



MEAs and the community sector A•S•U

This paper sets out why it is imperative that the “public interest” stream be retained and why even parties are consenting to bargain for a MEA they should be entitled to access FWA and good faith bargaining orders.

- It is essential that in addition to being able to facilitate bargaining for the low paid and for those who have not had access to bargaining, FWA retain its broad discretion to approve bargaining where it is in the public interest.
- Historically both the AIRC and FWA have had discretion in the area of MEA's and their operation in the public interest- there is no good reason to remove this discretion.
- The current “public interest” test arrangements have meant that the Workplace Authority, and previously the AIRC, has relied on issues such as, reliance on government funding, lack of employer expertise and size of the workforce in determining that employers and employees can bargain for an MEA in the public interest.
- It is unreasonable and inconsistent to assert that simply because an employer and employees (union) have agreed to bargain for an MEA that they should not have access to FWA and good faith bargaining orders.
- The Community Sector will lose the ability to increase wages and funding via the award system under *Forward with Fairness*. This leaves bargaining as the only option for improving wages and conditions. An unfair system for the making of MEA's for the community sector will be disastrous.

The Solution

- **Retain the Forward with Fairness commitment to enable FWA to facilitate the making of MEAs available to the low paid and those who have not had access to bargaining;**
- **Retain the discretion of FWA to further approve MEA's where it is in the public interest**
- **Ensure that employees who have access to MEA's as a result of being either, low paid, had no previous access to bargaining, are bargaining by consent, or who have met a public interest test have the same rights to access the assistance of FWA.**
- **Provide a stream of MEA's for consenting parties with no access to FWA.**

An Alternative Approach

Forward with Fairness states, “Collective bargaining will be based on bargaining at the level of an enterprise. The well understood definition of ‘enterprise’ will continue and may include a single business or employer, **a group of related businesses operating as a single business** or a discrete undertaking site or project.”

Social and Community services are services delivered for and on behalf of state and federal governments. Each of the services and the funding arrangements pertaining to them are regulated for government by statute – **they are a group of related businesses operating as a single business** to deliver government services.

The Solution

Draft the definition of “Single Business” to include a group of employers which are funded by governments to deliver programs on their behalf. Such employers come under common statutory requirements and competition between employers is not a feature of their operation

The adoption of this approach would overcome all of the objections raised above.

The Making of MEAs

From 1996 till 2006 the rules pertaining to the making of a multi business agreement or multi employer agreement (MEA) were simple:

- Unions, or employees and a number of employers could make a multi employer agreement provided that it was in the “public interest”
- Protected industrial action was not permissible
- The parties bargained in whatever way they deemed appropriate and, consequent upon reaching a settlement, they made an agreement which was then subject to certification by the Commission subject to it meeting the “public interest” test
- There were no further constraints upon the parties other than those pertaining to bargaining in general

Since 2006 under WorkChoices the rules pertaining to the making of a multi employer agreement are:

- Before multi employer bargaining can commence with any prospect of final approval of an agreement, the Workplace Authority must provide a certificate

stating that “in the public interest” the parties may pursue the making of a multi employer agreement

- Protected industrial action is not permissible
- Only an employer can apply for a certificate on behalf of a designated group of employers
- There are no further constraints upon the parties other than those pertaining to bargaining in general

The government’s announced proposals in relation to the making of MEA’s are as follows:

- MEAs can be initiated by any party
- MEAs can only be obtained in the low paid sector or for those who have not had access to bargaining
- The existence of over-award payments in the employment arrangements in one employer will preclude that employer from being involved in an MEA
- Protected industrial action is not permissible