

INITIATING BARGAINING

(WITHIN 5 YEARS OF EXPIRY)

What is it, and what is new?

This is a new mechanism that makes it easier for unions to commence bargaining to replace existing single enterprise agreements.

Previously, unless the employer consented, a Union was required to be granted a majority support determination (MSD) in order to commence bargaining for replacement agreements.

Under the new changes, a Union can require an employer to commence renegotiating an existing agreement without an MSD where the nominal expiry of the existing agreement is less than 5 years prior.

This entitlement cannot be used to commence bargaining under any other stream besides single enterprise bargaining

What are the key rights and requirements?

- » A bargaining representative has commence bargaining if:
 - The employer has received a written request from the bargaining representative,
 - The current agreement is a single interest agreement (that was not made following a single interest authorisation), and
 - That current agreement has passed its nominal expiry date but is no more than 5 years past expiry, and
 - The proposed agreement will cover the same, or substantially the same, group of employees as the existing agreement.
- » Once the above is satisfied and bargaining is commenced, the union can access bargaining rights such as good faith bargaining requirements (which may be used for actions including orders to attend bargaining meetings) and protected industrial action (subject to all prerequisites being met).
- » Initiating bargaining using this entitlement will exclude that employer from being included in a supported or single interest multi-employer bargaining authorisation

Strategic considerations

Coordinate:

- » Initiating single enterprise bargaining this way will mean losing the ability to include that employer in a supported or single interest authorisation. How do we coordinate for a common strategic approach to this?

Growth:

- » Currently, the commencement of bargaining can be a key opportunity for growth. What organising strategies can we use under this new system to maintain or build on this stage of bargaining as a growth opportunity?

- » How do we assess for an employer or industry which stream of bargaining is best suited to maximise growth and power before we lock in to a particular stream?

Precedent:

- » This is a vital new entitlement that will allow unions to more efficiently commence negotiations. How do we protect against narrowing or limiting precedent setting in this space?
- » Many employers may be strongly motivated to conclude single enterprise agreements to avoid MEAs. How can this be leveraged?

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