



# Research Report

**Fair Work Commission**

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Bargaining Discovery Research

## Welcome

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Pivot Management Consulting was engaged by the Fair Work Commission (the Commission) in October 2023 to undertake qualitative research into the perceptions, knowledge and information needs of relatively inexperienced employer and employee bargaining representatives in relation to enterprise bargaining and agreement-making.

The Commission has the functions of promoting good faith bargaining and the making of enterprise agreements under s.576(2)(ab) of the *Fair Work Act 2009* (FW Act). Pursuant to s.576(2)(b), the Commission is required to provide assistance and advice about its functions and activities; although the Fair Work Ombudsman has responsibility under the FW Act to provide education, assistance and advice and produce best practice guides in relation to workplace relations or workplace practices, including in relation to bargaining and enterprise agreements.

This report summarises the key qualitative feedback and insights generated by the research. It includes recommendations for how users can be assisted in bargaining and agreement-making through access to new and enhanced information resources.

The report is based primarily on the experiences, observations and suggestions of inexperienced users and potential users, but it also draws on input from the Commission's stakeholders, including from its Enterprise Agreements and Bargaining Advisory Group.





## Contents

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1. Executive summary	4
2. Perceptions and understanding of bargaining and agreement-making	7
3. Enablers to bargaining and agreement-making	16
4. Recommendations	23
5. Methodology	25
6. Appendix 1: Workshop discussion guide	28

### Background and methodology overview

This qualitative research was designed to aid development of information resources that can help employers and employees, particularly from small business, to bargain for enterprise agreements. The research sought insights on:

- how employees and employers conceive and understand enterprise bargaining and agreement-making;
- enablers to commencing bargaining and reaching agreement;
- suggested solutions to overcome barriers; and
- how employer and employee bargaining representatives prefer to access information and support.

The research targeted specific participant groups from smaller businesses with limited or no experience of bargaining for an enterprise agreement:

- Employer and employee bargaining representatives (inc., union delegates and individual bargaining reps) **with experience of bargaining** for an enterprise agreement within the past 4 years (experienced), but relatively *novice* (i.e. established and expert-level experience were excluded from the research scope).
- Employers and employees with informal bargaining, problem-solving or single-issue negotiation experience, but **no experience of formal bargaining** for an enterprise agreement (inexperienced).

18 *employers* and 17 *employees* were engaged in the research. Participant insights were captured through online workshops (up-to 6 participants) and in-depth interviews.

See the **Methodology** section of this report (from page 25) for further information about the research participants and data collection activities.

### Findings

#### 1. Low comprehension of the fundamentals of bargaining and agreement-making

Participant comprehension of foundational concepts and processes in bargaining was low. This research found that:

- Most participants could not define “bargaining” or describe the high-level bargaining and agreement-making process.
- Even users that believed they had moderate-to-high knowledge could not demonstrate detailed understanding of key concepts and processes or made inaccurate comments about bargaining topics.
- Many participants could not accurately define/describe concepts like: “Good Faith Bargaining”, the NERR, minimum bargaining periods, etc.
- Experienced participants demonstrated greater comprehension of key concepts but not significantly higher than inexperienced ones.
- Most participants (employers and employees) said their peers had low awareness of what agreements are, how they are bargained for, and the process of creating one. This was seen as a constraint on productive bargaining.

# Bargaining Discovery Research

## *Executive summary*

### 2. Heavy reliance upon external support

Participants reported heavy reliance upon lawyers, unions, industry associations, etc. Assistance included: agreement drafting, template provisions, directions on what to do, answering procedural questions, and problem solving. Many participants said they couldn't have navigated bargaining and agreement-making without the support. Reasons included:

- Capability: i.e., not having the requisite skill(s)
- Knowledge: i.e., not knowing what to do
- Capacity: i.e., not having the time
- Norms: i.e., it is the common practice.

Several participants (and members of the Commission's Advisory Group) suggested the Commission provide external organisations with resources that they can share with their clients/members.

### 3. Being a bargaining representative is challenging

Many participants, including some employers, expressed that the employee bargaining representative role is challenging. Being an intermediary between employers and employees was described as: time consuming, stressful, confronting and, at times, confusing.

The emotional and practical challenges of being an intermediary was said to monopolise all available time and attention, to the detriment of learning the process and performing well.

There appears to be a need to produce information materials to support bargaining representatives (and their colleagues) to understand their role and responsibilities.

### 4. Under-utilisation of existing Commission resources

Awareness and utilisation of existing resources was limited. Many participants:

- Were unaware the Commission provided information resources
- Had not explored the Commission's resources, and
- Suggested developing resources that the Commission already has available.

The Commission should continue to implement communications and outreach strategies to promote and enable access to existing resources (e.g., promotional campaigns, distribution of resources to industry associations, unions, etc.).

### 5. A need for introductory resources

Most participants said there is a need for introductory resources on:

- What is an enterprise agreement?
- What is "bargaining"?
- What is a bargaining representative and what do they do?
- What are the key steps in bargaining and agreement-making?
- What are common challenges during bargaining and how to resolve them?

Few participants sought information resources on technical matters: i.e., the BOOT, the NERR, good faith bargaining, minimum bargaining periods, etc.

# Bargaining Discovery Research

## Executive summary

### 6. Resources should be user-friendly

Participants overwhelmingly recommended concise, visually engaging resources, articulated in plain language. Almost all participants recommended short animated videos (1-3 minutes). Several of these videos could be “packaged” into a suite of introductory materials. Participants also recommended visual posters, case studies and a “nutshell” version of the Benchbook.

The Commission should review whether existing resources can be repurposed into these formats.

### Recommendations

Detailed recommendations are included at the end of the report. Summary recommendations include:

1. Consider creating new information resources focusing on foundational topics (e.g., What is an enterprise agreement? What is bargaining?)
2. Review whether existing resources need to be refreshed to optimise user friendliness.
3. Consider strategies to promote and enable easier access to existing information resources.

4. Produce introductory materials that employers and employees can share with their staff/colleagues.
5. Produce materials to support bargaining representatives to understand their role and responsibilities.
6. Investigate which existing resources contain information that can be repurposed into the formats recommended by participants.

