



PEOPLE, CULTURE & EMPLOYMENT GOVERNANCE

Enterprise Bargaining: A Strategic Choice, Not a Default Expectation

Good faith bargaining is about process, not outcome. You are never required to agree to specific terms

Most associations do not need an enterprise agreement to run a compliant, well-functioning workplace, and this is worth stating plainly before anything else. For most associations in the national workplace relations system, a well-designed combination of the relevant modern award, properly drafted employment contracts, and clear internal policies meets the organisation's legal obligations without the complexity enterprise bargaining introduces. Associations in Western Australia that are not trading or financial corporations should check whether the state system applies instead.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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A Strategic Decision, Not A Default Expectation

An enterprise agreement sits above the relevant modern award and must satisfy the Better Off Overall Test, confirming employees are better off under the agreement than they would be under the award alone. This can offer benefits, simplified pay structures, rostering flexibility matched to the organisation's actual operations, and multi-year certainty once approved. It also brings ongoing complexity, negotiation, formal approval, and compliance obligations that persist for the life of the agreement. A board considering enterprise bargaining should treat this as a deliberate strategic decision weighed against these real trade-offs, not something every maturing employer is simply expected to eventually do. Whether to start bargaining is usually the board's choice. However, if a majority of employees want an agreement, the Fair Work Commission can make a majority support determination requiring the association to bargain, and some sectors can be drawn into multi-employer bargaining.

The Distinction Most Boards Get Wrong: Process, Not Outcome

Where an association does bargain, good faith bargaining obligations under the Fair Work Act are specifically about how the process is conducted, not what the final agreement actually contains. An employer is not legally required to make concessions or agree to any specific term. The legal requirements are process-based: attending and participating in meetings at reasonable times, disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner, responding to proposals in a timely manner, properly considering proposals and giving reasons for responses, avoiding capricious or unfair conduct that undermines freedom of association or collective bargaining, and recognising and bargaining with the other bargaining representatives. A board that

understands this distinction precisely can engage in bargaining confidently, without the common misconception that starting the process risks being forced into unfavourable terms. Conduct such as repeated cancellations, unexplained delays, or a negotiator with no authority to make decisions may be found inconsistent with good faith bargaining, regardless of how reasonable the organisation's underlying position might be.

The Delegation Question This Series Has Already Established

Precisely because sending an under-authorised representative to the bargaining table is a good faith risk, the board must be clear about who is negotiating on the association's behalf and what authority that person holds, connecting directly to the delegation of authority discipline discussed earlier in this series. A negotiating team without authority to meaningfully engage does not merely slow the process. It creates real legal exposure for the organisation.

- Treat the decision to pursue enterprise bargaining as a strategic choice requiring board-level weighing of costs and benefits, not a default step every growing employer eventually takes, while noting that employees can seek a majority support determination.
- Understand precisely that good faith bargaining is a process obligation, not a requirement to agree to specific terms, before entering negotiations with unnecessary caution or reluctance.
- Ensure any negotiating representative has clear, delegated authority to engage meaningfully, connecting directly to the delegation discipline discussed earlier in this series.
- Avoid repeated cancellations, unexplained delays, or disengaged participation during bargaining, since this kind of conduct can put a good faith bargaining position at risk regardless of intent.
- Confirm any proposed agreement passes the Better Off Overall Test against the relevant award before proceeding to a vote, since this is the threshold the Fair Work Commission will ultimately assess.

Enterprise bargaining can be a valuable tool for an association whose operational needs no longer fit neatly within a standard award, but it is a tool, not an obligation every organisation must eventually reach for. The right governance response is a deliberate decision made with the actual trade-offs in view, not an assumption borrowed from how larger employers operate.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

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BOARDROOM ACTION WORKSHEET

Enterprise Bargaining: A Strategic Choice, Not a Default Expectation

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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