

Subdivision D—Unlawful terms

194 Meaning of *unlawful term*

A term of an enterprise agreement is an *unlawful term* if it is:

- (a) a discriminatory term; or
- (b) an objectionable term; or
- (baa) an objectionable emergency management term; or
- (ba) a term that provides a method by which an employee or employer may elect (unilaterally or otherwise) not to be covered by the agreement; or
- (c) if a particular employee would be protected from unfair dismissal under Part 3-2 after completing a period of employment of at least the minimum employment period—a term that confers an entitlement or remedy in relation to a termination of the employee’s employment that is unfair (however described) before the employee has completed that period; or
- (d) a term that excludes the application to, or in relation to, a person of a provision of Part 3-2 (which deals with unfair dismissal), or modifies the application of such a provision in a way that is detrimental to, or in relation to, a person; or
- (e) a term that is inconsistent with a provision of Part 3-3 (which deals with industrial action); or
- (f) a term that provides for an entitlement:
 - (i) to enter premises for a purpose referred to in section 481 (which deals with investigation of suspected contraventions); or
 - (ii) to enter premises to hold discussions of a kind referred to in section 484;
other than in accordance with Part 3-4 (which deals with right of entry); or
- (g) a term that provides for the exercise of a State or Territory OHS right other than in accordance with Part 3-4 (which deals with right of entry); or

- (h) a term that has the effect of requiring or permitting contributions, for the benefit of an employee (the **relevant employee**) covered by the agreement who is a default fund employee, to be made to a superannuation fund or scheme that is specified in the agreement but does not satisfy one of the following:
- (i) it is a fund that offers a MySuper product;
 - (ii) it is a fund or scheme of which the relevant employee, and each other default fund employee in relation to whom contributions are made to the fund or scheme by the same employer as the relevant employee, is a defined benefit member;
 - (iii) it is an exempt public sector superannuation scheme.

195 Meaning of *discriminatory term*

Discriminatory term

- (1) A term of an enterprise agreement is a **discriminatory term** to the extent that it discriminates against an employee covered by the agreement because of, or for reasons including, the employee's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Certain terms are not discriminatory terms

- (2) A term of an enterprise agreement does not discriminate against an employee:
- (a) if the reason for the discrimination is the inherent requirements of the particular position concerned; or
 - (b) merely because it discriminates, in relation to employment of the employee as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed:
 - (i) in good faith; and