### Concluding remarks

Several participants complimented the Commission for seeking feedback, seeing it as a commitment to continual improvement. A minority knew of existing resources and recognised the Commission’s efforts to continually enhance those resources.

Pivot Consulting appreciates the participants’ contributions and extends gratitude to the Commission staff for their valuable assistance.

Thank you

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# Bargaining Discovery Research

*Perceptions and understanding of bargaining and agreement-making*



Perceptions and  
understanding of  
bargaining and agreement-  
making

### Perceptions and understanding



## Overview

Participants were asked questions to identify how they conceptualise bargaining and agreement-making, and how well they understand it.

## Key lines of enquiry

Key lines of enquiry included, but were not limited to:

- Perceptions of bargaining and agreement-making overall
- Understanding of what enterprise agreements are (and other arrangements)
- Perceptions of why to use enterprise agreements (rather than an Award)
- Understanding of key concepts, requirements and processes of bargaining and agreement-making

## Findings Overview

- Overall, participant comprehension of foundational concepts and processes in bargaining was low.
- Participants recognised the potential value of enterprise agreements but doubted their ability to execute bargaining and agreement-making successfully. This appears to be due, in part, to not knowing the key processes and requirements of bargaining and agreement-making.
- Participants also exhibited notable gaps in their understanding of what bargaining is and the different approaches to bargaining. Similarly, they revealed low understanding of important elements of the agreement-making process.
- These findings indicate there is a need for information on the “fundamentals” of bargaining and agreement-making and introductory-level resources on key processes, steps, timeframes and concepts.



# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

### Understanding bargaining and agreement-making

#### The definition and purpose of enterprise agreements

Most participants (irrespective of their experience level) could articulate a basic definition of what an enterprise agreement is and how it differs to an award. Similarly, many participants could at least identify pay and some other conditions as variables that can be bargained for. However, most definitions and explanations provided by participants were superficial, indicating a cursory understanding, rather than a thorough comprehension, including among participants who had some experience of bargaining.

Many participants (both employers and employees) believed their colleagues had low awareness of what agreements are and the process of creating one. The knowledge gaps were seen by participants as constraints on the effectiveness and efficiency of bargaining:

- For employee bargaining representatives, it contributes to improbable requests and unrealistic expectations which, if not addressed, can constrain effective bargaining.
- For employer bargaining representatives, low understanding among owners and executives increased the difficulty of reaching managerial agreement on what conditions to authorise.

Both employer and employee participants suggested the production of introductory materials that employers could share with employees and managers, or that bargaining representatives can share with their colleagues.

Commentary:

- *'Getting authorisation to offer certain conditions from the execs was hard...each had a different view of what the agreement is meant to deliver for the business and how competitive the bargaining process is meant to be.'* – employer (experienced)

- *'Getting everyone on the same page was hard...everyone had a different view on what the process is meant to achieve and how it should work. One wanted to be reasonable; another said we should push as hard as possible...'* – employee (experienced)

#### The definition of "bargaining"

Most participants were unable to provide a clear, accurate definition of "bargaining" or the difference between "bargaining" and "agreement-making". Few participants could accurately describe when "bargaining" begins and ends.

Most participant attempts to define "bargaining" provided simplistic or inaccurate summaries. Some participants misconceived "bargaining" as replacing an existing agreement, while "agreement-making" refers to creating an agreement for the first time. Similarly, inexperienced participants (both employer and employees) often described bargaining as a one-way process in which employers tell employees what will be offered, and employees accept; or the process concludes.

This knowledge gap was more pronounced among inexperienced participants than experienced participants. However, the degree of difference in the ability to define bargaining between experienced and inexperienced participants was marginal.

Commentary:

- *'I don't think there is a difference between bargaining and making an agreement. They are the same thing.'* – employee (experienced)
- *'Staff say what they want and the business says yes or no and that's when bargaining ends.'* – employee (experienced)

# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

### Perceptions of bargaining and agreement-making generally

Overall, participants described enterprise agreements as theoretically valuable but practically difficult to realise.

Most participants spoke positively about the potential benefit of enterprise agreements for employers and employees. However, all participants discussed the difficulty of bargaining and making an enterprise agreement, especially for small businesses. Many participants:

- described the process as challenging
- noted that explaining the complexities of bargaining for an enterprise agreement to employees or colleagues was difficult and time-consuming
- described their experience of bargaining as combative in nature (adversarial) which constrained their ability to achieve positive outcomes
- explained that they did not understand bargaining and agreement-making effectively enough to navigate the process confidently; and that learning the necessary processes is too time-intensive
- felt daunted and overwhelmed by the process

Commentary:

*'I have some experience, but I still feel like I'm wading through unknown waters...It's daunting...and there isn't much info out there to help.'*  
– employer (experienced)

- *'I like the idea of enterprise agreements but the practicalities of them overwhelm me, to be honest. They seem like a good concept that's actually really hard to realise... because it's not clear what you're meant to do (or not do).'* – employee (inexperienced)
- *'...as a small family business... making an agreement seems hard. I don't really know what is required or why. I worry that we're walking our business into a really complex process we aren't equipped for. So, when EBAs are mentioned, I say 'we'll look into it' but it goes nowhere because I don't know what it really is. It feels like I'll have to spend ages researching to get a basic grasp of it.'* – employer (inexperienced)
- *It's a challenging process. I had to put truckloads of effort into explaining it to the blokes on site because they knew pretty much nothing. And I had to figure out the complex stuff and convert it into simple info for the guys.* – employer (experienced)
- *'EBAs are excellent. But I've seen EBAs as a Union Rep and from the employer-side, and it's variable: everyone needs to know what's happening and everyone needs to approach it in the "right" spirit. If it's adversarial or people don't really understand what to do, it becomes very hard.'* – employee (experienced)
- *'I think there is a need to ensure employers and employees understand bargaining and agreement-making don't have to be scary words. There is a misperception that EA's might not be useful or that they will be really hard. I think that comes from not knowing what it is or how it works.'* – employer (experienced)

# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

- *'Bargaining is where one side presents a list of demands and the other side counters those demands with something lower and might eventually accept.* – employee (experienced)
- *'It's more of an explanation than bargaining. We're explaining what we will be giving employees.'* – employer (experienced)

### The key processes, steps and concepts

Most participants were unable to provide a clear, accurate description of what the high-level process of bargaining and agreement-making is. When asked to describe the process, many participants were unable to provide a rudimentary summary of key steps.

