



## Bargaining and workplace relationships

### Removing barriers to the Single Interest Bargaining Stream

These amendments form part of an Australian Government commitment to ensure workers and businesses have flexible options for reaching agreements.

#### What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* (the Act) to remove unnecessary barriers to the existing Single Interest Bargaining Stream.

Previously, franchisees and employers with certain common interests could bargain together for a single interest enterprise agreement. Before they could apply to the Fair Work Commission (the Commission) to bargain together, employers which were not franchisees needed to obtain a declaration from the Minister for Employment and Workplace Relations. The previous process was detailed and restrictive, and few enterprise agreements were made this way.

The amendments to the Act:

- remove the requirement to obtain a declaration from the Minister while retaining a key role for the Commission to determine access to the stream
- require that at least some of the employees that will be covered by the agreement are represented by a registered employee organisation
- remove unnecessary limitations on eligibility for common interest employers to bargain for single interest agreements. Relevant matters for the Commission to determine whether employers are common interest employers may include: the nature of their enterprises

and terms and conditions of employment in those enterprises, their geographical location, and whether they are subject to a common regulatory regime

- ensure that the operations and business activities of common interest employers must be 'reasonably comparable' in order for an employer to be included in, or added to, a single interest authorisation or agreement
- require that it not be contrary to the public interest for common interest employers to bargain together (for example, the Commission may consider the broader economic ramifications of including a new employer in a single interest employer agreement), and
- require that employers and employee bargaining representatives have an opportunity to express their views on whether bargaining in the stream should be authorised.

The amendments provide that, where employers and employees are covered by a current enterprise agreement, or the employer has already agreed in writing with an employee organisation to bargain for a replacement single-enterprise agreement, such employers cannot be compelled to bargain for a single interest employer agreement. The Commission also has discretion to refuse to include an employer in an authorisation or add the employer to an agreement if:

- good faith bargaining is already occurring
- there is a history of effective bargaining between the parties, and
- less than nine months have elapsed since the nominal expiry date of the previous such agreement.

Small businesses (with fewer than 20 employees) cannot be required to bargain in this stream and can only access this stream by consent. Employers and employees undertaking defined types of building and construction work are precluded from being covered by single interest employer agreements.

Protected industrial action continues to be available in this stream with additional measures, including mandatory conciliation and a requirement for 120 hours' notice. Participants in this stream also have access to the new intractable bargaining process, which allows parties to seek conciliation and arbitration in certain circumstances.

Employee bargaining representatives can apply for a single interest employer authorisation to cover two or more employers. The Commission must make the authorisation if the relevant requirements for making the authorisation are met and the Commission is satisfied the employers consent to the application or there is majority support among the employees of each employer to bargain for the proposed agreement.

Employers and employee bargaining representatives can apply to the Commission to add or remove the name of an employer from the authorisation to bargain together, subject to meeting specified requirements.

Employers and employee organisations can also apply to the Commission to approve a variation to extend coverage of an existing single interest employer agreement to a new employer and its employees, subject to meeting specified requirements.

## **What do these changes mean?**

Employers with a common interest often benefit from sharing employment conditions and the costs of bargaining for a new enterprise agreement. The amendments provide access to these benefits and remove unnecessary barriers to obtaining a single interest employer authorisation for employers to bargain together, including by facilitating better access to the stream.

## **When will these changes come into effect?**

These changes will come into effect on 6 June 2023, or an earlier date to be fixed by proclamation.

**For more information on the *Secure Jobs, Better Pay* package visit:**

**[www.dewr.gov.au/workplace-relations](http://www.dewr.gov.au/workplace-relations)**.