

# A guide to interest-based bargaining

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## A new approach to enterprise bargaining

**Interest-based bargaining (IBB)** is a collaborative approach to enterprise bargaining. The parties identify and communicate their key needs in an effort to reach an agreement that maximises common interests and reconciles conflicting ones. The negotiations are consensus-seeking and the parties work together to try to solve problems. IBB is also called mutual gains bargaining or principled negotiation.

Successful IBB:

- reaches an agreement that meets the core needs of the parties – the parties are satisfied with the content of the agreement: it serves their purposes and they regard it as functional and fair
- is efficient – in terms of time and resources expended
- creates, maintains or strengthens good relationships between the parties – including as they prepare to deal with one another post-bargaining and outside of bargaining.

Traditionally, enterprise bargaining is adversarial. IBB, on the other hand, is collaborative and cooperative. The main focus of IBB is to ensure that each party is satisfied that its interests have been addressed.

## Why use interest-based bargaining?

There are a number of potential benefits to using IBB. It can:

- lead to better solutions – more information has been made available so decisions are better-informed
- create stronger ongoing relationships – the parties have worked together with a common purpose during bargaining
- increase respect and trust between the negotiating parties – the parties have openly declared their common and conflicting interests. There are no hidden agendas
- improve relationships more widely in the workplace – affected groups have witnessed a bargaining process based on open communication and mutual respect

- improve acceptance of necessary change – people may resist decisions that have been imposed upon them
- improve problem-solving capacity within the workplace.

IBB allows parties to draw on a larger number of people with a wider range of knowledge and skills than when using traditional bargaining.

Where individuals who are impacted by the outcome are given the opportunity to make inputs, they are more likely to support the outcome and invest personal effort into making it work.

The resulting agreements are more durable because they meet the underlying interests and needs of the parties and not just their short-term positions.

### **Is it the right approach for your workplace?**

Employers and employees who have a good relationship should consider IBB.

All parties need to consent to the process and be genuinely willing to work together. IBB won't work when only one party is willing to commit to the process. It is important everyone is on the same page about using interest-based methods.

IBB involves a high level of information sharing and genuine communication, so trust and respect between the parties is important.

IBB will be difficult in workplaces where relationships are strained or where there is distrust between management and staff. However, IBB can play a role in improving difficult relationships or where adversarial bargaining has previously damaged relationships.

IBB is not an all-or-nothing process. Parties can use it on particular issues or at particular stages of the bargaining process.