Only a few participants were able to articulate a simple high-level process. Almost all participants, from any group, were unable to articulate the steps within bargaining or agreement-making. Most experienced participants could indicate an awareness that there are technical steps, but they could not describe them.

Most inexperienced employees and employers self-assessed their knowledge about the process as low and answered "I don't know" far more frequently than experienced participants.

Some experienced participants self-assessed their knowledge of the process as low, but many considered their knowledge moderate, and some considered it high. This created a contradiction: despite considering their knowledge moderate-to-high, most experienced participants were unable to answer basic questions about processes. Similarly, when they attempted to describe a process, they provided inaccurate descriptions.

Overall, although experienced participants were able to demonstrate greater comprehension of key concepts than inexperienced participants, the degree of difference in observable comprehension levels was not significant.

Commentary:

- *'I've recently become a bargaining representative... I definitely don't feel like I can explain what the key steps in the process are... to be honest, I'm a rep but I have no idea what the basic tasks are.'* – employee (inexperienced)
- *'I was a bargaining rep. I should probably know more than I do. I couldn't really tell you what the process is...'* – employee (experienced)
- *'I'm a bit embarrassed but I don't really know how to describe how to create an agreement. I just pass on what staff want.'* – employee (experienced)
- *'To be honest, my role, I felt, was very much representative of other employees, rather than knowing procedural rules. It wasn't clear to me what the rules were...'* – employee (experienced)
- *Looking back, I had no knowledge of bargaining and associated procedures/practices...'* – employer (experienced)
- *'I led our businesses EA process and, honestly, I can't confidently summarise the key steps. Lots of figuring it out as you go by making lots of mistakes. I don't know what we're meant to do (or not do) – employer (experienced)*

# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

### Understanding of agreement-making concepts

Many participants were unable to accurately define/describe concepts relevant to agreement-making: i.e., timeframes, the NERR, voting rights, minimum bargaining periods, intractable bargaining declarations, the BOOT, etc. At times, participants demonstrated a misunderstanding of these concepts.

This was most pronounced among inexperienced participants. Most had almost no awareness of these concepts. Experienced participants appeared to recognise the terminology but were unable to accurately describe what the concepts meant.

For example, few participants could define “good faith” bargaining:

- *‘Good faith is being respectful to one another.’* – employee (experienced)
- *‘It’s about accepting a compromise. The other side is meant to accept a compromise.’* – employer (experienced)

Commentary:

- *‘Well, we tried doing an EBA and I still dunno what those things are [BOOT, NERR]. It probably sounds silly but I went into it thinking it’d be a few quick conversations followed by a document we send off to the government to hold onto.’* – employer (experienced)
- *‘The NERR rings a bell but I couldn’t describe what it is. Is that where your agreement gets assessed for whether its suitable?’* – employer (experienced)

- *‘I’ve not heard of a Minimum Bargaining Period. We told our staff we were keen to get the process wrapped up asap and asked for feedback within the week’* – employer (experienced)
- *‘We declared that we thought bargaining was gonna be intractable unless the business approach it the right way. I emailed the directors saying that before we sent our log of claims.’* – employee (experienced)
- *‘No, I’m not sure what the BOOT is. I think we kept it all pretty simple so we might not have used it.’* – employee (experienced)
- *‘I couldn’t say what happens if timelines are missed. Maybe we have to start again? Or maybe you just default to the award?’* – employer (inexperienced)
- *‘I don’t know what we can do if everything stalls. Like, are we protected if we protest or can we call someone in to help?’* – employee (inexperienced)

### Bargaining approaches

Most participants described “bargaining” in adversarial terms. Although some participants could describe a process akin to “interest-based” bargaining, no user was aware of that terminology or what it engenders. Lack of understanding was most pronounced among user without formal bargaining experience but was prominent among all participants.

A common perception was that bargaining is about making ambit claims and having disputation about those claims. Many inexperienced employees described bargaining as a “fight” or a “battle”.

# Bargaining Discovery Research

## *Perceptions and understanding of bargaining and agreement-making*

Many inexperienced employers described bargaining as a process in which ‘...you need to get in first to set the tone’. Both employers and employees spoke about being assertive and “holding the line”. Although experienced participants used more nuanced and diplomatic language, they also predominantly described bargaining as an adversarial activity.

- *‘I’m unfamiliar with “interest-based” bargain[ing]... even the concept doesn’t really make sense. Like, that’s just not what we picture as “bargaining” in our industry.’ – employee (experienced)*

### Heavy reliance upon external support

Participants reported heavy reliance upon important external support (e.g., lawyers, unions, industry associations, consultants, etc.). The nature of support varied but common examples included: directing participants on actions to take, providing template agreements, assisting in population of various documents (inc., the agreement), providing ad-hoc advice and problem-solving if/when issues arose.

Many participants expressed that without external support they would not be able to navigate bargaining and agreement-making successfully. Participants explained that this was due to several factors.

#### a) Capability

Many experienced participants (employer and employee) explained that they did not believe they have the requisite skills to navigate bargaining and agreement-making.

Many employee representatives explained that they were not equipped to manoeuvre through the interpersonal complexities of negotiating with their colleagues and their managers/bosses. They lacked the necessary soft skills and the pre-requisite knowledge.

Both employers and employees explained that there are many technical elements that are outside their expertise: i.e., they lack the hard skills and knowledge to read, comprehend and develop technical documentation. One employer explained: *‘I have spent my whole career on the tools. I’m lucky if I write more than 10 words in a text.... Drawing up fancy documents or interpreting legal language isn’t me.’*

#### b) Knowledge

Many experienced participants (employer and employee) explained that they did not have the knowledge required to bargain and make agreements alone. They know there are timelines and forms and particular steps that need to be undertaken but that they do not know what they are. Many explained they don’t have sufficient time to learn given their other demands. Some acknowledged they also lacked the interest, given it is not a core part of their role.

