



Bargaining and workplace relationships

Supported Bargaining Stream

These amendments form part of an Australian Government commitment to ensure employees and employers 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* to reform the existing low-paid bargaining stream, which has been renamed the supported bargaining stream.

Under the amendments, the Fair Work Commission (the Commission) is required to make a Supported Bargaining Authorisation if it is satisfied that it is appropriate for the relevant employers and employees to bargain together when considering:

- the prevailing pay and conditions in the relevant industry/sector, including whether low rates of pay prevail in the industry or sector
- whether the employers have clearly identifiable common interests (which may include geographic location, the nature of the enterprises to which the agreement will relate, the terms and conditions of employment in those enterprises, and whether they are substantially funded, directly or indirectly, by the Commonwealth, a State or a Territory)
- whether the likely number of bargaining representatives is manageable, and
- any other matters the Commission considers appropriate.

The Commission will also need to be satisfied that at least some of the employees are represented by a registered employee organisation.

Alternatively, the Commission is required to make a supported bargaining authorisation if an application has been made and the employees specified in the application are employees in an industry, occupation or sector declared by the Minister.

The Minister may make a declaration in relation to a particular industry, occupation or sector to facilitate entry into the supported bargaining stream. If this occurs, the Commission is not required to consider the factors outlined above.

Within the supported bargaining stream:

- bargaining orders are available and applications to deal with bargaining disputes can be made by a single bargaining representative. The Commission may provide assistance to bargaining representatives on its own initiative, including directing relevant third parties (e.g., third party funding providers) to attend conferences if their participation is necessary for the making of an agreement
- if the parties are unable to reach agreement, the Commission may make a binding workplace determination through the new intractable bargaining declaration process, and
- protected industrial action is permitted, with additional safeguards requiring mandatory conciliation and 120 hours' notice.

When a supported bargaining agreement is made and approved by the Commission, the agreement may then be varied to cover additional employers and their employees, subject to certain conditions. A variation may be made jointly by the employers and their employees and approved by the Commission.

Alternatively, an employee organisation may apply to the Commission for variation of a supported bargaining agreement to cover additional employers and their employees, if a majority of those employees want to be covered by the agreement and subject to range of other conditions being met.

Employers and employees undertaking defined types of building and construction work are precluded from bargaining for and being covered by supported bargaining stream agreements.

What do these changes mean?

The low-paid bargaining stream was intended to assist employees in low-paid industries to access the benefits of enterprise bargaining. The low-paid bargaining stream was seldom-used due to the onerous criteria placed on accessing the stream, with only 4 applications for a Low Paid Authorisation having been made and only 1 granted, and with no multi-enterprise agreements made under the stream.

The amendments aim to reduce barriers for employees and their employers who require support to bargain to access multi-enterprise bargaining, with enhanced support available throughout the process from the Commission.

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