Part 5, including 8 hours leave for job interviews? (s 43) ..... Yes .....No

**20. Rates of Pay**

Are weekly rates of pay specified?..... Yes ..(Cl ..... ) .....No

Are the rates of pay in addition to rates of pay payable under a relevant award?..... Yes .....No

If no:

- (a) Do the adult minimum rates of pay comply with ss 10 and 12 of the *Minimum Conditions of Employment Act* and the General Order made under s 51F of the Industrial Relations Act? ..... Yes .....No
- (b) Do the minimum rates set for apprentices comply with the General Order in force under s 51F of the Industrial Relations Act? (s 14 of the *Minimum Conditions of Employment Act*) ..... Yes .....No
- (c) Do the minimum rates for employees under 21 comply with s 13 of the *Minimum Conditions of Employment Act*? ..... Yes .....No
- (d) Do the minimum rates set for trainees comply with the General Order in force under s51F of the Industrial Relations Act? (s 15 of the *Minimum Conditions of Employment Act*) ..... Yes .....No
- (e) Are casual employees entitled to be paid a loading of 20% on top of the prescribed minimum wage? (s 11 the *Minimum Conditions of Employment Act*) ..... Yes .....No

\* – Please note these clauses now apply when agreement is within the jurisdiction of the Public Service Arbitrator (see s 80G of the Industrial Relations Act 1979).

NOTE: See s 99 of the *Public Sector Management Act 1984* which prescribes that except for particular matters, any matters contained in the public sector standards and code of ethics cannot be dealt with in an industrial agreement. Further other matters that may be prescribed are also excluded and so too are any matters dealt with by the *Public Sector Management Act* relating employment tenure in the Public Service or approved classification systems or procedures in the public sector.

