

Form F17 – Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement)

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Fair Work Act 2009, s.185; Fair Work Commission Rules 2013, rule 24 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for approval of an enterprise agreement in accordance with Part 2-4 of the Fair Work Act 2009.

I,

Name	Lisa Fitzpatrick		
Postal address	Box 12600 A'Beckett St PO		
Suburb	Melbourne		
State or territory	Vic	Postcode	8006
Occupation	Branch Secretary		

make the following declaration under the *Statutory Declarations Act 1959*

Part 1 – Preliminary

1.1 What is the name of the employer?

Legal name	Australian Nursing and Midwifery Federation
Trading name	Australian Nursing and Midwifery Federation (Victorian Branch)

Specify whether the employer is a "designated emergency management body" as defined in s.195A(4) and (5) of the Fair Work Act 2009.

n/a

1.2 What is the name of the agreement (write the name exactly as it appears in the title clause of the agreement)?

ANMF (Victorian Branch) (Staff and Council) Enterprise Agreement 2016-2020.

1.3 Are you aware of any other agreement(s) that has been filed or dealt with by the Commission that has identical or substantially identical terms?

☐ Yes

☒ No

If you have answered **Yes** to question 1.3 – specify the name of the identical agreement, the name of the employer covered by the identical agreement, the agreement ID number, the date of the Commission's decision and the name of the Commission Member who dealt with such agreement.

1.4 Was that agreement approved with undertakings?

- ☐ Yes
☐ No
☐ Don't know

1.5 Has a scope order, a low paid authorisation or a majority support determination been issued in relation to this agreement?

- ☐ Yes
☒ No

If Yes – Provide the unique print number (PR) and the date the order was made

Print number

Date of order



All employees that will be covered by the agreement must be notified that an application has been made to the Commission for approval of the agreement in accordance with rule 40 of the Fair Work Commission Rules 2013. Notification should be made through the usual means that are adopted by the employer for communicating with employees.

Part 2 – Requirements for approval

Nominal expiry date

2.1 What is the nominal expiry date of the agreement? Provide the clause number in the agreement that specifies the date.



See section 186(5) of the Fair Work Act 2009.

Clause number 5

Expiry date 1 November 2020

Scope of the agreement

2.2 Does the agreement cover all the employees of the employer (other than senior executives)?

- ☐ Yes
☒ No



See sections 186(3) and (3A) of the Fair Work Act 2009.

If **No** – what group(s) of employees are covered by the agreement. Explain why you think the Commission should be satisfied that this group(s) was fairly chosen. If appropriate, describe any geographical, operational or organisational qualities that make the group(s) distinct.

Employees of the Federation other than officers employed to work in its Victorian Branch.

Employees of the ANMF employed in other State/Territory Branches and officers are not covered.

2.3 Did the employer take all reasonable steps to give notice of their right to be represented by a bargaining representative to each employee who will be covered by the agreement?

☒ Yes – please attach a copy of the notice given to employees

☐ No



See section 173 of the Fair Work Act 2009 and schedule 2.1 of the Fair Work Regulations 2009.

Describe the steps that were taken to give employees notice of their right to be represented by a bargaining representative.

On 21/6/16 ANMF employees were advised of the Notice of Employee Representational Rights which was posted onto the internal Intranet and emailed to all staff. NERR posted to all staff on leave. Copy attached at page 12 of this document.

Agreement genuinely approved

2.4 What steps were taken by the employer and on what date were they taken to ensure that the relevant employees were either:

- a. given a copy of the written text of the agreement and any other material incorporated by reference into the agreement (must be provided during the 7 days before the start of the voting process), or
- b. had access to the above materials (must have access throughout the whole 7 day period)?



See section 180(2)(a) of the Fair Work Act 2009.

Describe the steps taken

Date

Agreement document posted onto intranet and staff notified by email it was there	22/3/17
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Staff on leave were emailed the agreement document	22/3/17
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Casual staff were emailed the agreement document	23/3/17
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2.5 When did you notify the relevant employees of the date and place at which the vote was to occur and the voting method to be used?



Please state the date of the notification and describe the steps taken to notify the relevant employees. See section 180(3) of the Fair Work Act 2009.

Advice posted on the intranet and staff notified by email it was there on 22/3/17 and included the manner in which the vote was to be conducted

Staff on leave and casual staff notified via email on 22/3 and 23/3 respectively.

2.6 What steps were taken by the employer to explain the terms of the agreement, and the effect of those terms, to the relevant employees?



