The Bargaining Cycle under the Fair Work Act

**Planning Stage**
- Contingency planning
- Industry trends
- Training
- EA content & scope
- Timeline
- Union log of claims
- Staff communications
- Establish ‘Bargaining Team’
- Bargaining strategy
- Coms/PR strategy
- Appoint ‘Decision Makers’

**Notice of representational rights**
- Union/s or employee seek to negotiate
- Employer Refuses
- Employer Approves
- Majority support determination

**Bargaining continues**
- Good Faith Bargaining
- Bargaining orders/Scope orders
- Dispute
- Refer to the Fair Work Commission
- Bargaining Reps agree FWC

**Workplace determination**
- Serious and consistent breach of bargaining orders

**FWA Conciliation**
- Agreement “made”
- Employees vote on approval of agreement
- Employees vote to approve the agreement
- Agreement approved by the Fair Work Commission
- Statutory declarations/agreement passes the BOOT
- Possible provision of undertakings
Understanding the legal framework is critical for a business’ bargaining team and decision-makers.

We offer public & customised training programs on enterprise bargaining which help ensure all key staff are on the same page with an appropriate level of knowledge and skills.

We offer blended delivery training solutions and a state of the art workplace training facility located right in the heart of Melbourne’s CBD.

Bartlett Workplace – thinking differently

Bartlett Workplace is a specialist workplace relations firm offering expert workplace legal and HR advisory services, and workplace management capability training.

We are thinking differently not only in the way we deliver our services and training, but also in the way we structure our costs and fees. We offer a retainer model and are also open to concluding fixed and capped fee arrangements. We are focused on developing strong and lasting relationships that add value to your business.

With offices in Melbourne and Perth, and a network of HR/IR consultants Australia-wide, we are ready to help you when, where and how your business needs it.

We are the experts when it comes to:

+ Planning and execution of enterprise bargaining strategies;
+ Legislative compliance with respect to enterprise bargaining and enterprise agreement content;
+ Dealing with industrial action issues and disputes and dispute settlement processes;
+ Bargaining-related Fair Work Commission and Court proceedings;
+ Enterprise bargaining-related training; and
+ Workplace relations and employment-related litigation.

Your end to end enterprise bargaining partner

Bartlett Workplace is uniquely positioned to be your end to end enterprise bargaining partner.

Our integrated offering:

A team of lawyers with over 70 years’ combined experience in workplace relations. Our lawyers have extensive experience in all aspects of private and public sector bargaining, bargaining-related litigation and industrial action.

Our lawyers can:

+ be directly engaged; or
+ provide legal advice as needed if your business is being assisted by our consultants.

In-house and through our alliance with Strategic Human Resources (shr.com.au), a network of HR and IR consultants who have worked in employee relations across all industries/sectors.

Our consultants understand the industrial landscape and nuances associated with their particular fields of expertise and can guide your business through the bargaining process from start to finish (and even sit at the bargaining table!)

Depending on your business needs, we can facilitate the provision of specialist services in the following areas:

+ secure, online platforms as a repository for bargaining-related documents and drafts;
+ communications strategists & advisors;
+ web-content designers; and
+ enterprise agreement electronic voting.

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Our experience

Our lawyers and consultants have extensive experience providing advice and representation across a wide range of industry groups, including:

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<thead>
<tr>
<th>Public sector entities</th>
<th>Rail</th>
<th>Sports and Entertainment</th>
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<tbody>
<tr>
<td>Local, State and Commonwealth Government</td>
<td>Transport and Logistics</td>
<td>Communications</td>
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<td>Education</td>
<td>Banking and Finance</td>
<td>Aviation</td>
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<td>Health and Emergency Services</td>
<td>Utilities and retail</td>
<td>Marine</td>
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<td>Construction</td>
<td>Energy and Resources</td>
<td>Security</td>
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<td>Oil and Gas</td>
<td>Consumer Retail</td>
<td>Agribusiness</td>
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Some examples of our lawyers’ specific enterprise bargaining experience include:

+ Advising various employers in the higher education sector including acting for an Australian University in enterprise bargaining including clause drafting and strategising, advising on industrial action contingency plans, advising and representing the client in respect of a successful application under section 424 of the Fair Work Act to bring protected industrial action to an end on health, safety and welfare grounds (which included an appeal to the Full Bench of the Fair Work Commission), advising on pay deduction implications for staff taking industrial action and advising on the enterprise agreement approval process.