#### c) Capacity

Many participants, but particularly experienced employers, explained that they do not have the time to navigate the process without external support. As small businesses, they do not have dedicated Human Resources teams. They have business as usual responsibilities, and bargaining is added to this workload.

Although some experienced employers believed they had the capability to adequately learn and execute what was required, they did not believe they had the capacity to do so. They felt that learning would be an overwhelming activity and that it was more efficient to engage others.

#### d) Norms

Some experienced participants explained they had always used external support. That was the standard practice.

# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

Additionally, even participants that had not utilised formal external support (e.g., unions, lawyers, industry associations, consultants, etc.) referred to relying on guidance/support of experienced colleagues and peers (within their organisation or beyond it).

### Comments:

- *'...I couldn't find something that summarised what we're meant to do in a simple way or that gave me something I could give to staff to explain what was happening. So, eventually, I gave up and we got legal advice... We have an EBA but I couldn't tell you what we'd have to do if we were meant to start again.'* – employer (experienced)
- *'I'm a union rep so I got all the info I needed from them. I didn't really need to learn processes.'* – employee (experienced)
- *'I didn't know what to do and I would have probably given up if I didn't get support from our industry association. They told us what to do and when. I wouldn't know where to start without them.'* – employer (experienced)
- *'I was totally lost. I looked online. I called people in my industry. Nothin'. Eventually, I called a lawyer and they sent a bunch of emails focused on specific topic... like here are the key timelines; here is stuff that has to be in agreement; make sure you send this document to all staff. That was the difference between packin' it in or not.'* – employer (experienced)

### Being a bargaining representative is challenging

Many participants, including some employers, expressed that the employee bargaining representative role is challenging.

Most employee bargaining representatives explained that being an intermediary between colleagues and employers is time-consuming, stressful, confronting and, at times, a confusing role.

Many representatives explained they do not always understand their responsibilities. Many experienced employee bargaining representatives explained that they never obtained a clear sense of what exactly their role is.

- *'I found myself at various meetings... not clear on what the purpose is or what I am expected to do or say.'* – employee (experienced)
- *'What am I meant to do? What am I allowed to do? What are my rights? Am I meant to be neutral?'* – employee (inexperienced)

Many representatives expressed feeling, at times, misunderstood by both colleagues and employers. They described feeling “caught” between their colleagues and their employers and placed in a lose-lose situation where one or both sides may be displeased with them. Additionally, many representatives explained feeling hampered by the employer/employee relationship, both its ongoing nature and the potential power dynamics involved. They felt they were required to argue with their employer.

- *'I found that I couldn't do the right thing either way. When I tried to be impartial and balanced, I was criticised by both sides.'* – employee (experienced)
- *'I'm feeling very nervous about it [being a representative]... my workmates are telling me demand this and that and not to back down but am I meant to go and have a massive fight with my boss? It's not a very comfortable situation.'* – employee (inexperienced)

# Bargaining Discovery Research

## Perceptions and understanding of bargaining and agreement-making

Many representatives noted that they did not always have the time required for the role. Although many representatives acknowledged that they were granted time away from business as usual for meetings, they maintained the role can be highly time-consuming. These participants explained that the unseen time-costs are not captured in the time-off provided for bargaining.

- *'I have to call the union to figure out what I'm meant to be doing. Then I have to talk to other staff about what they're wanting. In between that I'm meant to be doing my normal job... Then I get messages about "what if we could get this", and I haven't had a chance to make any notes. So I'm making them at home of a night.'*  
– employee (experienced)
- *'I'll have a meeting... I've come straight in from the site and I'm still thinking about that. Then people are talking about timeframes and documents... By the time I get home that night I've thought of five things I should have said. So then I'm texting people or emailing them with my comments or trying to set up another meeting.'*  
– employee (experienced)

Some employee bargaining representatives noted that the emotional and practical challenges of being an intermediary monopolises all available time and attention, to the detriment of learning the process, deeply understanding what is required, etc.

These participants explained that bargaining can be an intense, confronting experience that takes an emotional toll. Several reasons were presented for this:

- It can be confrontational and combative (in the participants' experience)
- They enter conversations with high expectations, and those expectations may not be met

- Self-confidence in their value and merit to participate in such significant discussions/decisions is low
- They can feel anxious and self-conscious because they are disagreeing with their employer
- They are, at times, criticised for their performance by their colleagues and their employers, despite feeling they are doing what is right.

Some participants explained that they did not want to stay at their employer following completion of bargaining. Reasons provided include, but may not be limited to, the emotional impact the process had on the participant and perceived damage to workplace relationships with colleagues and employers and "burnout".

Other participants acknowledged that they often felt they should learn more about the process, but they lacked the mental bandwidth to do so.

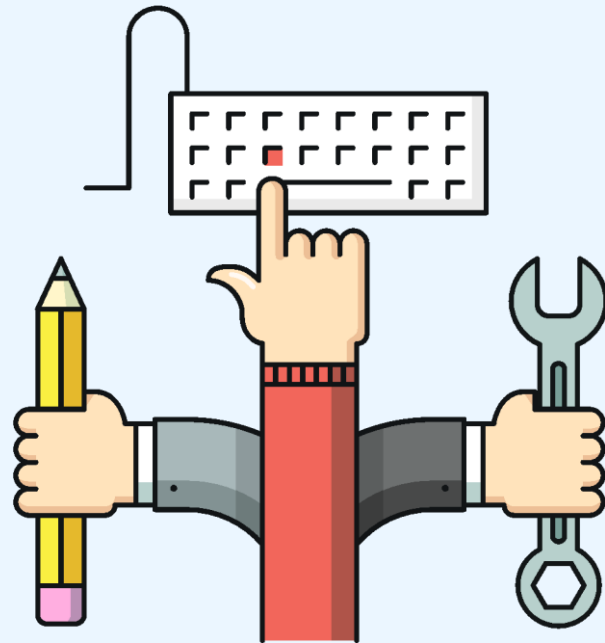
- *'You're meant to stand-up against your boss and you're responsible for listening to everyone's hardships and resolving them; and then you're meant to go home energetic enough to do some extra reading? Not possible.'* – employee (experienced)

Based on the commentary above, it appears participants had limited time or mental bandwidth for learning once bargaining had commenced. Provision of information should therefore follow, as far as practicable, these objectives:

- Information provided once bargaining has commenced should be as succinct and comprehensible as possible.
- Any comprehensive information that demands greater time/attention should be designed for use prior to bargaining commencing.

