



## Bargaining and workplace relationships

### Bargaining disputes

These amendments form part of an Australian Government commitment to give the Fair Work Commission the capacity to proactively help workers and businesses reach agreements that benefit them, particularly new entrants and small businesses.

### What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* (the Act) to empower the Fair Work Commission (the Commission) to resolve intractable bargaining disputes sooner, reducing the prospect of industrial action and providing a strong incentive for parties to negotiate in good faith and reach agreements more quickly.

The Commission will be able to make an intractable bargaining declaration on application by a single bargaining representative. In order to make an intractable bargaining declaration, the Commission must be satisfied that:

- it has dealt with the dispute (for example, by conciliation) under section 240 of the Act and the applicant participated in the processes to deal with the dispute
- the parties have bargained for a minimum period of 9 months or at least 9 months has elapsed since the nominal expiry date of the previous enterprise agreement
- there is no reasonable prospect of agreement being reached if the Commission does not make the declaration, and
- it is reasonable in all the circumstances to make the declaration, taking into account the views of all the bargaining representatives for the agreement.

If an intractable bargaining declaration is made, the Commission will consider whether to provide the parties with a further period to negotiate (a post-declaration negotiation period). Following a post-declaration negotiation period, the Commission may make an intractable bargaining workplace determination to resolve any matters that have not been agreed by the parties.

In making a workplace determination, the Commission must take into account the significance to the employers and employees of any arrangements or benefits in an enterprise agreement that applies to any of the employers in respect of the employees before the determination is made.

The new intractable bargaining provisions will not apply to bargaining for greenfields agreements or bargaining in the Cooperative Workplaces Bargaining Stream.

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

These changes support the Commission to assist parties bargaining for a new enterprise agreement to resolve disputes. There continues to be a high bar for access to arbitration for intractable bargaining disputes, however the changes encourage parties to bargain reasonably and in good faith.

## **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)**