



# Fair Work Commission's response

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## Bargaining Discovery Research

Melbourne, 9 August 2024

On 9 April 2024, the Commission received a report outlining the findings of a qualitative discovery research project. The research aimed to better understand the perceptions, knowledge and information needs of relatively inexperienced employer and employee bargaining representatives in relation to enterprise bargaining and agreement-making.

The findings from the research demonstrates there is a need for information materials on the fundamentals of bargaining and agreement-making, and introductory-level resources on key processes, steps, timeframes and concepts.

Over the last 18 months the Commission has increased the support we provide our users in relation to bargaining and enterprise agreements. The discovery research will inform what we do next to assist employers and employees, particularly from small business, to bargain for enterprise agreements. This is an outline of the Commission's initial response to the report.

## Background of the discovery research

### Secure Jobs Better Pay Act 2022

On 6 December 2022 the Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022 (Secure Jobs Better Pay Act) received Royal Assent. The Secure Jobs Better Pay Act amended the Fair Work Act 2009 and made a number of significant changes to the enterprise bargaining and enterprise agreement approval processes. These changes commenced on 6 June 2023.

The Secure Jobs Better Pay Act also placed an increased focus on the Commission's role in facilitating bargaining.

## Establishing the discovery research project

In October 2023, the Commission engaged Pivot Management Consulting 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 consulted key stakeholder groups, including our Enterprise Agreements and Bargaining Advisory Group (EABAG), in relation to the statement of requirements and the design of the research. These stakeholders were invited to attend workshops co-facilitated by the Commission and Pivot Management Consulting on 25 and 27 October 2023. The insights from these workshops directly shaped the key lines of enquiry for the research.

## Workshops and interviews

The research has drawn insights from a total of 35 participants, which includes 18 employers and 17 employees.

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

Participant insights were captured through online workshops and in-depth individual interviews.

## The report

On 9 April 2024, we received a report outlining the findings of the discovery research.

Download the report

[Bargaining Discovery Research report \(pdf\)](#)

The research identified 6 key findings:

1. Participants had low comprehension of the fundamentals of bargaining and agreement-making
2. Participants reported heavy reliance upon external support
3. Participants reported that being a bargaining representative is a highly challenging role
4. There is a significant under-utilisation of existing Commission resources
5. There is a need for introductory resources
6. Resources should be user friendly

The report made 6 recommendations for consideration, which are set out at [Table 1](#).

## **Enterprise Bargaining and Enterprise Agreements Support**

Over the last 18 months, we have allocated additional resources and commenced significant initiatives to address our increased focus on bargaining and agreement-making. This includes the Bargaining Discovery Research project which has influenced our next steps to support our users to bargain for enterprise agreements.

### **What we have done so far**

In a [Statement issued on 4 April 2023](#), the President outlined the Commission's approach to implementing the Secure Jobs Better Pay Act amendments relating to enterprise bargaining and agreement approvals. We commenced a range of initiatives in preparation for the relevant Secure Jobs Better Pay Act enterprise bargaining and agreements amendments which commenced on 6 June 2023.

#### **1. Specialised Bargaining Support Team**

To reflect the increased focus in the Secure Jobs Better Pay Act on our role in facilitating enterprise bargaining, the President established a bargaining practice area and appointed Deputy President Hampton as the National Practice Leader for Bargaining. In May 2023, we established a small highly specialised team to provide targeted bargaining-related support

to the Deputy President. This team also facilitated a shift to a centralised case management model for Protected Action Ballot Order applications.

The specialised nature of the team's work has increased efficiency, quality and consistency of Commission processes. The impact of this centralised bargaining support model has seen significant improvements in the timeliness of protected action ballot orders applications, with 92% of applications finalised within 2 working days of lodgment in 2023-24.

## **2. Enterprise Agreements and Bargaining Advisory Group**

In May 2023, we established an advisory group comprised of representatives from peak organisations and other groups that represent users impacted by the Secure Jobs Better Pay Act enterprise bargaining and agreements amendments. The advisory group has provided advice to support the implementation of the amendments and provides ongoing feedback about the practical operation of the amendments.

The advisory group has also been consulted in relation to initiatives of the Commission including the discovery research. Consultation with the advisory group continues to improve the Commission's understanding of the challenges users may face, and ways the Commission can assist.

The advisory group has become one of our primary consultative forums for our enterprise bargaining and enterprise agreements-related practice areas and associated projects, including the Bargaining Discovery Research project.

## **3. Targeted materials and communications**

To help our users prepare for the Secure Jobs Better Pay Act enterprise bargaining and enterprise agreements amendments we released a series of information and communications material. This included:

- Bargaining amendments information packs written in plain language
- Video information series led by Commission Members
- Social media information packs
- Enterprise Agreements-related templates and guides

#### 4. Interactive web tools and guides

We have developed new interactive web tools and guides to assist parties to lodge complete and compliant enterprise agreement approval applications. This included creating a tool to help parties select the correct Form F17 based on their circumstances and updating our tool to generate a notice of employee representational rights to reflect the Secure Jobs Better Pay Act amendments.

