**Supported bargaining in the aged care sector**

**The introduction of the supported bargaining stream**

On 6 June 2023, numerous amendments to the *Fair Work Act 2009* (Cth) came into effect, including those introducing a supported bargaining stream, and these changes will have a significant impact on the enterprise bargaining landscape.

The multi-enterprise bargaining process has now been extended to three streams, including the existing 'low-paid bargaining stream' being replaced by the 'supported bargaining stream'.

**What does this mean for aged care providers?**

*There are more options for employees and their representatives to commence bargaining*

Employers in the sector should prepare for imminent requests or applications to commence bargaining including under the new multi-enterprise bargaining provisions.

*Have an industrial strategy*

As a result, of these and other recent changes to the Fair Work Act, it is particularly important for employers in the aged care sector to have a considered industrial relations strategy.

We anticipate those with agreements past the nominal expiry date, are likely to see activity from employees and their representatives seeking to commence bargaining, including directly and through multi-enterprise processes.

*Monitor decisions (in and outside of the industry)*

As of early June 2023, the first application for a supported bargaining authorisation was lodged in the Fair Work Commission and childcare providers representing almost 500 centres joined the landmark application. The application was lodged by three union and covers 65 employers and more than 12,000 employees nationally.

*Potential wage increases?*

We know employees and their representatives have been active in seeking wage increases (including as part of the Work Value Case – Aged care industry). We anticipate that employees and their representatives will continue to advocate for higher wages including during single and multi-enterprise bargaining.

*If you are involved in a supported bargaining process*

If a supported bargaining authorisation is made (noting the factors above), an employer would need to prove that it does not have sufficient common interests with the other employers to be excluded from the authorisation. Depending on the applications, this may well be a high bar to overcome.

Of course a supported bargaining agreement will only apply to an employer if the majority of employees for that named employer vote in favour of the agreement.

**What is a supported bargaining agreement? Key things to know**

A supported bargaining agreement is a type of multi-enterprise agreement (which can involve numerous employers) which can only be made where a *supported bargaining authorisation* is in operation immediately before the agreement is made.

The Fair Work Commission will be able to make a *supported bargaining authorisation* if it is satisfied that it is appropriate for the relevant employers and employees to bargain together when considering factors including:

* the prevailing pay and conditions in the relevant industry/sector, including whether low rates of pay prevail in the industry or sector;
* whether the employers have clearly identifiable common interests (which may include geographic location, the nature of the enterprises to which the agreement will relate, the terms and conditions of employment in those enterprises, and whether they are substantially funded, directly or indirectly, by the Commonwealth, a State or a Territory);
* whether the likely number of bargaining representatives is manageable; and
* any other matters the Commission considers appropriate.

There are some restrictions on where an authorisation can be made including not incorporating an employee who is covered by a single-enterprise agreement that has not passed its nominal expiry date (except where the Commission is satisfied that the main intention of the employer in making that agreement was to avoid being included in an authorisation).

Within the supported bargaining stream:

* The responsible Minister has been given the power to declare an industry, occupation or sector eligible to take part in this stream.
* The Commission must make a supported bargaining authorisation in response to an application in industries, occupations or sectors the subject of a Ministerial declaration.
* The Commission will also be required to make a bargaining order in certain low-paid industries if the prescribed requirements are met, including where employers have clearly identifiable common interests.
* bargaining orders are available and applications to deal with bargaining disputes can be made by union who is entitled to represent employees/s in relation to work to be performed under an agreement or a single bargaining representative (this could include an employee etc).
* the Commission may provide assistance to bargaining representatives on its own initiative, including directing relevant third parties (e.g. third party funding providers) to attend conferences if their participation is necessary for the making of an agreement;
* Employers can be added to and removed from an authorisation;
* if the parties are unable to reach agreement, the Commission may make a binding workplace determination through the new intractable bargaining declaration process; and
* protected industrial action is permitted, with additional safeguards requiring mandatory conciliation and 120 hours’ notice.

When a supported bargaining agreement is made and approved by the Commission, the agreement can be varied to cover additional employers and their employees (with and without agreement).

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