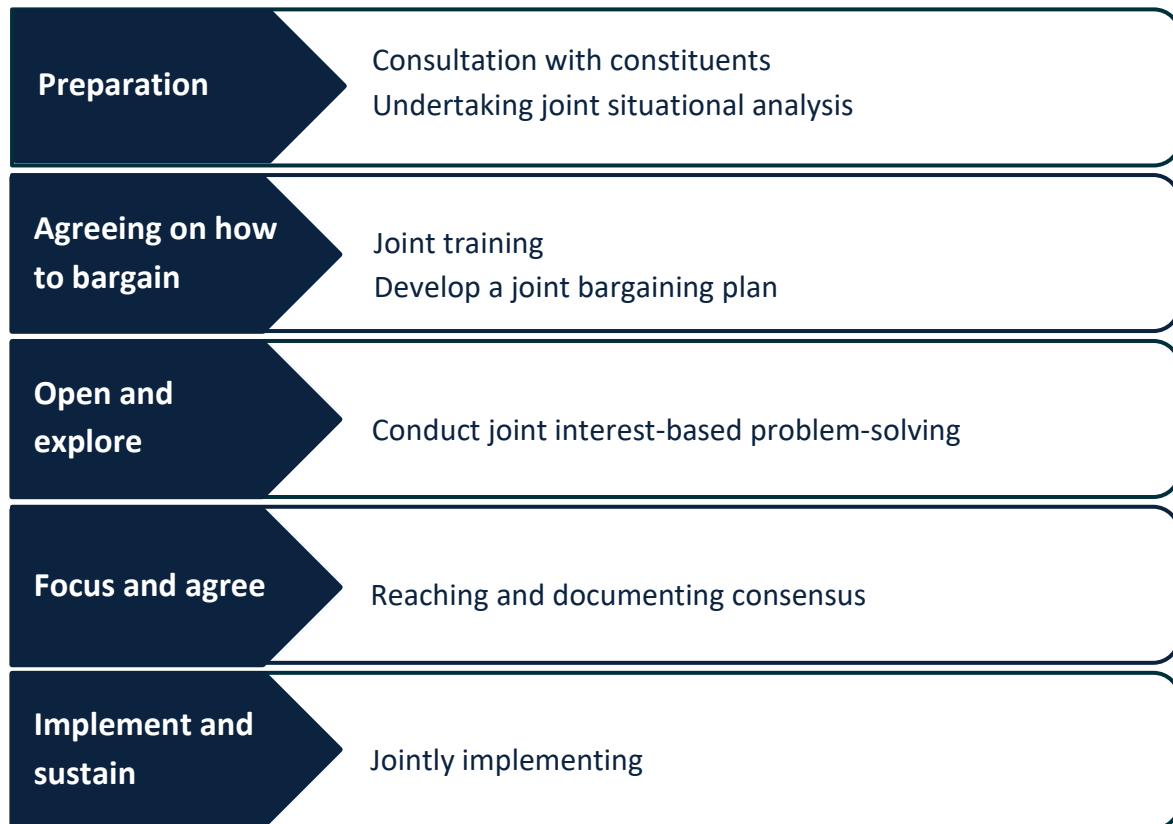
Parties who use IBB may find that certain terms in the agreement cannot be dealt with by IBB. They can return to traditional methods to negotiate those terms. Parties may agree at any point to return to traditional bargaining completely if the IBB process is not working.

### **We can help**

The Commission can help workplaces that want to try interest-based bargaining through our [Collaborative Approaches Program](#).

## A suggested model

The path set out in this guide can be a useful model for parties embarking on IBB in their workplaces.



### Preparation

This is where parties consult deeply about their interests with the people they represent and who will be affected. Then, the parties come together and share information about the context within which they are bargaining. This phase ensures that there is a common understanding of the situation.

### Agreeing on how to bargain

This phase deals with the logistics of bargaining. Essentially, this is a discussion about how to hold discussions. Important questions to consider in this phase are:

- Who is at the bargaining table?
- How will workforce representatives consult and report back to the whole of the workforce?
- When will we meet?
- How will we communicate the progress in bargaining?

## Open and explore

This is the beginning of bargaining. The parties discuss each issue or topic and identify shared and competing interests. Then they develop a range of options to address each topic or issue.

## Focus and agree

In this phase, the options generated in the previous phase are evaluated. When reaching agreement, the parties aim for consensus on each topic or issue.

## Implement and sustain

This stage puts the agreement into effect. This means that the parties commit to a plan and ensure that the agreement will be able to be implemented.

## Before you start

Before you start IBB:

- **explain** IBB to the people who will be bargaining – make sure they understand and agree with the approach
- **commit** to the process – bargaining takes time
- **resource** the process – your workplace may benefit from getting external help the first time you try it
- choose and train the bargaining team in IBB principles and techniques

## Explain IBB to the people affected

Before starting IBB, management and employee representatives (for example the union) need to explain the process to the people who will be doing the bargaining, as well as to the people they will be bargaining for.

Everyone affected should understand the approach. This is especially important if IBB is being used for the first time.

This could involve separate and joint meetings or workshops, where people involved are given an opportunity to ask questions about how IBB works and why it's being used.

It should be clear in the sessions that IBB focuses on interests and not positions. This can help employees and union members understand why there won't be a traditional log of claims, and why the process may feel different or take longer than they're used to.

Sometimes more explaining will be needed as bargaining progresses. Where IBB falters as things get underway, it is normally because key people did not understand the approach or the process.

