

The HSU welcomes
members to

THE ENTERPRISE BARGAINING PROCESS





What is an enterprise agreement?

On 1 July 2009, the various types of collective and individual workplace agreements that existed under the previous workplace relations system were replaced by a single type of agreement: an 'enterprise agreement'. This is simply an agreement between one or more national system employers and their employees, as specified in the agreement. Enterprise agreements are negotiated by the parties through collective bargaining in good faith, primarily at the enterprise level. Under the Fair Work Act 2009, an enterprise can mean any kind of business, activity, project or undertaking. Under the Fair Work Act 2009, the following new enterprise agreements can be made:

Single-enterprise agreement

A single-enterprise agreement is made between a single employer (or two or more single interest employers) and employees employed at the time the agreement is made, and who will be covered by the agreement. Single interest employers are employers that are in a joint venture or common enterprise or are related corporations. They can

also be employers authorised as single interest employers by the Fair Work Commission, which may be either franchisees or other employers where the Minister for Employment has made a declaration.

Multi-enterprise agreement

A multi-enterprise agreement is made between two or more employers (that are not all single interest employers) and employees employed at the time the agreement is made and who will be covered by the agreement.

Your employer will formally notify the HSU in writing and request to make a new agreement.

HSU members will receive a formal newsletter through email advising of commencement of the bargaining date.

How is an enterprise agreement made?

The Fair Work Act 2009 provides a simple, flexible and fair framework that assists employers and employees to bargain in good faith to make an enterprise agreement. Employers, employees and their bargaining representatives are involved in the process of bargaining for a proposed enterprise agreement. An employer must notify their employees of the right to be represented by a bargaining representative during the bargaining of an enterprise agreement as soon as possible, and not later than 14 days after the notification time for the agreement (usually the start of bargaining). The notification should be given to each current employee who will be covered by the enterprise agreement.

The employer will notify (workplace notices and emails) employees of their right to be represented and the commencement of the bargaining process with dates.

Who can be a bargaining representative?

Members and workplace delegates work together with the HSU and are representatives for their departments throughout the process. The HSU welcomes and encourages members to take an active role by attending meetings, teleconferences and communicating with others.

A bargaining representative is a person or organisation that each party to the enterprise agreement may appoint to represent them during the bargaining process.

The *Fair Work Act 2009* identifies the following as bargaining representatives:

- ❑ an employer that will be covered by the agreement
- ❑ a trade union who has a member that would be covered by the agreement (unless the member has specified in writing that he or she does not wish to be represented by the trade union, or has appointed someone else)
- ❑ a trade union who is entitled to represent one or more employees who will be covered by a Greenfields agreement





- ❑ a trade union that has applied to the Fair Work Commission for a low paid authorisation that relates to the agreement
- ❑ a person specified in writing as their bargaining representative by either an employer or employee who would be covered by the agreement.

For employees who are a member of a trade union, the default bargaining representative is their trade union.

The HSU and workplace delegates through electronic form or paper forms will send out to members a

Log Of Claims

This is to allow members to write down their ideas.

This is for members to advise on a suitable pay increase.

What are the requirements of good faith bargaining?

Bargaining representatives are required to act in good faith in the process of bargaining for a proposed enterprise agreement.

The following are the good faith bargaining requirements that a bargaining representative must meet:

- attending and participating in meetings at reasonable times
- disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner
- responding to proposals made by other bargaining representatives for the agreement in a timely manner
- giving genuine consideration to the proposals made by other bargaining representatives, and giving reasons for any responses to those proposals
- not behaving in a capricious or unfair way that undermines freedom of association or collective bargaining
- recognising and bargaining with the other bargaining representatives for the agreement.

The good faith bargaining requirements do not require a bargaining representative to make concessions during bargaining for the agreement, or reach agreement on the terms that are to be included in the agreement.

Before the Fair Work Commission approves an enterprise agreement, they must be satisfied that approving the agreement would not undermine good faith bargaining by one or more bargaining representatives for a proposed enterprise agreement.

Your employer, your union and workplace representatives will commence bargaining by meeting and negotiating.

This can take several meetings and all reps will be notified for attendance. Your union may request a teleconference with representatives to talk through issues, this can be done outside of work hours were they can discuss freely. You will be given a number and pin to join the conversation.

