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How to guide—completing the contract templates—for Aboriginal and Torres Strait Islander corporations covered by the federal industrial relations system

Permanent, part-time/full-time employment

Federal Industrial Relations System – Modern Awards

JULY 2024

Before you start to fill in the contract template check these five steps:

STEP 1

The contract template assumes that the workplace is covered by the federal industrial relations system established by the *Fair Work Act 2009* (the Fair Work Act). See 'The federal industrial relations system: A guide for Aboriginal and Torres Strait Islander corporations and their employees' for more information.

The template will almost certainly produce the wrong legal outcomes for any employment relationship that is not part of the federal system. So do not try to use this template unless you are covered by the federal industrial relations system.

STEP 2

The template assumes that the employment is permanent— that is, that the employment is not for a fixed period but is meant to continue indefinitely as long as things are going well. If the employment is meant to be for a fixed period, a slightly different template will be needed.

STEP 3

The template covers both **full-time** and **part-time** employees. However, the corporation will need to select the relevant clauses that apply to either **full-time** or **part-time** employees, and delete the clauses that don't apply.

STEP 4

The template assumes that your corporation does not have an **enterprise agreement under the Fair Work Act**. If an enterprise agreement is currently operating in the corporation, and if it applies to the job you are filling, then the terms and conditions of employment for the new employee will have to be consistent with terms of the agreement.

The template also assumes that your corporation is not subject to what is known as an **enterprise award**—that is, a federal award that applies only to your corporation (you can check the list of enterprise awards at: <https://www.fairwork.gov.au/employment-conditions/awards/list-of-awards/enterprise-and-public-sector-awards>).

STEP 5

You will need to check—ideally, before you fill the position—which **modern award** applies to this work in the employment of your corporation.

One way to do this is to contact the Fair Work Ombudsman on 13 13 94 and give them the details of the employment and see what they say about which modern award applies. Generally, they should be able to advise you on this.

Another way to do this is to use the tools at Fair Work Ombudsman’s website. Substantial help is available for employers at:

<https://www.fairwork.gov.au/employment-conditions/awards#find-my-award>

This guide (and the template contract) assumes that the employment is covered by one of the following awards (as in effect in July 2024):

- Aboriginal Community Controlled Health Services Award 2020;
- Social, Community, Home Care and Disability Services Industry Award 2010;
- General Retail Industry Award 2020; and,
- Clerks—Private Sector Award 2020.

If the employment is covered by a different award, you should get legal advice on how to adapt the template material.

Do not use this template if there is no award that applies to the employment.

What is in the template?

The template consists of four parts.

The **first part** is the template contract of employment. The first part—the contract of employment—needs to be filled in at various places and signed and dated by both the employer and the new employee.

The **second part** is Attachment 1 to the contract—the Job Description. The corporation will need to create Attachment 1. The description of the job should be set out in this attachment. What goes into this is something for the corporation to work out.

The **third part** is Attachment 2 to the contract—a summary of the National Employment Standards set out in the Fair Work Act, together with a summary of the main terms and conditions set out in the relevant award. There are different summaries for each of the four awards listed above. Chose the summary that relates to the award that covers this employment and attach that summary as Attachment 2.

The **fourth part** is Attachment 3 to the contract, the Fair Work Information Statement. This does not require any input from the corporation. It is a standard document issued by the Fair Work Ombudsman that employers must provide to employees when they start employment.

Filling in the template

Clause 1 of the contract: you need to fill in the name of your corporation. This then gets defined in the contract as ‘the corporation’, so you don’t need to repeat the specific name of your corporation until you get to the signing page.

The document is just an offer, and not a contract, until it is signed.

Clause 2 of the contract: you need to fill in the commencement date for the employment. This is the date that you expect the employee to begin work.

Clause 3 of the contract refers to the employee’s position. You will need to fill out the role of the employee here. It also refers to Attachment 1 as setting out the Job Description for the job the employee will be doing. As noted above, the Job Description should be created by the corporation.

Attachment 1 needs to be labelled ‘Attachment 1’.

Clause 4 of the contract deals with the period of probation. There are a few issues to consider here.

The first is the *period* of the probation. The length of a probation period is dependent on what the corporation needs. Generally speaking, the more senior and the more responsible the job, the longer the period of probation should be. Corporations may want to have a period of three, six months or even 12 months. Any longer than 12 months is quite unusual.

Once you have decided on the probation period, put this into the contract and also include the end date of the probation period (this will be the date of commencement plus the probation period, minus one day). So, if three months of probation began on 20 August 2024, it would end at the end of 19 November 2024.

Note that if you make the period of probation 12 months, and you terminate the employee’s employment on the very last day of that period, then you would need to give the employee two weeks’ notice of termination, not one week’s notice, as is specified in the template. If the employee’s employment is terminated with *less* than one year of service, they only need to be given one week’s notice of termination.

The grounds set out in the contract for ending the employment for failing to ‘pass’ probation are the usual ones—that either the employee’s conduct or work performance is not satisfactory. The corporation may wish to specify additional grounds in the contract.

Clause 5.1 of the contract specifies the award that covers the employment. As discussed above, you will need to identify the relevant award and refer to that award in the contract.

You need to have a copy of the relevant award available in the employee's workplace.

The clause also includes a link to the web page that lists all of the modern awards under the Fair Work Act, as well as a link to the Fair Work Online website that has information about the National Employment Standards.

Clause 5.2 of the contract is likely to be the most difficult for the corporation to deal with. For this clause you will need to work out the classification of the employee in terms of the modern award that applies to the employee. You will need to check the classification clause of the award, and see which classification most closely matches the duties and responsibilities of the position. Then you will need to specify that classification in the contract.

