



Enterprise Agreements

Enterprise Agreements: What are they and why make one?

What are they?

An enterprise agreement sets out the collectively agreed terms and conditions of employment between an employer and a group of employees, normally reached following good faith bargaining negotiations between the employees, their bargaining representatives (often involving a trade union) and the employer.

There are three types of enterprise agreements – single-enterprise, multi-enterprise and greenfields agreements (which can either be a single or multi-enterprise agreement), each of which are discussed below.

Single-Enterprise Agreements

Single-enterprise agreements are the most common type of collectively bargained agreement and are normally used where an employer conducting an existing “enterprise” enters into an agreement with its employees – an “enterprise” is broadly defined to include a business, activity, project or undertaking.

An employer may have separate enterprise agreements with different groups of employees, with terms and conditions tailored specifically to that group. However, the groups of employees must be fairly chosen taking into account geographical, operational and organisational characteristics.

Single-enterprise agreements can also be used by “single interest” employers, i.e. employers engaged in joint ventures or another type of common undertaking, e.g. business franchise operators may apply to the Fair Work Commission for an authorisation to make a single-enterprise agreement.

Multi-Enterprise Agreements

Multi-enterprise agreements are far less common and are made between two or more employers that are not single interest employers.

While parties seeking to negotiate a multi-enterprise agreement are, in theory, subject to good faith bargaining obligations, bargaining orders cannot be obtained from the Fair Work Commission to enforce those obligations. Protected industrial action cannot be taken in pursuit of a multi-enterprise agreement, but employee approval requirements are more onerous than in respect of single-enterprise agreements.

Greenfields Agreements

A greenfields agreement may be made for a genuine new enterprise that a single employer or multiple employers are establishing or propose to establish. These types of enterprise agreements must be made with, at least, one trade union and prior to employing any persons covered by the agreement. Any trade union a party to the agreement must be able to represent the majority of the employees who will be covered by it.

Importantly, the Fair Work Act’s good faith bargaining obligations do not, at the moment, apply to negotiating for a greenfields agreement, which does give a trade union involved in the bargaining process considerable leverage. Prospective employers seeking to develop a new project should carefully consider as part of their industrial strategy which trade unions have potential coverage rights and may be more amenable to reaching a greenfields agreement on better and more advantageous terms for its business.

Why make an enterprise agreement?

There are a number of reasons why an employer might consider making an enterprise agreement, namely:

- if an award applicable to the employer’s workforce is difficult to apply, inflexible or otherwise unsuitable for the operation of its business;



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- when there are commercial benefits to be gained from having a standard set of employment conditions contained in a single document, for example, where employees are covered by multiple awards with various terms and conditions;
- to ensure, as far as possible, industrial harmony and freedom from strike action by employees seeking better employment terms and conditions;
- to provide greater certainty in respect of projecting and fixing future labour costs for a period of up to four years, particularly for start up projects.

For information on how to make an enterprise agreement, please refer to our fact sheet *Enterprise Agreements – How to make one?*

You may also wish to contact HopgoodGanim's Industrial and Employment Law team for advice specific to your business needs.

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