# Bargaining Discovery Research

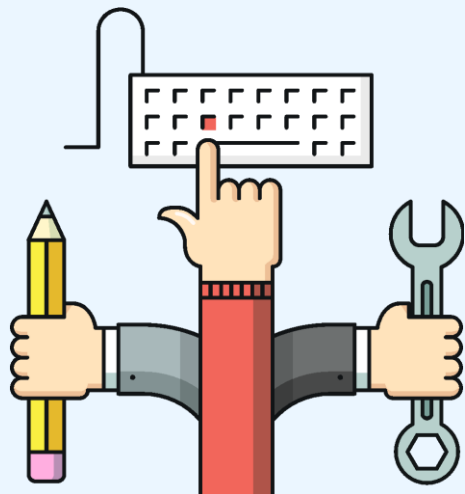
*Enablers to bargaining and agreement-making*



Enablers to bargaining and  
agreement-making



### Enablers to bargaining and agreement-making



## Overview

Participants were asked questions to identify what specific forms of assistance would be most beneficial to them in their efforts to bargain and create an enterprise agreement.

## Major lines of enquiry

Key lines of enquiry included, but were not limited to:

- Where do you obtain information about bargaining and agreement-making?
- How do participants want to access information/support? What does it look like?
- What kinds of information and resources would you want from the Commission (as an independent authority)?
- Have you ever used the Commission's existing resources? Have you contacted the Commission? How accessible to find these resources/services?

## Findings

- There was low awareness and utilisation of existing Commission resources among participants (discussions did not explore other specific sources of information).
- Participants prefer to be provided information than seek it, and few participants appeared to be actively seeking information themselves.
- There appears to be a need to introduce new information materials focused on introducing users to bargaining and agreement-making: i.e. What is an enterprise agreement? What is bargaining?
- The size/complexity of information should be tailored to how far through the process users are: i.e., deliver the "right" information at the "right" time.
- Participants overwhelmingly recommended concise, visually engaging resources, articulated in plain language.
- Most participants recommended 1-3 minute animated videos (among other formats to cater to diverse preferences and learning needs).
- Only a few participants sought resources on matters such as: the BOOT, the NERR, Good Faith Bargaining, Minimum Bargaining Periods, etc.

# Bargaining Discovery Research

## *Enablers to bargaining and agreement-making*

### Accessing existing resources

The research indicates significant under-utilisation of existing Commission information resources. Many participants were unaware the Commission provided information about bargaining and agreement-making. Some participants specifically requested information and documentation that the Commission already publishes on its website.

This was a universal finding across all groups. Only a few experienced employers and employees were aware of existing resources.

This indicates the Commission should consider strategies to promote and enable easier access to existing information resources. This may take the form of a promotional activity, modifications to existing display of materials, etc.

- *‘Does the Commission provide support or guidance for employers and employees?... I didn’t know that. I wasn’t aware there was information like that [i.e., processes, timeframes, etc.] available.’* – employer (experienced)
- Existing webpage: *‘I think we need something on the website that you can click to reveal more information. “What is an agreement?” Then “what goes into an agreement”. And so on.’* – employee (experienced)
- *‘To be honest, I never checked if there was documentation out there. I had no idea the Commission had documentation.’* – employer (experienced)
- *‘I am looking online now, as we do the session, and there is a lot of stuff on the website....I didn’t realise that this existed.’* – employee (experienced)

### Searching for information versus receiving it

Throughout the research, participants became aware that the Commission may have existing resources that would be of value. They suggested it would be useful if the Commission share these resources more proactively (rather than participants seeking it out).

Conceptually, this a reasonable suggestion. However, the Commission does not have a legislated educative function – it is an independent authority and is not necessarily aware of when bargaining is commencing. Whilst not directly canvassed with the research participants, further consideration could be given to how the Fair Work Ombudsman’s educative function can support bargaining and enterprise agreement-making and how the agencies could develop and share resources on bargaining and agreement-making more proactively. If and how this could be achieved specifically would likely require careful consideration.

### The Commission’s website

Several participants acknowledged that despite assuming the Commission might have some kind of resources, they had not reviewed the Commission’s website to check. These (and other) participants explained that their first source of information would likely be their union (employees) or industry association (employers).

Given participants’ preference for seeking information from their unions and industry associations first, the Commission may consider promoting resources to these organisations, so that these organisations can share those resources with users, as deemed appropriate.

Only a small number of participants indicated they had explored the Commission’s website therefore feedback is limited.

# Bargaining Discovery Research

## *Enablers to bargaining and agreement-making*

However, within this subset of participants who had reviewed the website, a minority suggested they could not find the information they were looking for. This suggests the website could be further optimised for discovery of information about bargaining.

Pivot's analysis is that it is possible to discover enterprise agreement information on the Commission website in a reasonably accessible manner. Broadly speaking, it is evident the Commission has sought to regularly enhance the website user friendliness. However, there are always opportunities to continually enhance website user experience.

### Calling the Commission

Similarly, few participants were aware that they could call the Commission for direction to information resources.

Many participants (employers and employees, experienced and inexperienced) disclosed a perception that the Commission probably would not be receptive to phone calls. The Commission, in their minds, is an independent decision-maker that would not accept calls.

Some participants indicated they had called the Commission for information but felt the call(s) did not meet their needs. Some participants felt their calls to the Commission were circular as they were directed back to the Commission's website. They believed the Commission did not provide the specific information or advice they required.

- *'I didn't realise you're allowed to call the Commission. I thought that wouldn't be appropriate'. – employer (experienced)*

### **Information users want**

#### Foundational information

Almost all participants requested information about, primarily, foundational concepts and processes.

