



Relaxation of Strict Procedural Requirements for Enterprise Agreement Approval

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In December 2018, the Federal Government passed legislation which provides the Fair Work Commission with the power to approve enterprise agreements **despite the existence of minor procedural and technical errors.**

Previously, the existence of minor procedural and technical errors in an enterprise agreement up for approval was subject to the specific wording of the *Fair Work Act* which required:

- employers to strictly comply with extensive procedural requirements relating to the negotiation of, vote for, and application for approval of, enterprise agreements
- the Fair Work Commission had to reject any application for approval where these procedural requirements had not been complied with

This resulted in the Fair Work Commission being forced to reject applications on unreasonable (and sometimes absurd) technical grounds, including where:

- an employer had printed the Notice of Employee Representational Rights on company letterhead
- where an employer had relied on the Commission's own enterprise agreement date calculator which provided an incorrect result

With the recent changes, the Fair Work Commission will now be able to approve enterprise agreements containing minor technical errors or applications involving minor procedural errors, provided that the errors are not likely to disadvantage employees.

Whilst these changes should result in fewer rejections of applications and shorter approval times, as well as far less stress and anxiety for both employers and employees, it is still **best practice that enterprise agreements meet all relevant requirements (and are properly drafted) to minimise the risk of rejection.**