Note there are different paragraphs to be completed depending on whether the employee is part-time or full-time – the corporation should delete the clause that does not apply (i.e. delete the full-time clause if the employee is engaged part-time).

As noted above there is significant help available to work out the right classification at the Fair Work Online website. The best place to look is at:

<https://www.fairwork.gov.au/employment-conditions/awards/award-classifications>

Having worked out the classification, you will next need to specify in the contract the correct rate of pay for that classification.

You should get the pay rate figure from an up to date version of the modern award. If you use the electronic link in the contract it should always take you to the latest version of the award.

If the classification in the award has multiple pay points, you will also need to specify in the contract the pay point that applies to this employee. Usually, you would specify the first pay point – the lowest pay point – of the classification.

You should be aware that the award rate is the *minimum* rate you can pay, and that the rate is likely to increase once every 12 months. The corporation will need to monitor movements in the award pay rates to make sure it is paying the right amount to employees who are working on the award rate.

As an alternative, the corporation may choose to pay the new employee at a rate which is **above** the award rate. In order to do that, the corporation will need to specify a higher amount than the award rate. For that purpose, the corporation will

still need to know what the relevant award pay rate is for the employee's classification; and the corporation will need to monitor the wage rate for that classification, to make sure that the pay rate under the contract stays at or above the relevant award rate.

If the corporation is paying at the award rate, there is no need for a salary increase clause. This is taken care of by the award, although it will still be up to the corporation to make sure it is paying the right rate. If the corporation chooses to pay a rate above the award rate, it would make sense to include a pay increase clause in the contract, like 'The corporation will review the employee's rate of pay on xx date each year, and may increase it from the first pay period after that date.'

Clause 5.3 of the contract says that the employment is permanent—that is, it does not have any specified end date.

The clause has two separate options depending on whether the employee is part-time or full-time. The corporation should delete the clause that does not apply.

If the arrangement is part-time, you will need to specify the total number of ordinary hours per week to be worked by the part-time employee. You will also need to specify the part-time work pattern of the employee. That is, set out which days of the week they will be working, what their start time and finish time will be, and how long they can take for a meal break. For part-time employees, the total number of working hours in a week must be less than 38 hours per week. The pattern of hours and minimum hours on any day must be consistent with the requirements in the relevant award. For instance:

- For employees covered by the Aboriginal Community Controlled Health Services Award 2020, the employer must roster the part-time employee for a minimum of 4 consecutive hours on any shift.
- For employees covered by the Clerks – Private Sector Award 2020, the employer must roster social and community service part-time employees (who are not performing disability services work) for a minimum of 3 consecutive hours on any shift. For all other employees, they must be rostered to work a minimum of two consecutive hours on any shift,
- For employees covered by the Social, Community, Home Care and Disability Services Industry Award 2010, the employer must pay the part-time employee for each shift in a broken shift for a minimum of 3 hours for social and community service employees, or 2 hours for other employees.
- For employees covered by the General Retail Industry Award 2020, the employer must roster the part-time employee for a minimum of 3 consecutive hours on any shift.

Clause 5.4 of the contract states that employees must have an agreement in writing with their employer, if they are to complete work for another employer.

Clause 5.5 of the contract spells out the grounds of termination for an employer.

The corporation should consider if there are any other relevant grounds specific to its industry that it would like to include in the contract, such as holding a particular qualification.

This clause sets out how much notice the corporation will give the employee if the corporation decides to terminate the employment after the end of the probation period (for reasons other than serious misconduct). The corporation will need to give, at a minimum, the notice that is required by the Award. However, the corporation could choose to offer a longer period of notice, if it wants to do so.

This clause also deals with resignation by the employee. The minimum notice required by an employee is prescribed the Award. However, the corporation could consider if it would like to require greater notice from the employee than what is set out in the Award and can update the contract accordingly.

Clause 5.6 states that the employee will not misuse or release the employer's confidential information.

Clause 5.7 states that the employee agrees that the employee's intellectual property rights in the products they produce belong to the employer.

Clause 5.8 states that the employee must comply with the corporation's relevant policies.

Clause 6 of the contract spells out which jurisdiction governs the contract. You will need to specify the relevant jurisdiction that the contract is made in—Victoria, Western Australia, Northern Territory, Australian Capital Territory, Tasmania, New South Wales, South Australia or Queensland—by omitting the ones that do not apply. This will not affect the application of federal legislation. Generally speaking, you would choose the jurisdiction where the corporation is based or where the employee will be performing their duties.

Clause 7 states that the contract spells out the entire agreement between both parties excluding contractual terms implied by the law.

Clause 8 of the contract refers to the Fair Work Information Statement (the FWIS) being at Attachment 3. You can download the FWIS by going to:

<https://www.fairwork.gov.au/employment-conditions/information-statements/fair-work-information-statement>

Every new employee must be given a copy of the FWIS when they commence their employment. Giving it to them with the contract helps to make sure this happens.

The signing page of the contract: the Common Seal of the Corporation needs to be affixed to the contract in the presence of two authorised officers of the corporation who will sign the contract. If the corporation does not have a Common Seal—some do not—you can use the second form of words supplied in the template. Either way, one of the two forms of words must be deleted.

The contract needs to be signed by the new employee and by a witness to the employee's signature. This does not all have to happen at the same time —each side can do its part separately.

Attachment 1 to the contract is the Job Description. This is discussed above in the notes to clause 3.

The Attachment should be labelled 'Attachment 1'.

Attachment 2 to the contract is the summary of the relevant Award and the National Employment Standards. There are different summaries for each of the awards (the National Employment Standards summary is the same in each version). Chose the summary that relates to the award that covers this employment.

The Attachment should be labelled 'Attachment 2'.

Attachment 3 to the contract is the Fair Work Information Statement, discussed above in the notes to clause 8.

The Attachment should be labelled 'Attachment 3'.