Sometimes a workplace learns about IBB and decides it doesn't want to try it. Without a mandate, it's unlikely that going ahead with the approach would be successful. If this happens, advocates for IBB might suggest a hybrid model of bargaining with a view to falling back on traditional bargaining if it doesn't work. If this is not accepted either, the parties may choose to rest the idea for now but can always suggest it again for future agreements.

## Commit to the process

Bargaining takes time.

## Resource the process

Your workplace may benefit from getting external help the first time you try IBB.

## Choose the bargaining team

The objective of IBB is to achieve **mutual gains**. That means that the key interests of each party should be satisfied in the final bargain. The long-term sustainability of the business is in everyone's interest.

Negotiators should have basic financial literacy skills in relation to fundamentals such as reading balance sheets, profit and loss statements, and cash flow positions. Negotiators should also clearly understand the drivers of the business and the potential impact of various outcomes on the business performance. This knowledge will enable productive discussions at the bargaining table. Informed and reasoned exchanges are very much part of the process.

This may mean that the bargaining teams are made up of people you wouldn't previously have expected. It may also mean that some or all bargaining team members may need additional training to make sure they can bargain well.

You may decide that it's helpful to assign roles to bargaining team members. For example, someone who will keep discussions focused.

## Train the bargaining team

IBB teams from both sides are typically trained together in the bargaining approach and the tools and techniques used.

### Need help?

The Commission's [Collaborative Approaches Program](#) is available to workplaces that want to try IBB.

A Commission Member will work with the parties to deliver training and help with facilitation. The program is free.

This is because:

- the negotiators should have a common understanding of IBB and of how it might work in their workplace in practice
- equal competence is essential
- joint training can help build relationships.

All bargaining team members should attend all of the training, even those who think they have nothing to learn.

The training should include opportunities to practice taking an issue through the entire bargaining or problem-solving sequence.

**Tip:** Think about the context you'll be bargaining in: what forces, internal and external, are out of your immediate control? How could they affect negotiations, positively or negatively? Establishing a common view of these things will help reduce disagreements as interests and possible solutions are being discussed.

## Getting ready to bargain

Preparing for bargaining means that:

- each group should **define their interests**
- the groups together should **develop a bargaining plan**

### Define your interests

The parties need to work within their own groups to identify their objectives and key interests. The aim is to arrive at the negotiating table with an outline of objectives and interests rather than a list of claims or demands.

The objectives and interests should not be prescriptive. Negotiators should find flexible solutions that address the objectives and interests of those they represent.

**Tip:** Most people will tell you what they want. This is their position. Interests are *why* they want it. Open the conversation. Ask questions respectfully. Asking about the risks and opportunities of a particular position often leads to interests.

### Develop a bargaining plan

Towards the end of the joint training or just after it, the parties should come up with a bargaining plan.

**Tip:** It's just as important to take an interest-based approach to agreeing on how to bargain as it is to bargaining itself.

**Ground rules** – The plan should include the ground rules for bargaining. For example, the plan may set out rules around being open about interests, sharing information, avoiding positions, and not engaging in behaviour that might damage trust.

**The issues for discussion** – This is the IBB equivalent of exchanging logs of claims in traditional bargaining. The issues should be framed in broad terms so that the underlying interests can be identified, leading to the generation of options.

The list of issues can help parties identify which ones might require additional information before negotiations start. Parties may like to assign sub-committees to gather the information, particularly if the issues are complex.

**A bargaining agenda** – A bargaining agenda helps parties prepare for each discussion and helps them put the right resources in place. It sets the order that subjects should be discussed in (and, if ordered in a considered way, can improve the chances of successful negotiations).

An agenda can also help prepare the parties by indirectly flagging the larger objectives each side has in relation to the bargaining ahead: what they each hope to achieve in realising their respective interests.

**Tip:** It's often easier to work on shared interests than on competing interests, so start there. Working on shared interests creates value which can make it easier to reconcile competing interests later.

**Confidentiality** – The plan may include a commitment to keep certain classes of information within the negotiating room. IBB involves much more sharing of information than traditional bargaining, including the sharing of confidential and sensitive business information. It is important that those people being represented understand and accept this.

