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Subdivision B—Intractable bargaining declarations

234 Applications for intractable bargaining declarations

- (1) A bargaining representative for a proposed enterprise agreement, other than a greenfields agreement, may apply to the FWC for a declaration (an *intractable bargaining declaration*) under section 235 in relation to the agreement.

Note: The consequence of an intractable bargaining declaration being made in relation to the agreement is that the FWC may, in certain circumstances, make an intractable bargaining workplace determination under section 269 in relation to the agreement.

- (2) An application for an intractable bargaining declaration must not be made in relation to a proposed multi-enterprise agreement unless a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the agreement.

235 When the FWC may make an intractable bargaining declaration

Intractable bargaining declaration

- (1) The FWC may make an intractable bargaining declaration in relation to a proposed enterprise agreement if:
- (a) an application for the declaration has been made; and
 - (b) the FWC is satisfied of the matters set out in subsection (2); and
 - (c) it is after the end of the minimum bargaining period (see subsection (5)).

Matters of which the FWC must be satisfied before making an intractable bargaining declaration

- (2) The FWC must be satisfied that:
- (a) the FWC has dealt with the dispute about the agreement under section 240 and the applicant participated in the FWC's processes to deal with the dispute; and

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- (b) there is no reasonable prospect of agreement being reached if the FWC does not make the declaration; and
- (c) it is reasonable in all the circumstances to make the declaration, taking into account the views of all the bargaining representatives for the agreement.

What declaration must specify

- (3) The declaration must specify:
 - (a) the date it is made; and
 - (b) the proposed enterprise agreement to which it relates; and
 - (c) any other matter prescribed by the procedural rules.

Operation of declaration

- (4) The declaration:
 - (a) comes into operation on the day it is made; and
 - (b) ceases to be in operation when each employer specified in the declaration is covered by an enterprise agreement or a workplace determination.

End of the minimum bargaining period

- (5) The **end of the minimum bargaining period** in relation to a proposed enterprise agreement is:
 - (a) if one or more enterprise agreements (the **existing agreements**) apply to any of the employees that will be covered by the proposed agreement—the later of the following:
 - (i) the day that is 9 months after the nominal expiry date for that existing agreement, or the latest nominal expiry date for those existing agreements;
 - (ii) the day that is 9 months after the day bargaining starts, as worked out under subsection (6); or
 - (b) the day that is 9 months after the day bargaining starts, as worked out under subsection (6).

- (6) For the purposes of subparagraph (5)(a)(ii) and paragraph (5)(b), the day bargaining starts for a proposed agreement is:
- (a) if a supported bargaining authorisation or single interest employer authorisation is in operation in relation to the proposed agreement—the day that the authorisation first comes into operation; or
 - (b) otherwise—the notification time for the proposed agreement.

235A Post-declaration negotiating period

- (1) The FWC may, if it considers it appropriate to do so, specify in the declaration a period (the *post-declaration negotiating period*) that:
- (a) starts on the day the declaration is made; and
 - (b) ends on:
 - (i) the day specified by the FWC in the declaration; or
 - (ii) any later day determined under subsection (2).

Note: The FWC cannot make an intractable bargaining workplace determination during any post-declaration negotiating period (see section 269) but may still provide other assistance during the period, such as conciliation.

- (2) The FWC may, if it considers it appropriate to do so and taking into account any views of the bargaining representatives, extend the period referred to in subsection (1) by determining a later day for the purposes of subparagraph (1)(b)(ii).