



# Australia's Fair Work system

## 13. Enterprise Agreements

Collective bargaining at the enterprise level is at the heart of the Australian Government's Fair Work system.

New laws governing enterprise agreements took effect on 1 July 2009.

### ***Types of Enterprise Agreements***

The Fair Work system enables enterprise agreements to be made between a single employer, or single interest employers, and their employees (a single-enterprise agreement) or between more than one employer and their employees (a multi-enterprise agreement). Once approved, all enterprise agreements operate according to a common set of rules; however there are different rules for the bargaining, approval, variation and termination of multi-enterprise agreements.

There is now no distinction between union and non-union agreements. This removes the capacity for disputes over which type of agreement parties should enter into. Unions may elect to be covered by an enterprise agreement if they are a bargaining representative for the agreement.

A greenfields agreement can still be made for a genuine new enterprise (which includes a genuine new business, activity, project or undertaking) where the employer or employers have not yet engaged any employees who will be covered by the agreement. A greenfields agreement must be bargained with one or more relevant unions that are eligible (taken as a group) entitled to represent the majority of employees to be covered by the agreement — an employer cannot unilaterally set out a list of terms and conditions and have it approved as an enterprise agreement.

There is no capacity to make an individual statutory agreement (like an Australian Workplace Agreement) under the Fair Work system.

### ***Single-enterprise agreements***

In most cases an enterprise agreement will be made between an employer and some or all of their employees. This is the most common form of enterprise bargaining and there is no requirement to seek authorisation or notify Fair Work Australia when an employer and their employees wish to bargain for an enterprise agreement.

### ***Single-interest employers***

The Fair Work system introduces the concept of single-interest employers for enterprise agreements. Single-interest employers are employers who operate in a related way or share such a common interest that they may bargain together for a single-enterprise agreement.

If two or more employers are engaged in a joint venture or common enterprise or the employers are related bodies corporate, they will be able to bargain for a single-enterprise agreement and will not need authorisation to do so.

In addition, some employers can bargain as single-interest employers where Fair Work Australia authorises them to do so. Single-interest employer authorisations will be available for franchisees and certain employers that have been specified in a Ministerial declaration.

Employers that are not franchisees but who wish to be authorised as single-interest employers must first apply to the Minister for a declaration to allow them to bargain together for an enterprise agreement. A Ministerial declaration could potentially be made in respect of employers such as schools in a common education system and public entities providing health services. There are threshold criteria for a Ministerial declaration, which will prevent the stream being used more widely.

If these employers wish to bargain together they must obtain a single-interest employer authorisation. Fair Work Australia will only make a single-interest employer authorisation if it is satisfied that the employers who would be covered by the agreement have agreed to bargain together without coercion.

### **Multi-enterprise agreements**

Multiple employers who are not single-interest employers may voluntarily choose to bargain together for a multi-enterprise agreement. There is no public interest test for voluntary multi-enterprise bargaining and employers do not need to seek authorisation from Fair Work Australia to bargain together.

Bargaining orders and protected industrial action are not available to parties when bargaining for a multi-enterprise agreement because bargaining will be voluntary. This will also prevent industrial action in support of pattern bargaining. When approving a multi-enterprise agreement, Fair Work Australia must be satisfied that all employers genuinely agreed to make the agreement and were not coerced.

### **Low-paid bargaining stream**

There is a special bargaining stream for low-paid employees who have not had access to the benefits of collective bargaining. Fair Work Australia can facilitate bargaining for a multi-enterprise agreement to cover these employees.

Further details of the low-paid bargaining stream are set out in the fact sheet *“Assisting low-paid employees and those without access to collective bargaining”*.

### **Access to bargaining orders and protected industrial action**

Protected industrial action and bargaining-related orders from Fair Work Australia are not available in all circumstances. This is aimed at preventing pattern bargaining and to ensure that bargaining involving multiple employers happens on a truly voluntary basis.

The following table outlines the access to bargaining-related orders and protected industrial action in different bargaining situations:

| <b>Type of enterprise agreement and bargaining situation</b>  | <b>Protected industrial action</b> | <b>Bargaining orders/<br/>Serious breach declaration</b> | <b>Majority support determination</b> | <b>Scope orders</b> |
|---|------------------------------------|--|---------------------------------------|---------------------|
| Single-enterprise agreement with a single employer or two or more employers that are related bodies corporate, or engaged in a joint venture or common enterprise | ✓                                  | ✓  | ✓                                     | ✓                   |
| Single-enterprise agreement with two or more employers that are specified in a single-interest employer authorisation   | ✓                                  | ✓  | ✓                                     | ✗                   |
| Multi-enterprise agreement with two or more employers that are <b>not</b> specified in a low-paid authorisation   | ✗                                  | ✗  | ✗                                     | ✗                   |
| Multi-enterprise agreement with two or more employers specified in a low-paid authorisation   | ✗                                  | ✓  | ✗                                     | ✗                   |