See section 180(5) of the Fair Work Act 2009.

All staff meeting to present and explain the terms of the agreement was held on 19/10/16.

Name and contact details for questions or further information also provided to all by email staff on 22 or 23/3/17.

2.7 When you explained the terms of the agreement to the employees, what did you do to take into account the particular circumstances and needs of the relevant employees?



Examples of employees who have 'particular circumstances and needs' include employees from non-English speaking backgrounds, young employees, employees who don't have a bargaining representative, etc.

All bargaining representatives and employees communicated with via posting updates on the intranet and regular all staff meeting updates.

Material provided in writing and summarised in meeting.

2.8 Please provide the following dates:



See sections 173, 181, 181(2) and 182 of the Fair Work Act 2009.

Event	Date
The date of notification time (that is, either the date that the employer initiates or agrees to bargain or the date of a majority support determination, scope order or low paid authorisation).	21/6/16
The date of the last notice of representational rights given to an employee who will be covered by the agreement.	21/6/16
The date voting for the agreement commenced (voting commences on the first date that an employee is able to cast a vote).	3/4/17
The date that the agreement was made (that is, the date on which the voting process by which the employees approved the agreement concluded).	10/4/17

2.9 Is the agreement lodged within 14 calendar days of the date the agreement was made?

☒ Yes

☐ No

If you have answered **No** to question 2.9 – Please provide details of the circumstances the Commission should take in to account in deciding if it is fair to extend the time for lodging this application.



See section 185(3)(b) Fair Work Act 2009

2.10 Please provide the following details about the vote on the agreement:

How many employees will be covered by the agreement?	140
How many employees cast a valid vote?	117
How many employees voted to approve the agreement?	114

Interaction with the National Employment Standards

2.11 List any terms of the agreement that exclude in whole, or in part, the National Employment Standards?



See Part 2-2 – National Employment Standards of the Fair Work Act 2009.

2.12 List any terms of the agreement that are detrimental to an employee in any respect when compared to the National Employment Standards.

Right of entry

2.13 Does the agreement contain any terms that deal with the rights of officials or employees of employee organisations to enter the employer's premises?



See section 186(4) and sections 194(f) and (g) of the Fair Work Act 2009.

☒ Yes

☐ No

If you have answered **Yes** to question 2.13 – Please identify the clauses in the agreement dealing with right of entry.

53.5

Unlawful terms

2.14 Does the agreement contain any of the following:

- ☐ discriminatory terms – s186(4), s194(a), s195
- ☐ objectionable terms – s12, s186(4), s194(b)
- ☐ terms dealing with employee rights in relation to unfair dismissal – s186(4), s194(c)-(d)
- ☐ designated outworkers terms – s186(4)
- ☐ terms that deal with the taking of industrial action that are inconsistent with Part 3-3 of Chapter 3 of the *Fair Work Act 2009* – s186(4), s194(a)
- ☐ a term that does not comply with the superannuation contribution requirements for default fund employees – s194(h)
- ☐ objectionable emergency management terms – s195A

If you have selected any of the above please identify the relevant terms of the agreement.

Required terms

2.15 Please provide the clause numbers in the agreement for these required terms:

Dispute resolution procedure – s186(6)	76
Flexibility term – s202(1), s203	38.8
Consultation term – s205(1) s205(1A)	73

Particular types of workers

2.16 Can shift workers be employed under the agreement?



See section 196 of the Fair Work Act 2009.

☐ Yes

☒ No – Go to question 2.17

Please identify the clause(s) in the agreement that define shift workers for the purpose of the NES.

Please advise if the agreement provides for an additional week of annual leave for shift workers and identify the relevant clause(s) number of the agreement.

2.17 Does the agreement?

☐ cover any pieceworkers – s197

☐ cover any outworkers – s200

☐ contain terms for school based apprentices or trainees that provide for loadings in lieu of paid leave – s199

Part 3 – Better off overall test

Reference instruments

3.1 List the modern award(s), if any, that currently cover the employer and any of the employees covered by this agreement.

Clerks - Private Sector Award 2010 [MA000002]

Educational Services (Post-Secondary Education) Award 2010 [MA000075]

3.2 List the pre-reform award(s) or NAPSA(s) that covered the employer and any of the employees covered by this agreement as at 31 December 2009.

Clerical and Administrative Employees (Victoria)

Roping-in No 2 (Industrial Services) Award 2001

Translating classifications**3.3 Are any of the classifications in the agreement different from the classifications in any of the reference instrument(s) listed in questions 3.1 and 3.2?**☒ Yes☐ No

If you have answered **Yes** to question 3.3 – Please attach a table that identifies how the classifications in the agreement relate to the classifications in the reference instrument(s).