+ Acting for an employer in the oil and gas industry in bargaining for multiple enterprise agreements with four different unions appointed as bargaining representatives, including the making of application to the Fair Work Commission to stop the taking of unprotected industrial action. The bargaining strategy involved seeking to reduce the number of enterprise agreements covering its workforce and seeking major changes to the content of the existing enterprise agreements to maximise flexibility for the employer and increase productivity.

+ Acting for a single national employer in the health sector which was established by mirror legislation enacted in each State and Territory, utilising an application for the Fair Work Commission to deal with a bargaining dispute to successfully determine the legal status of the employer for the purposes of the Fair Work Act.

+ Acting for an employer in a significant cultural change program in the coal industry in Western Australia, which included advising on strategy, content of the Coal Miners Agreement and the Maintenance Agreement, responding to industrial action in particular by the AMWU including successfully obtaining Federal Court and Supreme Court injunctions and appearing in negotiations to break the deadlock after a 9-week strike by the AMWU.

+ Acting for an employer in the ship building industry to establish their first ever non-union collective agreement.

+ Acting for an employer in the manufacturing sector where the employees had appointed multiple bargaining representatives in a 'conflict of interest' situation and successfully using the application of Regulation 2.06 to defeat a protected action ballot application.
Acting for various maritime industry employers during industry-wide enterprise agreement negotiations including preparing, instructing and appearing in relation to applications for protected action ballot orders, unprotected industrial action, good faith bargaining orders and injunction proceedings in the Federal Court of Australia.

Acting for a maritime towage industry employer during negotiations with the maritime unions, including providing strategic input on the approach to negotiations and developing industrial contingency plans.

Acting for employers in the building and construction industry to establish non-union enterprise agreements and acting for the building and construction regulator in both Court and Fair Work Commission proceedings.

Acting for a large international resources company during negotiations involving protracted protected industrial action, including developing industrial contingency plans and representing the client in various applications in the Fair Work Commission and Federal Court of Australia.

Acting for a State emergency service agency in highly contentious enterprise bargaining to drive cultural change, including on applications to the Fair Work Commission for bargaining orders and in Federal Court proceedings regarding the validity, interpretation and operation of enterprise agreement terms.

Acting for and appearing on behalf of State emergency service agencies in numerous enterprise agreement disputes in the Fair Work Commission including substantial arbitrations.

Acting for a State public service employer in bargaining including appearing in and successfully defending an application for a scope order and an application that a public servant bargaining representative be paid to attend bargaining meetings during non-rostered hours.

Acting for a State emergency service agency in obtaining a weekend Federal Court injunction in relation to industrial action that was potentially life threatening and acting for the employer in an application to the Commission to suspend or terminate the bargaining period.

Acting for an employer in the Government sector including providing strategic advice with respect to managing multiple bargaining representatives and the communication strategy including dealing with the media.

Advising a State public sector employer in the health sector in bargaining including sitting at the bargaining table.

Advising a Territory public service employer in respect of a pay-docking dispute associated with staff taking protected industrial action during bargaining. The union unsuccessfully sought to have the employer’s wage deduction calculation (under section 472 of the Fair Work Act) significantly reduced by the Fair Work Commission.
“I have trained over 4000 decision makers and managers from both public and private sectors. From this experience it is apparent to me, that organisations often put their best people into management positions, making them responsible for their organisations’ most valuable asset (its people), but fail to provide them with the adequate tools and continuous training to lead them to success”.

“Our team at Bartlett Workplace is committed to working with you to provide your people with the best skills and knowledge to help them drive performance, deliver better value and maximise productivity”.

Glen Bartlett, Director and Principal Trainer, Bartlett Workplace Training

Under the Fair Work Act, employers are faced with complex procedural requirements and other challenges in the way they approach enterprise bargaining and related matters.

Further, the clauses that end up in an enterprise agreement are likely to have a lasting impact on an organisation for years to come.

Our enterprise bargaining training equips the right people within an organisation with the vital skills and/or knowledge to both understand the enterprise bargaining regime in Australia to and maximise opportunities for the business to effectively negotiate a workable and favourable industrial instrument with its workforce.

Public and Customised Training

We deliver training in the form of workshops and masterclasses all through the year, across Australia.

You can find our training schedule on our website www.bartlettworkplace.com/training

Customised Training

All our training can be customised to suit your organisation’s needs.

These tailored workshops offer advantages to such as

- Provide your team privacy. You can workshop and solve real problems in a confidential environment;
- One – on – one attention working closely with our skilled facilitators; and
- Receive personalised video and recorded copies of role plays and analysis.