**Tip:** It can be a good idea to publish the bargaining plan. That way, everyone knows the when, where and what of upcoming bargaining.

**Need help?**

Download our [bargaining plan template \(docx\)](#).

## Bargaining

During bargaining, parties should:

- communicate their interests clearly
- genuinely try to understand the interests of others
- actively work on developing options for discussion – use collaborative problem-solving techniques to resolve matters on the bargaining table
- share as much information as possible relevant to the bargaining subject matter
- be objective and rational when evaluating options
- negotiate in good faith – genuinely try to arrive at consensus outcomes
- be respectful and avoid coercive methods where possible
- be patient – like all bargaining, and particularly the first time, IBB will present challenges

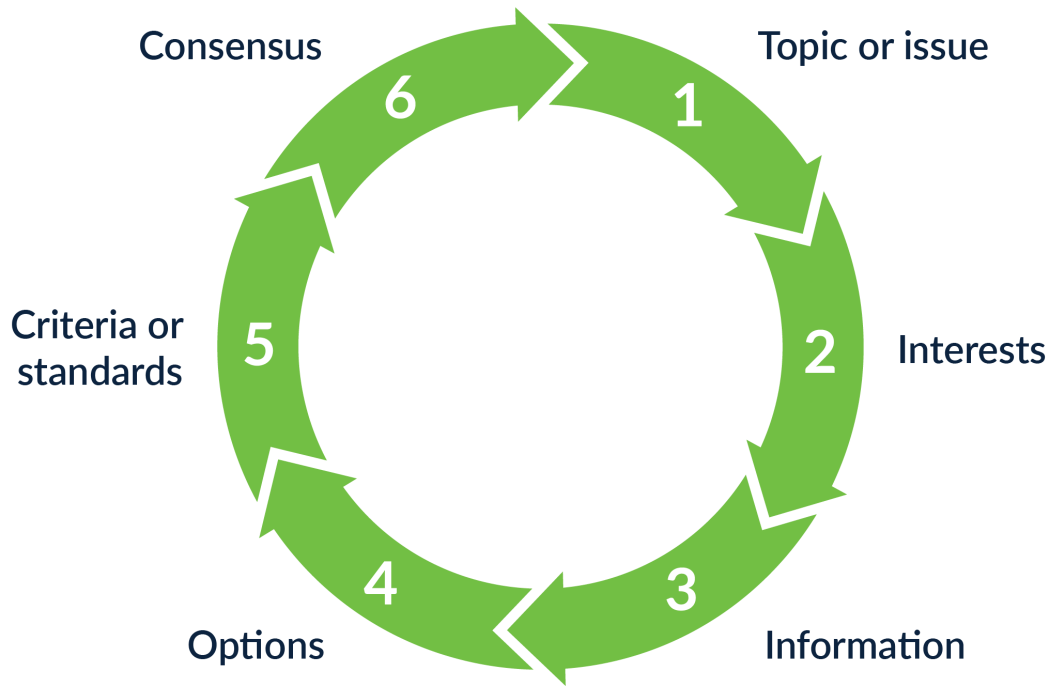
### Getting started: joint session

At the start, it may be helpful for the parties to make opening statements. Opening statements don't need to be long but they can help set the tone for the negotiations ahead. They may include their reasons for agreeing to the IBB process, and what they are hoping to achieve. They may also identify their party's interests in detail and, if possible, the parties' shared interests. Parties should avoid presenting an opening position or a set of demands.

In a less formal, less structured IBB process, these opening statements can form part of or follow on from training and/or the work to develop the bargaining plan.

Once this is done, the parties can discuss each issue in the bargaining plan. They may deal with issues individually, or by grouping overlapping or similar issues. The following 6 steps can be repeated for each issue or group of issues.





### 1. Scope out the issue: joint session

The aim of scoping out the issue is to focus the upcoming discussion.