Only a small number of participants sought information resources on, comparatively technical matters such as: the BOOT, the NERR, Good Faith Bargaining, Minimum Bargaining Periods, etc.

Instead, most participants sought information resources that focused on:

- What is an enterprise agreement? What is "bargaining"?
- What is a bargaining representative and what do they do?
- What are the key steps in bargaining and agreement-making?
- What are common challenges and how to resolve them?

Simple questions like "What is an Enterprise Agreement?" and "What is "Bargaining"?" were suggested by many participants (employers and employees). Employees believed it would be a valuable resource for educating colleagues about what was occurring during bargaining. Employers echoed this sentiment, noting this type of information may help address a low-level of understanding of bargaining among staff.

Hence, both employer and employee participants suggested the need for introductory materials: i.e., resources that employers can share with employees and managers, or that employee bargaining representatives can share with colleagues. This would save participants time educating peers/staff, but it may also assist in bargaining.

- *Something simple that tells you what an Enterprise Agreement is and what the basic steps are to achieve one.' – employer (inexperienced)*
- *'...my problem was helping staff understand. Lots of them didn't know the difference between an EA and an award. Putting together a document for that and explaining it took ages and turned me off the EA... If I can't even explain what an EA is, how can we collectively follow the process?' – employer (experienced)*

# Bargaining Discovery Research

## *Enablers to bargaining and agreement-making*

- *We need something that educates employers in a way they understand. Most in our industry haven't done year 12. So, you'll lose them with text or long videos. Even if its ten 30 second videos. Short, sharp.* – employer (experienced)
- *'If there were short introductory videos, I would share those with my staff.'* – employer (experienced)

Some participants suggested videos include real-people, but most participants recommended using animations. These were seen as more engaging and less intimidating.

Due to different learning styles, many participants suggested that videos need to be supported by simple documentation with additional content and referrals to more information. This was recommended to be no longer than 2-3 pages.

- *'A few short videos that link-out to documents that also aren't too long.'* – employer (experienced)

### **a) Posters**

Posters with minimal text and diagrams were also suggested by several participants (employers and employees). These posters would have simple summaries of the major steps in the bargaining and agreement-making process, timeframes (in a process flow) and simple definitions. They could also include a link (or direction) to further information: e.g., a website URL to follow or a QR code to scan.

- *'I'd like posters I can stick on walls or share in group chats'* – employer (experienced)

- *'We have a notice board that I would stick posters or visual diagrams to.'* – employee (inexperienced)

### **b) Case studies**

Many participants, particularly inexperienced employers and employees, suggested provision of case studies. These participants felt that the experience of others is instructive, and believed documenting the process followed by others, including challenges they encountered, would be a more impactful resource than generic information provision.

### **c) A “small” version of the benchbook**

A small number of ‘experienced’ participants were aware of the benchbook. These participants considered the benchbook too dense and technical but recognised it includes information of value. They suggested this book be simplified so that it is more accessible to inexperienced users and users that do not specialise in human resources, workplace relations or law.

### **d) Not recommended**

Most participants advised they would be unlikely to use or engage with long-format, comprehensive online learning modules. Although sound in concept, a comprehensive module would take too long for busy small business executives and employees. Large training courses or programs were also considered unlikely to be utilised by most participants for the same reason. So too were educational visits to workplaces.

# Bargaining Discovery Research

## Enablers to bargaining and agreement-making

- *'... something that outlines the ways in which the user can bargain... what is bargaining? Does it have to be adversarial? What does it look like if it's more of a discussion?'* – employer (experienced)
- *'Only a few of our staff really knew the difference between an EA and the award. Their reaction was to presume that an EA was potentially a bad thing because it meant we weren't exactly matching the award.'* – employer (experienced)

Requests for materials defining the basics of being a bargaining representative appear to be driven by participants not feeling clear on the roles and responsibilities of being a bargaining representative (discussed earlier in the report).

- *'I'd like something that the Union or my employer can give me that just gives me a starting point for understanding what it means to bargain and what my role will be.'* – employee (experienced)

Requests for information about processes/procedure appear to be driven by low understanding of the steps users need to take.

- *'A guide that gives you the basics: here are the steps; here is what to expect; here is what to do if it goes sideways. Here is how voting works...'* – employee (inexperienced)
- *A handbook or guide that steps out the process at a high level. It tells you the timeline and where to find more info'* – employee (inexperienced)
- *'As an employer, I'd like something that tells me what I'm supposed to do (and not do). Nothing fancy – just basic good practices. "At X number of days, make sure you do Y.'* – employer (inexperienced)

- *'I'd like an index of terms with definitions. You come of the site where you've spent the day not reading anything to staring at words that mean nothing to you. Definitions would help.'* – employer (experienced)

Hence, both employers and employees suggested introductory materials i.e., resources that employers can share with employees and managers, or that bargaining representatives can share with colleagues. This would save participants time educating peers/staff, but it may also assist in bargaining.

## Optimising the medium of resources (i.e., how resources are delivered)

Participants overwhelmingly recommended concise, visually engaging resources designed specifically to address introductory topics.

### The format

Almost all participants recommended short videos. Many participants added that several of these videos could be “packaged” into a suite of introductory guides that could be accessed by participants or shared with participants by external organisations.

The participants suggested these be brief videos. The definition of brief varied: some thought videos could be as long as 3 minutes. Others recommended keeping videos no longer than 30 seconds each. Overall, an average duration of 1-3 minutes was considered advisable.

# Bargaining Discovery Research

## *Enablers to bargaining and agreement-making*

### Language

Many participants (employer and employee) recommended that resources be articulated in plain language. The resources should deliberately avoid use of legal terminology and/or technically complex language, insofar as possible. Several participants, among both employers and employees, considered legal terminology and complex language a barrier to engagement. Some suggested providing a terminology index to help address this.