Bartlett Workplace Training Facilities

Our state of the art workplace management and leadership training facility is located right in the heart of Melbourne’s CBD.

We can accommodate up to 20 people at our facility with access to the latest technology and interactive tools.

What participants say about our training

“Very informative. Really enjoyed real life stories about cases – puts everything into context”.

“Amazing. I really enjoyed how flexible the discussion was. Glen was able to answer every question without fault”.

Glen Bartlett, Director and Principal Trainer, Bartlett Workplace Training
Public enterprise bargaining workshops

Our one-day interactive enterprise bargaining workshop – which is run periodically over the year - is designed for all leaders with responsibility for enterprise bargaining. To register for this training go to www.bartlettworkplace.com or call us on 03 9603 5000.

During this practical day of training with interactive discussions, hear from our legal and negotiation experts about:

- the relevant framework under the Fair Work Act;
- tips and tricks around bargaining;
- IR strategy;
- Bargaining-related industrial action; and
- the process for approval of enterprise agreements.

Participants will also receive practical checklists and our own Bartlett Workplace Enterprise Bargaining Booklet.

There are many critical elements to the legal framework including:

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<th>Section</th>
<th>Description</th>
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<td>How bargaining may commence</td>
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<td>The ability of each and every employee within the scope of the proposed agreement to appoint a bargaining representative</td>
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<td>Various applications bargaining representatives can make to the Fair Work Commission including applications for a “scope order” which can delay the bargaining and change the bargaining dynamic</td>
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<tr>
<td>Content that must, may and must not be included in an enterprise agreement</td>
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<tr>
<td>The safety net (National Employment Standards and modern awards) which underpin enterprise agreements</td>
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<tr>
<td>The requirement to bargain in good faith – what does it require and what does it not require</td>
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<tr>
<td>The process to have enterprise agreements approved by the Fair Work Commission</td>
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Who is the training for?

This training program is critical for all managers with the responsibility for enterprise bargaining whether they be part of the bargaining group, decision making or the communications team.

What does the training cover?

- Informative session with IR experts
- Explore the critical aspects of the Fair Work Act including: parties to an agreement, types of agreements, commencement of bargaining and good faith bargaining
- Learn about IR strategy, bargaining related industrial action and the process for approval of enterprise agreements
- Hear our insights on the Fair Work Commission’s perspective on enterprise bargaining, including the approach it takes towards the approval of enterprise agreements and which employees should be covered by an agreement
- Development of useful resource documents to support management in the process
- How to provide assistance in dispute resolution including dealing with industrial action and the agreement approval process

Anticipated learning outcomes for your team

- Hands on and practical approach to understanding employer requirements and responsibility with respect to enterprise bargaining
- The ability of each and every employee within the scope of the proposed agreement to be able to appoint a bargaining representative and possible response by employers
- Understanding the process to have enterprise agreements approved by the Fair Work Commission
- Provision of resource materials worth thousands of $
Customised enterprise bargaining training

Our public enterprise bargaining training can be run privately for an organization, and can be customised and tailored to suit your organisation’s needs and audience. Our trainers have designed and delivered customised training for over 30 of Australia’s largest employers across every industry sector.

Advantages of customised training include:

- **Privacy** – you can workshop and solve real problems in a confidential environment;
- **Access to trainers** – our experts will be focused on your organisation’s structure, purpose and needs;
- **Materials** – receive personalised video and recorded copies of role plays and analysis;
- **Content** – tell us about your organisation’s particular training needs and we will focus the content of the training accordingly; and
- **Facilities** – have the option of the training taking place at your organisation’s premises, or access our state of the art learning facilities located right in the heart of the CBD (for Melbourne clients).

Popular enterprise bargaining-related customised training topics include:

- The legal framework and process requirements for enterprise bargaining and agreement making under the Fair Work Act
- Negotiation strategies and skills
- Best practice agreement content to enhance certainty, productivity and flexibility within your organisation
- Handling disputes under enterprise agreements that go to the Fair Work Commission
- Protected and unprotected bargaining-related industrial action and how to deal with it
- Interpretation of enterprise agreements
- Advocacy in industrial relations tribunals
- Facilitated executive-level

Training delivery options:

A **face to face interactive delivery model** is most popular among our clients. We recommend that no more than 20 people attend a particular training session, and that anywhere between 12 - 16 participants is the ideal number to maximise the benefits of the training.

Left: The Bartlett Workplace training facility in Melbourne, which can accommodate up to 20 people, provides training attendees with access to the latest technology and interactive tools.

