



Workplace instruments, awards and bargaining

Information for early childhood education and care (ECEC) workers about awards, workplace instruments and bargaining.



Information for employees

For your employer to pay you the [worker retention payment](#), they must employ you under a workplace instrument that meets grant conditions.

This factsheet has information about the types of workplace instruments your employer may use.

Workplace instruments

The term workplace instrument is defined in the *Fair Work Act 2009*. A workplace instrument is a legally enforceable document that sets out the terms and conditions of employment, like:

- pay rates
- penalties and loadings
- working hours
- leave entitlements.

Some examples of workplace instruments are outlined below. This is not an exhaustive list.

Enterprise agreements

An **enterprise agreement** is a workplace instrument tailored to the needs of the business and its employees.

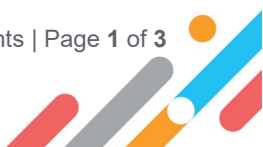
They can be made between:

- one employer and their employees (single-enterprise agreement)
- 2 or more employers and their employees (multi-enterprise agreement).

Existing enterprise agreements that are not compliant with the conditions of the worker retention payment may be made compliant through:

- a variation to the enterprise agreement, or
- an IFA.

Multi-enterprise agreements include:



- [supported bargaining agreements](#), like the one being made to cover some employers in the ECEC sector
- [single interest employer agreements](#)
- [cooperative workplace agreements](#), which can be made without authorisation from the FWC.

The Fair Work Ombudsman (FWO) provides more information about [enterprise agreements and bargaining](#).

Bargaining is when employers and employees negotiate the terms and conditions of employment. It's done with the goal of forming of an enterprise agreement. During bargaining, employees can be represented by representatives like unions.

On 6 June 2023, bargaining reforms under the [Secure Jobs, Better Pay Act](#) came into effect. This amended the *Fair Work Act 2009* and placed gender equity at the heart of the workplace relations system.

The amendments mean the Fair Work Commission (FWC) can provide greater access to bargaining for lower-paid sectors. This is done through reforms to the previous low-paid bargaining stream. It's now called the supported bargaining stream.

Supported bargaining is a new process where employers and employees can bargain collectively with other employers or employees in their sector, with support from the FWC.

Supported bargaining outcomes must lead to employees being better off overall than the pay and conditions set out in awards.

A **supported bargaining agreement** is a type of multi-enterprise agreement.

In September 2023, the FWC made a supported bargaining authorisation covering 64 Centre Based Day Care providers, their employees and their unions.

This may lead to a supported bargaining agreement which will set out terms and conditions of employment for a number of different employers and their employees.

The Commonwealth has been participating as a third party in supported bargaining conferences and will continue to support the process.

When a supported bargaining agreement comes into effect, other employers can apply to join it. They must ask their employees to vote for the agreement to be varied to cover them. If most employees approve the vote, the employer must apply to the FWC for approval of the variation.

Individual flexibility arrangements

An **individual flexibility arrangement**, or IFA, is a formal written agreement between an employer and an individual employee.

An IFA varies the effect of an award or enterprise agreement on an individual basis to meet the genuine needs of the employer and employee.

Existing workplace instruments that are not compliant with the conditions of the worker retention payment may be made compliant through an IFA.

The FWO provides information about [individual flexibility arrangements](#).

State industrial instruments

A **state industrial instrument** is an award, enterprise agreement, or another type of agreement under state or territory industrial law.

To find out more or get help, contact your state or territory's:

- Industrial Relations Commission
- Employment Tribunal.

Awards

Awards set out the **minimum** pay rates and conditions of employment in a specific industry. There are 2 primary modern awards that cover the ECEC workforce:

- *Children's Services Award 2010*, which covers educators
- *Educational Services (Teachers) Award 2020*, which covers early childhood teachers.

Every year, the FWC reviews the minimum rates of pay in modern awards to decide if they should be increased. This is the [annual wage review](#).

The FWC is currently undertaking a process to examine five modern awards, including the *Children's Services Award 2010*. This is the [gender undervaluation priority awards review](#).

The FWO provides more [information about awards](#).

Awards alone do not meet the conditions of the worker retention payment. Awards may be made compliant though:

- making an enterprise agreement to apply instead of the award, or
- an IFA.

Useful resources

Fair Work Ombudsman

The FWO provides education, assistance, advice and guidance to employers and employees. It also promotes and monitors compliance with workplace laws. On the FWO website at www.fairwork.gov.au you will find more information about:

- awards
- agreements and bargaining
- individual flexibility arrangements
- guide to starting a new job
- contacting the FWO.

Fair Work Commission

The FWC is the national workplace relations tribunal and unions regulator. On the FWC's website at www.fwc.gov.au you will find:

- Steps and timelines for making an enterprise agreement.
- A video that explains where pay rates and entitlements come from, how they interact, and the role of the two Fair Work agencies.
- A video that explains what an enterprise agreement is and how they are made.
- A video that explains the 3 key stages in a good bargaining process, and requirements for bargaining in the Fair Work system.
- An online learning portal that offers a growing catalogue of online learning modules about key workplace topics.
- Information on how to contact the FWC.

Employee organisation

If you are a member of an employee organisation (for example, a union), you can also seek their advice.