#### 5. Member education and engagement sessions

Several Commission Members have facilitated education seminars and presented at engagement sessions on enterprise bargaining and enterprise agreements on request from employers, unions and industry associations. Member education and engagement sessions will continue in 2024-2025.

### What's next

The recommendations in the Bargaining Discovery Research report have influenced several projects we are currently working on. The following projects directly address several of the report's recommendations. See [Table 1 — Implementation of recommendations](#) at the end of this response for a summary of these initiatives

#### 6. Bargaining and agreements digital resources project

We are working on a project to develop three animations which will address introductory topics in relation to enterprise bargaining and agreement-making. The animations will focus on:

- foundational concepts and processes about employee pay and entitlements,
- enterprise agreements, and
- the bargaining process.

This project is in collaboration with the Fair Work Ombudsman.

These animations will be concise, visually engaging, accessible and articulated in plain language.

Participants in the research suggested that videos need to be supported by simple documentation with additional content and referrals to more information. Therefore, as part of this project, we are also creating text-based downloadable resources that will provide supporting information in plain language. These resources will complement the animations, provide practical information, and cater to different learning styles.

## 7. Bargaining and enterprise agreements website content

With a plain language focus, we are reviewing, updating and drafting new enterprise bargaining and enterprise agreements website content. This includes a review of existing information resources. We will develop a tailored communications plan to promote and enable easier access to these resources.

We are also undertaking user experience research to optimise how information is organised and presented on our website. This research will examine enterprise bargaining and enterprise agreements website content to ensure the information and resources can be easily accessed by our users.

## 8. Benchbooks

Feedback from stakeholder workshops held as part of the Bargaining Discovery Research project indicated our informed users find the Commission's benchbooks very useful. We have commenced the process of updating the Enterprise agreements and Industrial action benchbooks following the substantial changes as a result of the Secure Jobs Better Pay Act and the more recent *Fair Work Legislation (Closing Loopholes) Act 2023* and *Fair Work Legislation (Closing Loopholes No.2) Act 2024*.

## 9. Ongoing engagement with the Fair Work Ombudsman

The Fair Work Commission and Fair Work Ombudsman continue to explore opportunities to improve collaboration and identify improvements for our shared users, including small business.

## 10. Promotion of existing Commission resources

The report highlighted significant underutilisation of current Commission resources. To address this, we are developing a comprehensive promotion strategy which includes promotion of our online learning portal and existing website resources. This also includes a strategy for social media engagement.

## Thank you

We extend our appreciation to employers, employees, unions and employer associations, including members of the Enterprise Agreements and Bargaining Advisory Group, for their engagement with the research.

We also thank Pivot Management Consulting for their flexibility, understanding and professionalism in conducting the research.

## Fair Work Commission

### Subscription service

For updates on the Commission's services about enterprise bargaining and enterprise agreements, subscribe to our [Subscription service](#).

**Table 1: Implementation of recommendations from the Bargaining Discovery Research report**

#	Recommendation	Status	Update
1	Consider creating new information resources on foundational topics.	Underway	The bargaining and agreements digital resources project, in particular, the animations and accompanying text-based downloadable resources, will directly address this recommendation.
2	Consider producing information materials to support bargaining representatives to understand their role and responsibilities.	Underway	As part of the bargaining and agreements digital resources project, we are developing material in plain language on the role and responsibilities of bargaining representatives.
3	Review whether existing resources need to be refreshed to optimise user friendliness.	Ongoing	As part of the project to review enterprise bargaining and enterprise agreements website content, we are identifying what resources we could refresh to be more user friendly. This will be an ongoing project as we continue to monitor and respond to user feedback.  This recommendation will also be addressed through our upcoming website user experience research.
4	Consider strategies to promote and enable easier access to existing information resources.	Not yet commenced	We will develop a tailored communication strategy to promote the new resources we are developing as a part of our bargaining and agreements digital resources project. We will also continue to work with the Fair Work Ombudsman, Enterprise Agreements and Bargaining Advisory Group (EABAG) and other key stakeholders to inform our promotion and awareness strategy for new and existing information and education resources.  The upcoming website user experience research will also assist us to identify strategies to enable easier access to existing information resources.



#	Recommendation	Status	Update
5	Produce materials that employers can share with employees and managers, or that bargaining representatives can share with colleagues.	Ongoing	<p>All material created by the Commission in relation to enterprise bargaining and agreement-making, in particular the material developed in the bargaining and agreements digital resources project, has been developed to cater to a broad audience. One of the aims of these resources are to save employers and employees time educating their peers and staff on bargaining and agreement-making and to assist the bargaining process.</p> <p>The material developed in the bargaining and agreements digital resources project has been designed for employers, employees and bargaining representatives to share with their colleagues and constituents.</p>
6	Investigate which existing resources contain information that can be repurposed into the formats recommended by participants.	Underway	Existing resources are being reviewed as part of the bargaining and agreements digital resources project. One of the aims of this project is to repurpose website material into different resources as suggested by the participants in the research, including fact sheets and summaries. We will continue to review material on an ongoing basis.