However, if you have staff located in regional areas, we can deliver customised training via a live blackboard collaborative webinar session. This method allows participants to connect online and interact with the trainer in real time from their own location. All participants will receive access to all materials required for the workshop prior to the session.
Meet our legal team

Glen Bartlett  
Principal Workplace Lawyer  
Director of Training  
(Melbourne I Perth)  
(03) 9603 5001  
glen@bartlettworkplace.com

Experience

Glen has worked in the Industrial Relations area since 1986, including three years as a union advocate, four years as an academic and as a legal practitioner in the area of workplace relations and employment law since 1994. Prior to establishing Bartlett Workplace, Glen was for many years a partner at Clayton Utz and was Managing Partner of the Melbourne office.

Glen has acted for a wide range of significant private and public sector clients and some of Australia’s largest employers, covering a wide range of industries including: local, State and Commonwealth Government employers; transport and logistics; construction; power supply; energy; resources; retail; higher education; health; emergency services; sport and entertainment; postal; security agencies; and agribusiness.

Glen has also been recognised as a training leader in the areas of workplace and employment law, human resources and workplace investigations.

Bryan Mueller  
Director, Workplace Litigation  
(Melbourne)  
(03) 9603 5002  
bryan@bartlettworkplace.com

Experience

Bryan has over 20 years’ experience working as an industrial relations practitioner (12 of which were spent as a barrister at the Victorian Bar, and for more than 10 years’ Bryan worked as a Special Counsel in top tier law firms Blake Dawson (now Ashurst) and Clayton Utz).

As an industrial relations lawyer, Bryan has worked for private employer clients in the mining and resources, building and construction, transport, meat processing and communication industries. Bryan also has extensive experience in advising and representing public sector agencies (both Federal and State). He has also represented the Country Fire Authority in proceedings conducted in the Fair Work Commission (and its predecessor) and in the Federal Court. Bryan has a deep knowledge and understanding of the workplace relations issues that confront the Government sector.

Bryan has also been a special adviser to Airservices Australia – the Commonwealth statutory authority responsible for the delivery of air navigation, and aviation firefighting services and rescue, across the whole of Australia. In that role, he was responsible for the hands-on the management of Airservices’ workplace relations and several enterprise bargaining streams including that relating to the highly sensitive area of air traffic control.

Bryan is a very experienced litigator and his wealth of experience has made him an expert in identifying legal issues and the risks that workplace relations problems can have to an organisation’s interests.

Lauren Townsend  
Special Counsel (Melbourne)  
(03) 9603 5003  
laur@bartlettworkplace.com

Experience

Lauren is a lawyer with over 8 years’ experience working in the areas of workplace relations, employment, discrimination, EEO and OHS. Lauren joins Bartlett Workplace having spent many years at top tier law firm Clayton Utz.

Lauren has advised clients across the higher education sector (which included a period of secondment to the Employee Relations team of a major University), transport and logistics, emergency services, manufacturing, retail and construction, as well as local, State and Territory and Commonwealth public sector/government agencies and departments.

Lauren provides clear, well-reasoned and pragmatic advice to her clients and enjoys finding workable solutions to technically difficult scenarios.
David Scanlan  
Special Counsel (Perth)  
(08) 9485 4230  
david@bartlettworkplace.com

Experience
David heads up Bartlett Workplace’s legal practice in Perth and is an experienced employment and IR lawyer, having worked at a number of top tier law firms and has held senior roles within the emergency services industry. David has extensive experience in industrial litigation and in providing strategic advice to clients on contractual, general employment, investigations (and grievance management), industrial relations, discrimination and occupational health and safety issues across various industries.

Angus Mackenzie  
Graduate-at-Law (Melbourne)  
(03) 9603 5007  
angus@bartlettworkplace.com

Experience
Angus works closely with the team of Bartlett Workplace lawyers whilst completing his Graduate Diploma of Legal Practice, having obtained his Juris Doctor from the University of Melbourne. Angus has previously held positions as an advisor at Job Watch and as a Student Fellow at the Centre for Employment and Labour Relations Law at the University of Melbourne. Angus is a great communicator, providing easy to understand and practical analysis and advice.

To find out more about the services we provide go to www.bartlettworkplace.com

To discuss any of our training or your training needs, please call Victoria Laspas on (03) 9603 5000 or email victoria@bartlettworkplace.com

To register for any of our public training and workshops, go to www.bartlettworkplace.com
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