Attached at page 13 and 14

Improvements and reductions**3.4 Does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?**☒ Yes☐ No

If you have answered **Yes** to question 3.4 – Identify the terms and conditions of the agreement that are **more beneficial** than, or are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

FAIR WORK COMMISSION

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All employees: salary and wages (20), additional annual leave (30), additional public holidays (29), additional superannuation (21), leave loading (30), qualifications allowance (24), transition to retirement provisions (19), family violence leave (43), office closure (leave) during Christmas period (29), coverage of course fees (48) study, exam and professional development leave (45-47), wellness program (69), Redundancy(74).

No junior rates. Time off work to attend personal matters (14). Work from home (16). Purchased leave (32)., Full time staff: ADOs (11), Professional staff: flexi days (11), jury service (44) Parental leave (36), personal leave pool (41), professional supervision (49), career break scheme (50), replacement of employees on extended leave (56)

3.5 Does the agreement contain any terms that are *less beneficial* than equivalent terms and conditions in the reference instrument(s) listed in questions 3.1 and 3.2 and/or does the agreement confer any entitlements that are not conferred by those reference instruments?

☒ Yes

☐ No

If you have answered **Yes** to question 3.5 – Identify the terms and conditions of the agreement that are **less beneficial** and are **not conferred** by the reference instruments. Your answer should indicate whether all or only some of the employees are affected and, if only some employees are affected, identify the groups of employees affected.

Additional flexi time applies in lieu of overtime for 6 positions covered by a reference instrument.

Exceptional circumstances (where the agreement fails the better off overall test)

3.6 Do you think that the agreement passes the better off overall test?



Section 193 of the Fair Work Act 2009 sets out when an agreement will pass the better off overall test.

☒ I think the agreement **does pass** the better off overall test

☐ I **don't think the agreement passes** the better off overall test

If the employer considers that the Agreement **does not** pass the better off overall test – Identify any exceptional circumstances that the Commission should consider when deciding whether approving the Agreement would not be contrary to the public interest.



Section 189 of the Fair Work Act 2009 sets out when the Commission may approve an enterprise agreement that does not pass the better off overall test.

Part 4 – Statistical information



This information is necessary for the Commission to assess whether the employer took all reasonable steps to ensure that the terms of the agreement, and the effect of those terms, are explained to the relevant employees and the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees, for example:

- (a) employees from culturally and linguistically diverse backgrounds;
- (b) young employees;
- (c) employees who did not have a bargaining representative for the agreement. (s.180 (5) & (6) of the Fair Work Act 2009).

In addition, this information is collected to enable the General Manager of the Fair Work Commission to comply with the statutory reporting obligations in s.653 of the Fair Work Act 2009 and to be provided to the Department of Employment for inclusion in the Department's Workplace Agreements Database.

4.1 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

Registered Organisation

4.2 What states and territories will this agreement be operating in?

- ☐ Australian Capital Territory
- ☐ New South Wales
- ☐ Northern Territory
- ☐ Queensland
- ☐ South Australia
- ☐ Tasmania
- ☒ Victoria
- ☐ Western Australia

4.3 Of the employees covered by this agreement, how many employees are in the following demographic groups?

Demographic group	Number of employees
Female	112
Non-English speaking background	-
Aboriginal or Torres Strait Islander	-
Disabled	-
Part-time	22
Casual	6
Under 21 years of age	-
Over 45 years of age	79

4.4 Please list the full and precise name of all collective agreement(s) (including ID numbers) that covered any employees covered by this agreement immediately prior to the time this agreement was made.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

Signature of person making the declaration

Signature

Lisa Szpaniek

Declared at (place)

on (day) of (month) (year)

20 April 2017

Before me,

Signature of person before whom the
declaration is made

Full name of person before whom
declaration is made

Qualification of person before whom
declaration is made

Address of person before whom
declaration is made

Suburb

State or territory

Phone number

[Redacted Signature]

William Balson

Registered Civil Celebrant A12322

[Redacted Address]

[Redacted Suburb]
[Redacted State]
[Redacted Postcode]
[Redacted Phone Number]

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment of which is imprisonment for a term of 4 years – see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.



A statutory declaration must be made before a **prescribed person**. For a full description of prescribed persons please see the Commission's [Guide – Statutory Declarations](#).

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS