

# A PLAIN ENGLISH GUIDE TO



## >>AWARDS AND ENTERPRISE BARGAINING

>>What are awards and do they affect me?

An award is a standard of minimum industrial terms and conditions applying to specific groups of employees. Awards are set by the State or Federal Industrial Relations Commissions. Whether your employees are covered by an award depends on whether they fit into the occupations covered by an award.

>>Are all employees covered by awards?

No. For example, managers are generally not covered by awards, and many employees in the information technology sector are not covered by awards.

However, an employee is not "award free" only because weekly pay is greater than required by the award. An employee within the scope of an award will be covered by the award, and entitled to all of the other benefits specified by the award. Hours of work, overtime and leave entitlements often create problems when over-award payments are intended to cover all entitlements, but this has not been clearly agreed with the employee.

>>What is Enterprise Bargaining?

Enterprise Bargaining is a process by which employers and employees agree at an enterprise level to vary the terms of awards which would otherwise apply, in ways that suit the particular business and its employees. It is possible to

reorganise various classes of leave or hours of work, or to tie pay to performance. However, the enterprise bargain must pass the "no disadvantage" or "no net detriment" test: overall, the employees have to be as well or better off than under the award.

To displace an award, an enterprise bargain has to be registered with one of the Industrial Relations Commissions. The Commission checks the proposed agreement to ensure that it passes the "no net detriment" test. Unions can be parties to enterprise agreements, or not. Employees have to be given the opportunity to have union representation.

>>What is an Australian Workplace Agreement (AWA)?

Under Federal legislation, any corporate employer and an employee can enter an AWA, an individual workplace agreement between the employer and the employee. An AWA must not involve any net disadvantage to the employee compared to applicable Award conditions. An AWA can be negotiated collectively with all employees, but each signs as an individual. Unions are usually hostile to AWA's. An AWA is checked against the "no disadvantage" test by the Office of the Employment Advocate.

The potential issues involved with awards and enterprise bargaining are many. It is important to speak with an experienced employment lawyer with commercial expertise to make sure you understand the possible ramifications when dealing with this complex area of the law.



## >>How can Coleman & Greig help you?

Coleman and Greig's experienced employment law solicitors can:

- Advise about the general advantages or disadvantages of staying in the award system or introducing an enterprise agreement or AWA;
- Identify options to deal with issues in which greater flexibility is required compared to award requirements, and document those issues so that the final agreement will pass the no-disadvantage test;
- Assist with the process of having an enterprise agreement approved and documented at the workplace; and,
- Obtain approval of the final enterprise agreement or AWA from the IRC, the AIRC or the Office of Employment Advocate.

## >>Other Services

Coleman & Greig provides a wide range of services including:

### **Commercial Legal Services**

- Corporate & Commercial
- Employment Law
- Occupational Health & Safety
- Franchising
- Litigation & Dispute Resolution
- Intellectual Property
- Trade Practices
- Building & Construction
- Commercial Securities
- Commercial Property
- Business Migration
- Notarial Services

### **Personal Legal Services**

- Property and Conveyancing
- Wills and Estate Planning
- Family Law

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Solicitors and Notaries

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