Workplace representatives can discuss and advise staff on progress from meetings with management.

Consideration period

Draft Copies of the agreement will be available from your employer usually on internal email and notice boards.

For HSU members paper copys will be available from your reps and organiser. This is a time frame of usually 1 week to consider the draft document. Voting will commence after the consideration period.

Update Your Union Contact Details

HSU and your employer will advise on HOW TO VOTE

Voting on your agreement can be done via email and members will be sent a link to excess the vote via your smart phone. The voting process will take approximately 5 min.

Your union will visit your worksite during this process.

Your union will notify members via text and notices on the union board of attendance in the workplace, representatives will be able to advise members with the link to vote.





It is important to note this process is a collective process and representatives will have information on the Members Service Division for individual issues.

(please be advised that a representative or union official cannot physically assist in this process and cannot influence a voting member) The vote will be determined by majority.

When is a vote successful?

The vote is successful when one of the following occurs:

- ✓ Single-enterprise agreement - a majority of the employees of the employer (or employers if there is more than one single interest employer) who cast a valid vote endorse the agreement.
- ✓ Multi-enterprise agreement - a majority of the employees of at least one of the employers, who cast a valid vote endorse the agreement. A multiple enterprise agreement only covers employers whose employees have voted to approve the agreement. Therefore, after the vote the agreement must be varied to remove those employers whose employees have not voted to approve the agreement.

What are the steps to seek approval of an enterprise agreement?

Once bargaining is complete and a draft enterprise agreement has been made, it must be submitted to a vote by the employees who will be covered by the agreement. Before a vote can occur for employee approval, the employer must ensure that:

- ❑ During the seven-day period before voting for the agreement, employees are given a copy of the agreement and any other material incorporated in the enterprise agreement. The employer must also notify employees of the time and place the vote will occur and the voting method that will be used
- ❑ They take all reasonable steps to ensure that the terms of the enterprise agreement, and the effect of those terms, are explained to the employees, and
- ❑ The explanation is provided in an appropriate manner (e.g. appropriate for young employees, employees from culturally diverse backgrounds or employees who did not have a bargaining representative). Employees must endorse the agreement by voting for it. The vote cannot occur until at least 21 days from the date employees were notified of their right to have a bargaining representative.

What if there is a bargaining dispute?

Bargaining disputes may arise for a number of reasons, for example, a party may not be bargaining in good faith. If there is a bargaining dispute which cannot be resolved between the bargaining representatives, one or more bargaining representatives involved may apply to the Fair Work Commission for assistance in resolving a dispute.

Where necessary, the Fair Work Commission may issue a bargaining order in relation to the proposed agreement. A bargaining order will include the actions that the Fair Work Commission require to be taken, actions that are not to be taken and other matters that the Fair Work Commission considers necessary to promote fair and efficient bargaining.

When making a bargaining order, the Fair Work Commission must be satisfied that:

- ✓ The applicant has notified the relevant bargaining representative of their concern (unless the Fair Work Commission considers it is appropriate that this has not happened) and either:
- ✓ One or more of the relevant bargaining representatives for the agreement have not met the good faith bargaining requirements
- ✓ The bargaining process is not proceeding efficiently or fairly because there are multiple bargaining representatives for the agreement.

What happens if the parties are unable to reach agreement?

Where parties are unable to reach agreement on the terms and conditions of a proposed enterprise agreement, a bargaining representative can make an application to the Fair Work Commission requesting assistance.

The Fair Work Commission can make a workplace determination, which prescribes terms and conditions for those employees to whom it applies. In addition, if there is a serious and sustained contravention of a bargaining order that has significantly undermined bargaining, the Fair Work Commission can make a serious breach declaration. If matters are not then settled after 21 days, the Fair Work Commission can make a workplace determination.

Employees are able to initiate industrial action when bargaining for a proposed enterprise agreement. There are strict rules which govern industrial action under the *Fair Work Act 2009*, including the rights, responsibilities and obligations of employers, employees and their organising

Members will be advised of the outcome of the vote via newsletters and texts

Your organiser will also visit your worksite.

Members will be advised on the start times for increases in pay rates and any back pay if required.

HSU Bargaining Process

by law the HSU is your default bargaining representative

