Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022

The Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (the Act) received royal assent on 12 Dec 2022 and significantly strengthened the legal and regulatory framework surrounding the prevention of sex discrimination in the workplace.

Positive Duty

The Act introduces a new positive duty into the SDA on employers and persons conducting a business or undertaking (PCBUs) to take reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct that is already made unlawful under the SDA, including:

- sex discrimination in a workplace context;
- sexual harassment in a workplace context;
- sex-based harassment in a workplace context;
- conduct that amounts to subjecting a person to a hostile work environment on the ground of sex;
- certain acts of victimisation.

The new positive duty attaches to employers and PCBUs (the duty holder) and is a duty to eliminate, as far as possible, unlawful conduct in the workplace context by:

- the duty holder themselves — that is, by the employer or the PCBU;
- if the duty holder is an employer — by the duty holder's employees;
- if the duty holder is a PCBU — by the workers in the business or undertaking;
- by the duty holder's agents.

In some circumstances, the positive duty in the SDA extends to taking reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct by third parties (such as customers, clients, patients, suppliers, students, visitors) towards employees and workers. This includes sexual harassment, sex-based harassment, hostile workplace environments on the ground of sex and certain acts of victimisation.

The positive duty will operate concurrently with existing duties in work health and safety (WHS) laws, which require employers and PCBUs to provide a safe working environment.

Hostile Working Environments

The Act also inserted a new provision in the SD Act that prohibits conduct that subjects another person to a workplace environment that is hostile on the ground of sex.

The Act provides that a person subjects another person to a workplace environment that is hostile on the ground of sex if a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in the workplace being offensive, intimidating or humiliating to a person by reason of the sex of the person, or characteristics that generally appertain or are imputed to persons of the sex of the person. The circumstances to be considered when determining whether the conduct is unlawful include: the seriousness of the conduct, whether the conduct was continuous or repetitive, the role, influence or authority of the person engaging in the conduct, and any other relevant circumstance.

Changes to the powers and functions of the Australian Human Rights Commission

The Act also empowers the Australian Human Rights Commission (AHRC) to do several things to promote and enforce the Positive Duty by empowering the AHRC to:

- publish guidelines, promote public understanding, and undertake research in relation to the Positive Duty;
- make inquiries into and issue compliance notices in relation to a person's compliance with the Positive Duty;
- apply to the Federal Circuit and Family Court of Australia for an order directing a person to comply with a compliance notice in relation to the Positive Duty; and
- unrelated to the Positive Duty, the Act empowers the AHRC to inquire into any matter that may relate to systemic unlawful discrimination (defined as "unlawful discrimination that: (a) affects a class or group of persons or (b) is continuous, repetitive or forms a pattern").

Changes to Legal Proceedings

Lastly, the Act makes several further changes to the AHRC Act directed at ensuring access to justice for applicants who make claims under discrimination legislation. Specifically, the Act amends the AHRC Act by:

- allowing representative bodies to make representative applications in the Federal Courts on behalf of persons who have experienced unlawful discrimination. Previously, representative bodies were unable to initiate proceedings in the Federal Courts if the complaint had been terminated by the AHRC; and

providing that the President of the AHRC has a discretion to terminate a complaint if the alleged unlawful conduct took place over 24 months ago (as opposed to the previous 6 months).

Lowering the test for a finding of sex-based harassment

The Act lowers the test in the sex-based harassment provision in the SDA by removing the word 'seriously'. Previously, a person needed to engage in 'unwelcome conduct of a seriously demeaning nature in relation to the person harassed' for there to be a finding of sex-based harassment. Now it is 'unwelcome conduct of a demeaning nature in relation to the person harassed'.

Standardising time limitations

There is no specific time frame in which a complaint must be lodged with the Commission. The Act amends the AHRCA so that the President can now terminate a complaint alleging unlawful discrimination under the SDA, Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth) and Age Discrimination Act 2004 (Cth) if the complaint was lodged more than 24 months after the alleged acts, omissions or practices took place. This change applies to termination decisions made after 13 December 2022 (the date of the amendment's commencement). Prior to this amendment, the President had the power to terminate a complaint lodged under these laws if it had been more than 6 months after the alleged events — except under the SDA, where the timeframe was changed to 24 months in 2021.

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Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (the Bill) receives royal assent on 9 November 2022 and introduced significant changes to domestic violence leave. Specifically, it inserted a non-accumulating entitlement to 10 days paid family and domestic violence leave each year, into the National Employment Standards (NES), for all employees (including casual and part-time employees).

The new paid entitlement to family and domestic violence applied from 1 February 2023 for all non-small business employers (employers with 15 or more employees). It will apply to small business employers (employers with fewer than 15 employees) from 1 August 2023.

Under the Act, employees (including casual and part-time employees) will be able to take paid family and domestic violence leave if they:

- experience family and domestic violence; and
- need to do something to deal with the impact of that violence; and
- it is impractical to deal with that violence outside their ordinary hours of work.

