

Significant Industrial Relations Reforms Pass Parliament

On Friday 2 December, the Federal Parliament passed the *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* (Cth). Yesterday, the Act received the royal assent and became law.

The Act makes some of the most significant changes to the IR landscape in decades. We recommend you become familiar with these changes to understand how they effect your business.

ABCC has been abolished

- The Australian Building and Construction Commission (ABCC) and the Building Code 2016 have been formally abolished.
- The Fair Work Ombudsman (FWO) has now taken responsibility for the industrial compliance and enforcement of the building and construction industry.

Pay secrecy clauses prohibited

- Employment contracts will not be able to have clauses that prevent employees from discussing their remuneration.
- Any pay secrecy clauses in existing employment contracts have become void and unenforceable.
- Employers could face civil penalties for including pay secrecy clauses in any new contracts of employment.

Limitation on fixed-term contracts

- Fixed-term employment contracts will be limited to a maximum of two years.
- There are some exceptions, including for employees:
 - Engaged under a training arrangement;
 - With a specialised skillset engaged for a specific project; or
 - Earning above the high-income threshold, approximately \$160,00 per year.
- Employers will need to provide any employees under a fixed term contract with a 'Fixed Term Contract Information Statement' produced by the FWO.

Added rules on flexible working arrangements

- Employees will now be able to request flexible working arrangements in a wider range of circumstances, including where they are experiencing family and domestic violence.
- In considering a flexible working request, an employer must now respond within 21 days and provide details reasons for any refusal of the request.
- An employee can now challenge an employer's refusal by application to the Fair Work Commission (FWC).

Various changes to enterprise bargaining

- There are significant changes to the enterprise bargaining process, including:

Unions will be able to initiate bargaining	Employee representatives, including unions, will be able to initiate bargaining where the employer is covered by an enterprise agreement that has expired within the last five years. This will be done through the provision of a written request to the employer.
Unions may apply for intractable bargaining determinations	A bargaining representative, including unions, may apply to the FWC for an intractable bargaining declaration if the parties can't agree on the terms of an enterprise agreement. If parties still cannot agree, the FWC can issue an intractable bargaining determination in which it will determine the terms of the applicable enterprise agreement.
Termination of enterprise agreements will become harder.	There will be a stricter test for employers to terminate expired enterprise agreements. The test will now require employers to satisfy one of three strict criteria.
Pre-2010 enterprise agreements will no longer apply.	Any enterprise agreements made prior to the commencement of the Fair Work Act will cease to apply. These instruments drop-dead 12 months from when the laws commence.

Multi-employer enterprise bargaining

- There will be an expansion of multi-enterprise bargaining. This is where multiple employers bargain for and are covered by an enterprise agreement.
- There will be three new streams of multi-employer bargaining:
 - Single-interest stream
 - Supported stream
 - Cooperative stream
- The majority of civil, residential and commercial construction work have been carved out from the multi-employer bargaining streams.
- The multi-employer bargaining streams may still be applicable for businesses that are performing other work, including joinery, prefabrication and manufacturing off-site.

Further protections for sexual harassment and discrimination

- Employers may now be liable for sexual harassment in their business, unless they can show they took all reasonable steps to prevent it from occurring.
- All reasonable means an ongoing obligation to take measures to reduce or eliminate risk.
- Liability can extend to conduct of employees, contractors and subcontractors.
- The FWC will also have additional powers to deal with sexual harassment disputes and the ability to issue stop sexual harassment orders.

Need further information?

The MBV Employment and Industrial Relations team are conducting a **webinar** to help you understand these changes.

The webinar is on **Thursday 15 December** at **10am**.

You can register for the webinar [here](#).

You can also call the MBV EIR team to have a one-on-one discussion about these changes on (03) 9411 4555.