- *‘Tell me the 101 in a simple way. No legal language’* – employee (inexperienced)
- *‘I’d like a list of definitions...because the words they use don’t make sense to me or the people I work with.’* – employee (experienced)

### Accessibility

Finally, some participants noted that any resource developed should be accessible in various languages and should consider broader accessibility for those with disabilities. For example, one participant explained: ‘although videos are a nice idea, they are of little value to someone with impaired vision... there needs to be written and audio content that mimics the content contained in videos.’

### A suite of resources

Many participants recommended dividing topics into discrete information resources, rather than compiling them into a singular or a few large resources. Participants explained that large documents are overwhelming and that neither they, nor their employees or colleagues, would be inclined to engage with large documents or videos.

Nonetheless, it may be suitable to package several separate resources into an introductory “pack”: a single package of resources with several individual elements.

Participants indicated this is because small business users are busy, stressed, and often not trained in Human Resources or Law. They seek succinct and engaging content they can absorb quickly.

- *‘A long document is not going to be any employers’ happy place, I don’t think ...We need info we can absorb quickly between tasks. Videos, short documents, succinct web content.’* – employer (experienced)
- *‘Thinking about the blokes I work with, their life experiences, the type of work their doing, they won’t read a large document. You’ll be lucky if they read more than a couple paragraphs* – employer (inexperienced)



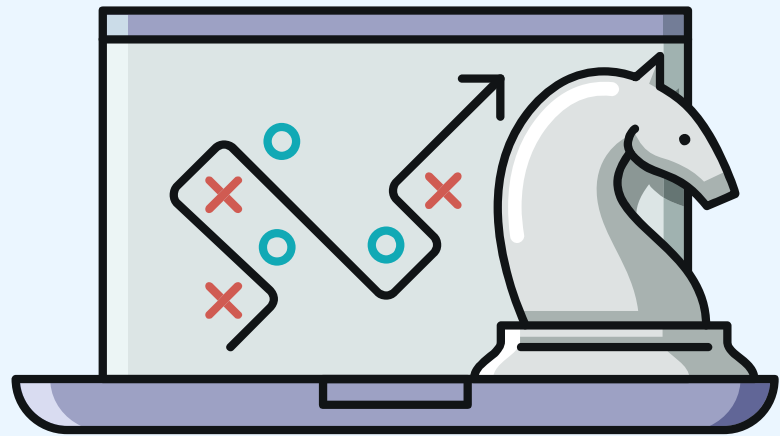
Recommendations

# Bargaining Discovery Research

## Recommendations

#	Recommendation	Detail
1	Consider creating new information resources on foundational topics.	<p>These would be introductory materials focusing on key topics like:</p> <ul style="list-style-type: none"><li>• What is an enterprise agreement?</li><li>• What is bargaining?</li><li>• What are the steps in the bargaining and agreement-making process?</li></ul> <p>The purpose is to provide a succinct, highly accessible entry-point into understanding bargaining and agreement-making, from which users can investigate further.</p>
2	Consider producing information materials to support bargaining representatives to understand their role and responsibilities.	<p>Consider creating resources that specifically define the roles, responsibilities and challenges of being a bargaining representative. This may assist bargaining representatives, who appear to have highly challenging experiences and would benefit from highly accessible information about their role.</p>
3	Review whether existing resources need to be refreshed to optimise user friendliness.	<p>Consider reviewing existing resources to validate that they are as visually engaging, succinct and accessible as possible, to ensure they align with participant feedback/requests, and update, as appropriate.</p>
4	Consider strategies to promote and enable easier access to existing information resources.	<p>Some of the knowledge gaps participants appeared to have could be, at least, partially addressed by existing resources. Low awareness and utilisation of existing resources should be addressed through assessing methods for promoting materials and enabling users to find them quickly and easily, if/when they search for them. This may include encouraging agents, lawyers, unions, industry associations, etc., to share the resources with their clients/members.</p>
5	Produce materials that employers can share with employees and managers, or that bargaining representatives can share with colleagues.	<p>Create materials so that they are fit-for-purpose for distribution by employers, bargaining representatives, unions, industry associations, etc. This may assist in addressing low general awareness of bargaining and agreement-making observed by participants.</p>
6	Investigate which existing resources contain information that can be repurposed into the formats recommended by participants.	<p>The Commission already provides the public with various resources relating to bargaining and agreement-making. Rather than re-invent resources, consider reviewing existing content to identify what can be re-purposed/refined in new materials.</p>





Methodology

### Research focus and scope

This qualitative research was designed to inform development of information resources that can help employers and employees, particularly from small business, to bargain for enterprise agreements, targeting insights on:

- how employees and employers conceive and understand enterprise bargaining and agreement-making;
- enablers to commencing bargaining and reaching agreement;
- suggested solutions to overcome barriers;
- how employer and employee bargaining representatives prefer to access information and support.

Systemic changes to legislation or policy were not within scope, nor was redesign of existing agreement approval processes.

### Research participants

The research targeted specific participant groups from smaller businesses with limited or no experience of bargaining for an enterprise agreement.

1. The 'experienced' participants  
Employer bargaining representatives and employee bargaining representatives (inc., union delegates and individual bargaining reps) **who had experience of bargaining for at least one but not more than 2 enterprise agreements in the past 4 years.**
2. The 'inexperienced' participants  
Employers and employees with informal bargaining, problem-solving or single-issue negotiation experience, but **no experience of formal bargaining** for an enterprise agreement. Participants needed to have contemplated bargaining for an enterprise agreement to qualify for the research.

### Recruitment

The 'experienced' participants were recruited using the Commission's case management system records.

A sample frame for recruitment invitations was constructed using data from case management records and data points from the Workplace Agreements Database.

Commission staff extracted records from agreement approval cases over a period of 4 years. The agreement nominal expiry date information was used as a proxy for when bargaining would likely take place next.

Staff targeted small and smaller medium-sized enterprises using proxy measures for business size, by excluding employer and employee bargaining representative records from cases where the number of employees covered by the EA was 100+ employees.

Approximately 1,400 employer and 740 employee bargaining representatives were invited to participate in the research in October 2023. Approximately one-third of the attempted contacts were unsuccessful/undeliverable. Commission staff screened the employer and employee bargaining representatives who expressed interest in participating in the research and then scheduled online workshops and interviews for those who qualified.

