

bargaining representative does not have to participate in the bargaining to be covered by the agreement.

Agreement content has changed considerably under the new Act. Agreements must continue to have no unlawful terms; i.e., no discriminatory or objectionable terms, no modification of unfair dismissal regulations, no alteration to the rights of entry, and no alteration to State OH&S laws. An amendment to the proposed Act was also made which will disallow enterprise agreements from restricting or controlling the use of independent contractors.

Agreements must have:

- individual flexibility term (which can allow an individual to leave a collective agreement),
- terms in regard to consultation (which may cover major workplace change; refer also to injunctions), and
- dispute settlement provisions.

Information included in agreements can only be 'permitted matters' which must relate to the employer and the employee or the employer and the union.

Previously, references in agreements to union claims were 'prohibited content' and disallowed. Care must still be taken in the wording of clauses, but items such as union deductions from payroll, union notice boards, union training, etc., may now be included in agreements.

#### Good Faith Bargaining

The expression 'good faith bargaining' was not included in the WorkChoices legislation, although most parties still approached Agreement making using that philosophy. Under the new Act all parties will now be required to:

- Attend and participate in meetings
- Disclose relevant information
- Respond to proposals
- Genuinely consider proposals
- Refrain from capricious/unfair conduct
- Allow consultation with employees

However, there is not a requirement to make a concession or to agree. It is also a requirement that employers (and other bargaining representatives) must not refuse to recognise or bargain with a particular bargaining representative.

Unions will now be able to represent anyone who is eligible to be a member, and unions do not necessarily have to attend bargaining meetings to be eligible to apply to be covered by an agreement.

#### Better Off Overall Test (BOOT)

An agreement must pass the BOOT, which replaces the No Disadvantage test currently in place. It is intended this will be administratively easier by allowing employees to be considered as a group where they all share the