



7. Assisting low-paid employees and those without access to collective bargaining

Work Choices had no provisions to assist the low-paid beyond the five minimum entitlements of the Fair Pay and Conditions Standard and an annual minimum wage review.

Under the new system Fair Work Australia can facilitate multiple-employer bargaining for certain kinds of employees, being the low-paid who have not had access to the benefits of, or who face substantial difficulty undertaking, enterprise-level collective bargaining. This will help employees working in areas like child care, aged care, community services, security and cleaning, who are often paid the basic award rate.

The need for multi-employer bargaining options

Enterprise level bargaining has been a central feature of workplace relations since the early 1990s.

However, over that time not all employers and employees have enjoyed the benefits of enterprise bargaining.

This may have occurred because employees in low-paid sectors generally lack the skills and bargaining power to bargain for improved wages and conditions at the single enterprise level. Similarly, some individual employers in low-paid sectors may lack the time, skills and resources to bargain collectively with their employees.

Some of these employees are unable to negotiate above minimum award rates and conditions because the conditions are effectively set by a third-party (such as a head-contractor), not their direct employer.

To provide employees and employers with another option in these circumstances, the new system provides access to a separate multi-employer bargaining stream for the low-paid.

How will parties enter the low-paid bargaining stream?

A bargaining representative or an organisation of employees with relevant coverage may apply to Fair Work Australia for entry into the low-paid stream to bargain with a specified list of employers.

Fair Work Australia will then consider a range of factors to determine if the proposed multi-employer bargaining is in the public interest. Issues to be considered will include whether multi-enterprise bargaining would assist particular low-paid employees and the history of bargaining in the industry in which the employees work. Fair Work Australia will also be required to consider the extent to which the applicant is prepared to respond to the needs of individual employers.

Individual employers can seek exemption from the process if they feel they should not be included. Decisions by Fair Work Australia that allow multi-employer bargaining in the low-paid stream are subject to appeal.

How will the low-paid bargaining stream operate?

Once in the low-paid stream, parties will benefit from having access to Fair Work Australia to help them negotiate the making of a multi-employer agreement. The types of assistance available include:

- *Compulsory conferences*: Fair Work Australia will remain impartial, but have the power to bring the parties together if this will assist in settling an agreement and to take a more hands-on role in facilitating the negotiations. Fair Work Australia can require a third-party to attend a conference in certain circumstances, if this is necessary to advance the negotiations. This might include a head contractor who actually determines the terms and conditions that apply to the employees.

- *Good faith bargaining orders*: Parties in this bargaining stream can apply to Fair Work Australia for orders to ensure that bargaining processes are being conducted in good faith (see fact sheet number six on bargaining in good faith).
- *Dispute resolution*: Fair Work Australia has broad powers to mediate or conciliate and to make recommendations. At any time, some or all of the parties can agree to Fair Work Australia resolving the issues in dispute by making a consent low-paid workplace determination.

In order to encourage agreement making, Fair Work Australia also has limited powers to make a binding special low-paid workplace determination to settle matters in dispute during bargaining if, despite the best endeavours of Fair Work Australia and the parties, the bargaining fails.

There are strict criteria for access to such a workplace determination. Access will only be available as a last resort. It will only be available for those employers and their employees who are bargaining for the first time under the Fair Work Act and where the relevant employees are substantially reliant on the safety net and there is no collective agreement currently in operation at the workplace. Fair Work Australia must be satisfied that making such a workplace determination will promote workplace productivity and efficiency. In deciding the outcome of the determination, Fair Work Australia must take into account the need to maintain the competitiveness of the employer.

Parties who bargain in the low-paid bargaining stream are not able to take protected industrial action in support of their bargaining claims. Protected action is available only in support of single-employer bargaining.

Outcomes of bargaining in the low-paid stream could include:

- A single agreement that applies to the enterprises of a number of named employers, which may have identical terms for each employer or some variations within it for different employers
- A number of agreements with different terms applying to different enterprises, or
- A combination of these.

Case Study

The Child Care Union has been surveying its members and many of them have expressed frustration with their inability to negotiate flexible working arrangements and pay increases. These workers feel they are being left behind when it comes to being able to negotiate better pay and conditions.

The union has found it difficult to negotiate with employers as some of them lack the resources and skills to bargain collectively.

The union asks Fair Work Australia to consider assisting it to negotiate a multi-employer agreement with six child care operators. Fair Work Australia considers whether the request to bargain in this stream is in the public interest, having regard to a number of criteria including the interests of the child care workers and whether and how child care employers have previously negotiated pay and conditions for workers.

Fair Work Australia decides that the union may negotiate on a multi-employer basis with five of the six employers. One employer is exempted as it already has a common law above-award arrangement in place that was developed with staff input.

Fair Work Australia works with the union and the other five employers on negotiating an agreement. With Fair Work Australia's assistance, the union successfully negotiates a separate agreement with one employer and a multi-employer agreement with four employers, which provides for flexibility for employees around rosters and annual pay rises tied to productivity improvements.