

What is the better off overall test?

Enterprise agreements must pass the better off overall test (BOOT) in order to be approved by Fair Work Australia.

An agreement passes the better off overall test if Fair Work Australia is satisfied that each award covered employee, and each prospective award covered employee, would be better off overall if they were employed under the agreement rather than under the relevant modern award.

Fair Work Australia will be able to examine classes of employees in applying the better off overall test. Fair Work Australia will assume, in the absence of evidence to the contrary, that an award covered employee will be better off overall if their class of employees will be better off overall in comparison to the relevant modern award.

The better off overall test is a point in time test, which requires each award covered employee and prospective award covered employee to be better off overall at the test time. The test time is the time that a bargaining representative makes the application to Fair Work Australia for approval of the agreement.

Though the approval of an agreement is subject to the better off overall test, Fair Work Australia may approve an agreement that does not pass the better off overall test if, because of exceptional circumstances, approval of the agreement would not be contrary to the public interest.

Because the better off overall test is a point in time test, over a period of time it is possible for an employee's base rate of pay under an agreement to be less than the base rate under the relevant modern award or the national minimum wage order. If this occurs then the employee is entitled to be paid under the agreement at a rate of pay equal to the award or national minimum wage order rate.

Please note: the BOOT comes into effect on 1 January 2010. Between 1 July 2009 and 31 December 2009, agreements are assessed under the 'no disadvantage test'