

## 2022 FEDERAL ELECTION POLICY STATEMENTS

### WORKPLACE RELATIONS POLICY – ENTERPRISE AGREEMENTS

#### Key Points

- The number of enterprise agreements and the number of employees covered by agreements has declined substantially since the *Fair Work Act* was implemented.
- There are some serious problems with Australia’s enterprise agreement system that need to be addressed to encourage agreement-making.
- Enterprise agreement making should be a relatively simple process for employers and employees – not the ‘minefield’ that it currently is.
- With a few sensible reforms, the enterprise agreement system can once again play a key role in delivering improved remuneration to employees and boosting productivity for businesses. In particular, Ai Group proposes:
  - Simplifying the Better Off Overall Test by ensuring that hypothetical types and patterns of work that are unlikely to be engaged in are not taken into account.
  - Simplifying the requirements for the Fair Work Commission (FWC) to be satisfied that genuine agreement has been reached.
  - Simplifying the requirement for employers to explain the terms of a proposed enterprise agreement to employees prior to the vote.
  - Clarifying the cohort of casual employees who are entitled to vote on an enterprise agreement.

#### Policy Approach

In the recovery from the pandemic, enterprise agreements have the potential to play an important role in delivering important flexibility to employers and employees. However, unless the current problems with the enterprise agreement system are fixed the system is set to continue to wither on the vine.

According to the *Trends in Federal Enterprise Bargaining Report*,<sup>1</sup> released by the Attorney-General’s Department in December 2021, there were around 10,000 in-term enterprise agreements covering 1.65 million employees in September 2021. This compares to around 25,000 agreements covering 2.6 million employees in 2010. These changes are even more stark given that the size of the workforce increased from around 11 million to 13 million between 2010 and 2021.

Another glaring picture can be seen in the ABS statistics<sup>2</sup> that identify the level of award reliance in Australia. These statistics show that since 2010 there has been a constant

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<sup>1</sup> Attorney-General’s Department, *Trends in Federal Enterprise Bargaining Report*, September 2021 Qtr, published on 21 December 2021.

<sup>2</sup> ABS, *Employee Earnings and Hours*, Australia.

increase in the level of award reliance. This trend in award reliance is largely mirrored by the trend in employees whose pay is set by collective agreements. Every year a smaller and smaller proportion of employees are covered by collective agreements. This trend shows that something is seriously wrong with the enterprise agreement making system.

We don't need industry bargaining or any other radical approaches that would damage the economy, harm relationships at workplaces and remove flexibility at the enterprise level. What we need is to fix the 'minefield' that the enterprise agreement approval process has become.

We need to get back to the approach that worked very well from the time that enterprise agreements were introduced in 1993 up to the implementation of the *Fair Work Act* in 2009. In those days an employer and its employees, with or without union involvement, could negotiate an enterprise agreement, lodge it for approval and be confident that it was highly likely to be approved within a short time period without any fuss or need for undertakings. These days, there can be no such confidence, and this is why businesses have abandoned the enterprise agreement making system in droves, including many major employers.

Schedule 3 of the original IR Omnibus Bill contained a series of fair, balanced and worthwhile amendments to address widely recognised problems with the agreement making system.

Four particularly important reforms that need to be urgently addressed are:

1. Simplifying the Better Off Overall Test by ensuring that hypothetical types and patterns of work that are unlikely to be engaged in are not taken into account.
2. Simplifying the requirements for the Fair Work Commission (FWC) to be satisfied that genuine agreement has been reached.
3. Simplifying the requirement for employers to explain the terms of a proposed enterprise agreement to employees prior to the vote.
4. Clarifying the cohort of casual employees who are entitled to vote on an enterprise agreement.

These are basic, common sense changes, and by no means radical reforms. Major problems are currently arising in each of those areas which are frustrating and delaying the approval of many agreements. Some unions have weaponised the enterprise agreement approval process for agreements that they do not support by frequently pursuing numerous technical arguments about why a particular agreement does not meet the requirements of the *Fair Work Act*. The Act encourages these arguments and many agreements that are beneficial to, and supported by, the employer and employees covered by the agreement are being rejected by the FWC.

With a few sensible reforms, the enterprise agreement system can once again play a key role in delivering improved remuneration to employees and boosting productivity for businesses.

Productivity improvement and increased flexibility are critical during the recovery, and we cannot afford to let the enterprise agreement system continue to fail on every measure.

It's been said on many occasions that you can't legislate common sense. However, a few sensible changes to the *Fair Work Act* will go a long way towards delivering common sense enterprise agreement making outcomes, which are not being delivered in far too many cases at present.