To better understand the issue, the parties may ask: Why has the issue come up? Who does it affect? What do the parties already know about it? What else do they need to understand about it? Why does it need to be resolved?

It can then be helpful to frame the issue as a question that the parties will try to answer.

### 2. Identify the interests: separate sessions

Parties can identify interests in a joint session, but it is often done in separate sessions, at least at the start.

Interests may be worries, concerns, competing responsibilities or priorities, or any number of things. Interests underly traditional claims.

Interests may be shared, mutual, separate or conflicting.

It isn't helpful to disguise positions as interests. Hidden agendas can cause difficulties in the process.

### 3. Gather information: joint exercise

Parties should gather and share all of the information they have about the issue, as well as come up with any additional information that may help inform the discussions.

### 4. Develop options: joint exercise/session

It is important that the parties work together to develop options. Otherwise, if the two groups work separately to generate options, they could easily feel like 'union options' and 'management options' and this can be unhelpful.

Parties are encouraged to be creative at this stage and develop as many options as possible. This is not the time to make judgments about whether the options are good or bad. It is an opportunity to think flexibly, creatively and outside the box.

Options may be substantive (capable of being implemented immediately or soon) or procedural (a process such as a review that can lead to substantive options later).

**Example of creating options:** The parties have identified that reducing unplanned absences is a mutual interest. Some of the options they have developed include: reducing annual leave entitlements, increasing annual leave entitlements, allowing part-day annual leave, reducing sick leave entitlements, financial rewards for no absences in a given period, stricter rules for production of medical certificates, referral to company doctor, more flexible working hours, a joint union-management study committee to identify roots of the problem, and hiring consultants. Some of these options are poor ideas. Other options may be good or may provide a basis for other even better options.

### 5. Apply standards: joint session

Parties should decide on a set of standards that they can apply to each option to see whether they can be genuinely considered.

The standards may be that an option must be feasible, beneficial, acceptable, legal, affordable, ratifiable, implementable and safe. Options should also satisfy the interests of the parties.

Some standards aren't entirely objective. For example, if parties have different views of what is 'affordable', it can be more helpful to specify a cap on expenditure. The more specific the standards can be, the more useful they are in judging the possible solutions.

The parties should apply the standards to each option. Options that don't meet the standards can be adjusted or combined with other options in order to meet the standards. Alternatively, they can be discarded entirely.

The options that remain can go on to be considered by the parties to be included in the enterprise agreement.

## 6. **Decide on the terms of the agreement**

Once there is a set of options for consideration, the parties can decide which options best serve the interests of the parties. This should be a consensus decision. If parties can't reach consensus, the issue can always be set aside and returned to at a later time.

If the parties are negotiating a number of issues at one time, it is likely there will be some settled and some unsettled issues. The unsettled issues can be grouped in categories based on similarities of issues or interests. For example, all the money issues can be grouped. Then negotiations can be focused on a group of issues. A group of options might then be developed to address all the issues in that group. This could involve revisiting already settled options.

Sometimes, consensus won't be reached on all options. Parties may find they need to return to more traditional methods of bargaining to finalise certain terms.

**Tip:** Reality test your solutions by preparing an implementation plan. Consider the what, why, who, when, where and how of the solution. Doing this before the agreement is finalised can help you determine whether the solution is practical and make adjustments if necessary.

**Need help?** The Commission can help workplaces that want to try interest-based bargaining through our [Collaborative Approaches Program](#).

## A note about implementing your IBB agreement

Once your agreement has been made, you should aim to implement the terms using all the knowledge discovered during the IBB process: that is, with an understanding of the underlying interests of the parties.

Issues will emerge during the lifespan of most agreements. When they do, you should aim to address them in a manner consistent with IBB principles: that is, in a problem-solving way.

**Tip:** It can be helpful to form an Implementation Group. This is a joint group of management and employee representatives, ideally including some of the negotiators. The group can develop educational materials about the agreement and monitor and

This guide has drawn on inputs from Clive Thompson of CoSolve – [www.cosolve.com.au](http://www.cosolve.com.au)