Commission staff also requested assistance with recruitment from 28 stakeholder organisations, sending out a flyer that could be disseminated to their members and affiliates. These initiatives did not successfully source any participants.

# Bargaining Discovery Research

## Methodology

The ‘**inexperienced**’ participants were recruited by Pivot via the market research recruitment platform, **Askable**.

Employers and employees were screened for eligibility using an online survey. Pivot consulted the Commission’s project team to confirm eligibility of each participant based on responses to the screener survey prior to scheduling the interviews. Participants needed to have had some experience of representing the interests of others in a workplace context, but not bargaining for an enterprise agreement. Further, participants needed to be at least aware of enterprise agreements (i.e. know the difference between awards and enterprise agreements) and have contemplated agreement-making.

## Data collection

Two (2) stakeholder workshops were conducted in October 2023 with members and nominees from the Commission’s stakeholder user groups, including the *Enterprise Agreements and Bargaining Advisory Group* to assist with development of the design of research with the employer and employee participants.

The research has drawn insights from a total of 35 participants, including:

- **18** employers
  - 14 ‘experienced’, and
  - 4 ‘inexperienced’.
- **17** employees
  - 11 ‘experienced’
  - 6 ‘inexperienced’.

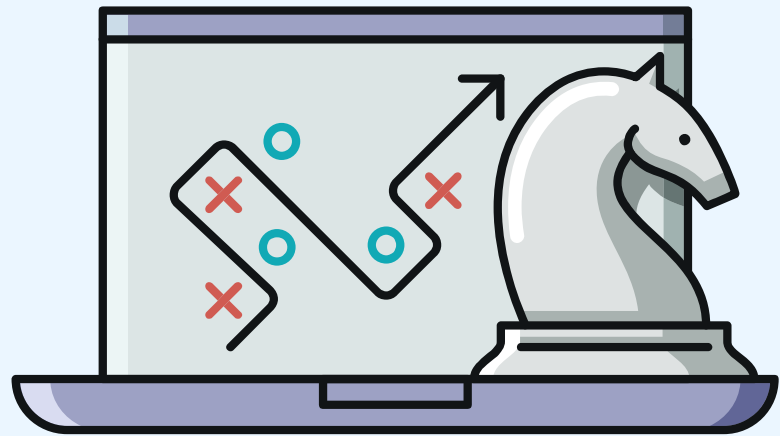
Data was collected using discussion guides that were developed with input from the 2 stakeholder workshops and Commission staff.

The data collection activities took place in November 2023 and included:

- 5 x 1.5-hour semi-structured workshops conducted online on Microsoft Teams
  - 2 employer-only session
  - 2 employee-only sessions
  - 1 combined employer and employee session
- 15 x 45-minute interviews conducted via telephone

All participants were offered monetary compensation in the form of a gift card that was coordinated by Pivot at the conclusion of the data collection period.

The data collection materials used for the workshops are included in this report as appendices. This details the research lines of enquiry and activities.



## Appendix 1: Workshop discussion guide



# Workshop

**Fair Work Commission**

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Bargaining Research



## Purpose & Objective

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### Why

The Commission seeks to develop resources to support users with bargaining.

### What

Collecting user feedback, insights & perspectives on bargaining & agreement-making.

### How

Discussion about:

- Views on bargaining & agreement
- Enablers to commencing bargaining & reaching agreement
- Awareness and knowledge gaps
- How users want to access information & support

### Next Steps

Recommendations on what the Commission can do to support users, including what resources to develop.



## Focus of the Discussion

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The Commission seeks to develop resources to support users with bargaining.

The Commission envisions these resources will:

- Support users to understand what Enterprise Agreements are
- Fill any knowledge gaps users may have
- Help users understand what the major steps in the process are
- Ensure users have the tools, resources, etc., they need, if they choose to bargain for an agreement.

Consequently, there is a distinct focus on understanding what knowledge, information, and resources users need.

A particular focus for this session will be on what practical resources users recommend and what those resources look like.



## Agenda

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1. Welcome & Session Introduction (done)
2. Participant Introductions
3. The purpose & key features of Enterprise Bargaining & Agreement
4. Understanding Bargaining & Enterprise Agreements
5. Recommendations for supporting users





## Introductions

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### About:

- Name, Role, Industry
- Level experience in bargaining & agreement making

### Perspective

- Overall, what is your perspective on Bargaining & Enterprise Agreements? What words do you associate with Bargaining & EAS?

### Recommendations

- 1-3 practical recommendations for how the Commission could support users?

### Question:

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From your perspective, why use an Enterprise Agreement (instead of an Award)?

### Additional Questions

- To you, are 'bargaining' and 'making an enterprise agreement' the same thing? Or different? How do you define bargaining?
- What factors motivate you to bargain? Why engage in bargaining?
- What kind of things (workplace issues, employment conditions, etc.,) have you, or would you, bargain for?

### Question:

How confident do you feel in your understanding of Bargaining & Agreement Making? i.e., what it is, the steps involved, what your role is, etc.

What information do you find yourself uncertain about or feel is missing in your current understanding of Bargaining & Agreement Making?

### Topic:

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## Understanding Enterprise Agreements

- How would you describe the process of bargaining and making an enterprise agreement to a colleague [who was considering becoming a bargaining rep]?
- Can you tell me about the different approaches that can be taken to bargaining and how the 2 sides negotiate?
- How would you describe a productive bargaining process?
- How would you describe the procedural steps & rules that must be followed in making an agreement?

## Question:

What specific forms of support would be most beneficial for you and others with similar needs?

### Topic:

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What would best support you (and other users like you)?

- Where do you obtain information about bargaining & agreement – making?
- Have you used existing Commission resources? What do you think of them?
- Have you ever contacted the Commission to seek information or support? What was your experience?
- Are you familiar with the Collaborative Approaches Program Or New Approaches? Who is familiar with Interest-Based Bargaining? Who would like to learn (more) about it?
- What kinds of information & resources would you want or expect to get from the Commission (as an independent ‘authority’ on bargaining & agreements)?



**Thank you**