

Understanding bargaining



Enterprise bargaining is a formal process that involves employers, employees and their representatives working together to make an enterprise agreement.

There are generally three key stages found in good bargaining processes.

Stage 1: Prepare

First, employers and employees decide who will represent them during the bargaining process. Employers must tell employees about their right to be represented by a bargaining representative using a [Notice of employee representational rights](#). Once the bargaining representatives are chosen, these representatives participate in discussions to negotiate the terms of an enterprise agreement on behalf of either the employer or one or more employees.

Together, these representatives make up the bargaining committee. They communicate the wants, needs and concerns of the people they represent.

To prepare for bargaining, the bargaining committee consults with the employers and employees they represent, listening to their views, gathering information and considering issues relevant to the bargaining context.

Through this process, representatives each develop a list of topics for bargaining. This may take the form of a log of claims or a list of issues or interests. Before negotiations start, the bargaining committee agrees on how and when bargaining will happen.

Stage 2: Negotiate

During the negotiation stage the bargaining committee works through the topics in the employers' and employees' logs of claims or lists of issues or interests, one by one.

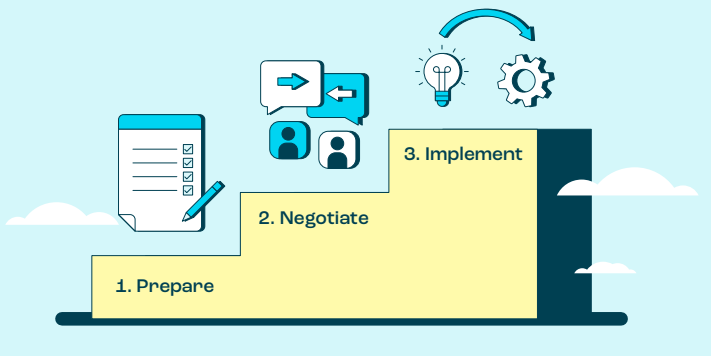
Each member of the bargaining committee is there to advocate and negotiate for the best outcome for the people they represent. To do this, they provide information and justification to support their points of view.

Representatives listen to each other's views. They may go back and forth over a few meetings to consider and discuss ideas and issues raised.

Throughout this process, the bargaining committee updates the people they represent. They may ask for opinions on proposed enterprise agreement terms and share these with the bargaining committee.

Once the terms of the enterprise agreement are settled by the bargaining committee, it must be voted on by employees and approved by the Fair Work Commission.

When approved, the enterprise agreement replaces any awards or previous agreements that would otherwise apply.



Stage 3: Implement

Enterprise agreements are legally enforceable documents.

Employers, employees and their representatives should establish processes to ensure everyone understands and can comply with the terms of the new enterprise agreement. One way to do this is to set up a joint implementation committee.

Employers should make sure payroll systems and other processes are fit for purpose and are updated as required. They should also keep an eye on base pay rates in any awards that would otherwise apply, to ensure employees' base pay rates don't fall below award minimums. If they do, employees must be paid the higher base rate from the award, while their other entitlements continue to come from the enterprise agreement.

Enterprise agreements have a nominal expiry date, but they continue to apply until they're replaced by a new enterprise agreement or terminated by the Commission.

What happens if bargaining breaks down?

Sometimes, there are difficult conversations and representatives have conflicting points of view about an issue. It can be useful to recognise this conflict isn't personal, focus on the issue itself and seek to understand each other's points of view, by listening and respectfully asking questions.




Sometimes bargaining stalls or breaks down. When this happens, there are a number of things employers, employees and their representatives can do to advance their positions. This may include taking protected industrial action.

Employers, employees and their representatives can also seek assistance from the Commission when bargaining for an enterprise agreement.

Who can help?

The **Fair Work Commission** is the national workplace relations tribunal and registered organisations regulator.

It has a range of roles in relation to bargaining and agreement-making, including:

-  providing support for enterprise bargaining
-  assisting with a bargaining dispute
-  facilitating parties taking an interest-based approach through the [Collaborative Approaches Program](#)
-  approving enterprise agreements
-  dealing with applications about industrial action
-  helping to resolve disputes about a term under an enterprise agreement.



Fair Work
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For more, visit: www.fwc.gov.au



For videos and other resources about bargaining for an enterprise agreement, visit the Commission's [Online Learning Portal](#) at learn.fwc.gov.au

The information contained in this document is general in nature and accurate at the time of preparation. If you are unsure about how it applies to your situation, please refer to the Commission's website or speak with a union, industry association or a workplace relations professional. Last updated: October 2024.