



Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022 – Multi-Enterprise Bargaining: The Cooperative Workplace Bargaining Stream

On 2 December 2022, the [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) (Cth) (**Amendment Act**) was passed by the Commonwealth Parliament and received Royal Assent on 6 December 2022.

The Amendment Act introduces major changes to the Fair Work Act 2009 (**FW Act**) and other laws, particularly in relation to the availability and conduct of multi-enterprise bargaining.

The Amendment Act will provide for 3 streams of multi-enterprise bargaining:

- Single interest employer agreements
- Supported bargaining agreements
- Cooperative workplaces agreements.

This Summary provides an overview of the cooperative workplace bargaining stream.

The new provisions in respect of multi-enterprise bargaining **commence from the earlier of 6 June 2023 or a day to be proclaimed.**

Multi-enterprise bargaining

The Amendment Act will introduce major changes to the availability and conduct of multi-enterprise bargaining under the FW Act. This is separate to bargaining that occurs in relation to a single-enterprise agreement.

The Amendment Act will replace the existing streams of multi-enterprise bargaining previously available under the FW Act with 3 streams that can result in the making of either:

- a supported bargaining agreement;
- a single interest employer agreement; or
- a cooperative workplace agreement.

Generally, employers must obtain written agreement from each union bargaining representative before requesting that their employees vote to approve or vary a multi-enterprise agreement.

Employers can apply to the FWC for a 'voting request order,' permitting the employers to request that the agreement be put to a vote, providing that the following are satisfied:

- for each union bargaining representative that refused the employer's request, that the refusal was unreasonable; and
- that the making of the request by the employer would not be inconsistent with or undermine good faith bargaining.

The cooperative workplace bargaining stream

The Amendment Act introduces the 'Cooperative Workplace Bargaining Stream' in place of the existing multi-enterprise bargaining stream. Participation in the stream remains voluntary.

The stream permits 2 or more employers who have voluntarily agreed, to bargain together for a 'cooperative workplace agreement' in circumstances where there is no supported bargaining authorisation or single interest employer authorisation in operation. At least some employees involved in bargaining must be represented by a union and cooperative workplaces agreements must be approved by a majority vote of employees of each employer.

Within the cooperative workplace bargaining stream employers and employees also have the ability to jointly make a variation to an existing cooperative workplace agreement to add employers and employees. Where a variation of such kind is made, an employer must apply to the FWC for approval.

Employers can choose to opt-in to an existing agreement with the support of a majority vote of employees.

Is protected industrial action permitted under this stream?

Protected industrial action will not be available under this stream and access to dispute resolution through conciliation and arbitration could only occur with the consent of all parties.

Variations to cooperative workplace agreements

The Amendment Act will enable an employer and its employees to jointly make a variation to a multi-enterprise agreement including and a cooperative bargaining agreement, so they cease to be covered. The variation will take effect if approved by the FWC.

However, before an employer requests that employees approve a variation of cooperative workplace agreement, by voting for it, the employer must obtain written agreement to the making of the request from each union covered by the enterprise agreement.

In addition to the requirement for union agreement, the FWC must also be satisfied that:

- the employer took all reasonable steps to notify employees of the time and place at which the vote will occur and the voting method that will be used and gave the employees a reasonable opportunity to decide whether they want to approve the proposed variation;
- affected employees have voted by ballot or electronic method and a majority of those approved the variation; and
- there are no reasonable grounds for believing that a majority of affected employees who cast a valid vote did not approve the variation.

When do these changes come into effect?

The new provisions in respect of multi-enterprise bargaining commence from the earlier of 6 June 2023 or a day to be proclaimed.

The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.