



# New Workplace Law Reforms



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Recent media coverage about the new workplace laws bringing substantial changes to the way the Fair Work Commission considers improving job security, wage theft, the making of enterprise agreements, gender and pay equity, and the content of employment contracts. These changes officially received royal ascent on 5 December 2022 where they come with various effective dates.

In fact, to cover the many aspects of the changes being made to the Fair Work Act 2009 in the form of the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 involved a massive 240 pages document with major changes being made right up to the time it was finally agreed by the Parliament.

This article briefly touches on the changes to employment laws which are often not felt by many employees and employers until after they have been in place for a while. Meanwhile many industry sectors are preparing for bargaining in a way not felt in many years. There are many interested parties who have high expectations of what the latest changes will bring however more experienced experts are predicting their effect will be more long term.

### The list of changes being implemented in 2023 includes:

- Compliance action can be taken against employers for Pay Secrecy clauses.
- Amendments to eligibility for Flexible Work Arrangements, similar to existing modern award provisions will operate from 6 June 2023 with the right to raise a dispute to the Fair Work Commission about the Reasonable Business Grounds. This includes the need to request, genuinely consult and consider alternatives, and provide reasons for refusal.

- Job Advertisements: Employers will need to carefully consider how they advertise pay rates when jobs have up until now had piece rates such as in the horticultural industry. There is no requirement to include rates of pay in job advertisements under the new amendments.
- Changes to the way Fixed Term Contracts operate in relation to the duration and renewal will come into operation on or before December 2023. These will limit fixed term contracts to up to 2 years, also stopping them being able to be extended or rolled over to do the same work, and the total duration of one or more contracts exceed two years. However, there is a list of exemptions based on the type of job (Apprentices, Trainees), nature of the projects (funding arrangements), governing rules of the organisation, and conditions in the contract.
- Large claims for underpayment of wages will be more readily accessible when the cap to go to the Federal Circuit Court increases from 1 July 2023.
- Anti-Discrimination provisions are broader to include breastfeeding, gender identity, and inter-sex status.
- Prohibiting Sexual Harassment in connection with the workplace, so that the Fair Work Commission can conciliate such dispute, accordingly, issue orders and compensation; arbitration may be sought if this does not resolve the dispute. Aspects of accountability and accessory liability (third party) are operative from 6 March 2023 or earlier.
- The co-operative workplaces and Enterprise Agreements provisions will mostly operate from 7 June 2023, which will include complex provisions covering:
  - Sunsetting of “zombie” (very old, Collective) agreements operative now.
  - Changes to the agreement approval process.
  - Review of the Better off overall test considering reasonably foreseeable patterns or kinds of work that were considered when the FWC approved the agreement, whether undertakings were provided, with concerns of any ‘significant new risk’.
  - Commencing bargaining, bargaining disputes, compulsory conciliation conferences, and protected industrial action processes, where the relevant



- majority is in the context of each employer.
- Good faith and ‘minimum’ bargaining.
- The process of genuine agreement informing employees of their bargaining rights, opportunity to consider the agreement and ensure free voting.
- The Supported Bargaining Stream and Multi-Employer Bargaining are complex:
  - Small business exception if under 20 employees;
  - Exemptions to building and construction;
  - Defined Anti-avoidance provisions; and
  - Those business with over 50 employees are to prove they do not fit.
- authorisations considering whether the employer is distinguished by geographic location, regulatory regime, or nature of the enterprise, and how this is assessed includes a public interest test.
- Specific circumstances to vary enterprise agreements to remove employers and their employees.

For those businesses that have not previously had enterprise agreements, the breadth of these changes is substantial and very complex. While these changes to the workplace relations landscape will be implemented during 2023, there is a second tranche that will be announced during 2023.

In summary, these changes affect all organisations whose employees are covered by the ‘Fair Work Act 2009’, so effectively covering employees nationally.

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The above information is provided as general information only, is current at the time of preparation, and should not be relied on. If you have any enquiries about this article and all workplace relations matters, please contact your usual HR organisation or MTAQ to find out if, how and when these changes will affect your business.