

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Agency - Fair Work Australia

DEEWR Question No. EW0883_12

Senator Abetz provided in writing.

Question

FWA - Agreements

How many enterprise agreements have been rejected by Fair Work Australia? a.
Please provide the reason why it was rejected ie. Failed to meet the Better off overall test.

Answer

Fair Work Australia (FWA) *has provided the following response:*

The *Fair Work Act 2009* (Cth) ('the Act') does not specifically provide for an enterprise agreement to be rejected.

Fair Work Australia must approve an enterprise agreement if the requirements set out at Division 4 - Approval of enterprise agreements - of the Act are met. The basic rules for approval are outlined at sections 186 and 187 of the Act. If FWA has concerns that the agreement does not meet the requirements set out in those sections, FWA may accept a written undertaking addressing those concerns, provided it is agreed by all bargaining representatives for the agreement and does not result in substantial change to the agreement. If these requirements are not met, FWA can decide not to approve the agreement.

Under s192, Fair Work Australia can refuse to approve an enterprise agreement despite these criteria otherwise being met if the agreement may result in a person committing an offence against a law of the Commonwealth, or a person being liable to pay a penalty in relation to a contravention of a law of the Commonwealth. Other requirements of Parts 2-4 of the *Fair Work Act 2009* (for example, application requirements under s185) are considered in the approval decision.

In the period 1 July 2009 to 31 December 2011, 306 enterprise agreements were found as not meeting approval requirements, with a decision to not approve the agreement issued. FWA did not refuse to approve any agreements under s192.

In some cases, decisions to not approve enterprise agreements have outlined more than one reason for not approving the agreement. The results below have grouped reasons for not approving an agreement under the general and additional requirements, set out under sections 186 and 187 of the Act.

Reasons for not approving	
s186 (2) (a) Not Genuine Agreement	139
s186 (2) (c) Contravenes NES	1
s186 (2) (d) Does not meet NDT/BOOT	120
s186 (4) Contains Unlawful Term	1
s186 (5) Does not meet Nominal Expiry Date requirements	3
s186 (6) Agreement does not provide a procedure to settle disputes etc	3
s185 (2) Incomplete Declaration accompanying application	2
s185 (3) Lodged outside 14 days	25
s172 Not an Agreement	9
Lodged in Error	3
TOTAL	306