



Bargaining and workplace relationships

Simplifying enterprise agreement approval requirements

These amendments form part of an Australian Government commitment to remove unnecessary complexity for workers and employers in relation to enterprise agreements.

What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* to remove some of the more prescriptive pre-approval requirements for enterprise agreements, while retaining important safeguards for employees.

The amendments provide a single, broad requirement that the Fair Work Commission (the Commission) must be satisfied that an enterprise agreement has been genuinely agreed to by the employees. In addition, the amendments:

- require the Commission to publish a ‘statement of principles’ to provide guidance to employers about how they can demonstrate the agreement has been ‘genuinely agreed’. The Commission must consider the statement of principles when determining if an agreement has been genuinely agreed to by employees
- require the Commission to be satisfied that the employees asked to approve the agreement had a sufficient interest in its terms and are sufficiently representative. This means employees must have had a sufficient stake in, and an informed and genuine understanding of, the agreement being approved, and
- retain the Commission’s power to disregard minor procedural or technical errors if it is satisfied the employees were not likely to have been disadvantaged by the error.

In addition, for proposed multi-enterprise agreements, before requesting employees to approve the agreement by voting for it, the employer must obtain written agreement to the making of the

request from each bargaining representative for the agreement that is an employee organisation. The Commission can make a voting request order where failure to provide written agreement is unreasonable in the circumstances.

As a consequence of the amendments, various steps that an employer must currently take within strict timeframes would be removed (for example, the requirement to take all reasonable steps to provide employees with access to the agreement during a 7 day 'access' period ending immediately before the start of the voting process).

The existing requirement that the employer must take all reasonable steps to ensure the terms of an agreement and the effect of those terms are explained to employees in an appropriate manner, taking into account their particular circumstances and needs, has been retained.

What do these changes mean?

The previous pre-approval requirements for enterprise agreements were prescriptive and complex.

Replacing the previous pre-approval steps and genuine agreement requirements with the broad 'genuine agreement' requirement will encourage bargaining and reduce agreement approval times.

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. They will then apply to any proposed agreement for which the 'notification time' occurs before commencement.

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

www.dewr.gov.au/workplace-relations