The Act extends the definition of “family and domestic violence” to include conduct of “a member of an employee’s household, or a current or former intimate partner of an employee”. Non-exhaustive examples of where family and domestic violence leave may be taken by employees include for the purposes of:

- making arrangements for their safety or the safety of a close relative, such as a dependent child (including relocation);
- attending urgent court hearings; and
- accessing police services.

To access this leave entitlement, employees are required to give their employer notice as soon as practicable of the need to take leave, and their expected length of leave. An employer may ask an employee to provide evidence that would satisfy a reasonable person of their need to take family and domestic violence leave. Examples of reasonable evidence include documents issued by police or the court, family violence support service documents or statutory declarations. Failure by an employee to comply with their employer’s request to provide reasonable evidence will result in the employee’s ineligibility in taking this paid leave entitlement.

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* was the first major piece of legislation to change Australia’s industrial relations since the introduction of the Fair Work Act in 2009. The legislation received Royal Assent on 6 December 2022 and includes the following changes:

Equal remuneration

The Fair Work Act 2009 (Cth) currently allows the Fair Work Commission (FWC) to make a determination varying modern award minimum wages if the FWC is satisfied by work value reasons on application by an employee, employee organisation or the Sex Discrimination Commissioner. Work value reasons are related to any of:

- the nature of the work;
- the level of skill or responsibility involved in doing the work; or
- the conditions under which the work is done.

The Act legislates that the FWC can now make determinations on its own initiative and the FWC's consideration of work value reasons must be free of assumptions based on gender, and include consideration of whether historically the work has been undervalued because of assumptions based on gender.

Prohibiting pay secrecy

The Act introduces provisions intended to promote pay transparency by prohibiting pay secrecy. Employees will now have a workplace right to disclose their remuneration or any terms and conditions of their employment that are reasonably necessary to determine remuneration outcomes. Employees will also be free to ask other employees about that information. Any terms of contracts of employment which are inconsistent with the new workplace rights will have no effect, and an employer who enters a contract of employment which contains a provision inconsistent with the new workplace rights after the provisions come into effect will contravene the Act.

Anti-discrimination and special measures

“Breastfeeding”, “gender identity” and “intersex status” definitions will be included into the anti-discrimination provisions of the Fair Work Act, allowing for the harmonisation of defined terms with other Commonwealth anti-discrimination laws, including the Sex Discrimination Act 1984.

Termination of enterprise agreements after the nominal expiry date

The circumstances in which the FWC can approve the termination of an enterprise agreement after its nominal expiry date have significantly changed, with the replacement of the general public interest test and FWC discretion with a set of prescriptive conditions which the FWC must have regard to. The FWC must terminate an enterprise agreement if it is appropriate in all the circumstances to do so, and it is satisfied that one of the following three criteria applies:

- the continued operation of the agreement would be unfair for the employees covered by it; or
- the agreement does not, and is not likely to, cover any employees; or
- all of the following apply:
  - the agreement’s continued operation would pose a significant threat to the viability of a business carried on by the employer(s) covered it; and
  - the termination of the agreement would be likely to reduce the potential of employment terminations due to redundancy, insolvency or bankruptcy; and
  - if the agreement contains terms providing entitlements relating to the termination of employment, the employer(s) has given the FWC a guarantee of termination entitlements

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in relation to the termination of the agreement.

The FWC must also consider the views of the employees (unless none are covered), each employer, and each employee organisation covered by the agreement. Other than in limited circumstances, if the termination application is opposed it must be heard by a Full Bench of the FWC.

The FWC must have regard to:

- whether the application for termination of the agreement was made at or after the notification time for a proposed enterprise agreement that will cover the same group of employees;
- whether bargaining for the proposed enterprise agreement is occurring; and
- whether the termination of the existing agreement would adversely affect the bargaining position of the employees that will be covered by the proposed enterprise agreement.

Where an employer applies to terminate an agreement based on criterion 3 above (i.e. its operation will pose a significant threat to the business's viability, the termination of the agreement will likely reduce the potential for terminations of employment, and the agreement provides for termination payments that are more favourable than what employees would be otherwise be entitled to receive), employers must provide the FWC with an undertaking guaranteeing termination entitlements.

A guarantee will remain in force until:

- the end time specified in the guarantee (if any), as approved by the FWC;
- immediately before another enterprise agreement (with the same or substantially the same coverage as the terminated agreement) comes into force; or
- 4 years from the day the guarantee is given to the FWC,

whichever is earlier.

Sunsetting of "zombie" agreements

The Act provides for an automatic sunset period for Zombie Agreements (pre-FW Act and FW Act bridging period individual and collective agreements). 'Zombie' agreements are agreements made before 1 January 2010, when modern awards commenced operation under the Fair Work Act 2009 (Cth), and which continue to operate.

Unlike enterprise agreements made after that date, 'zombie' agreements were not required to be compared against modern awards for the purposes of the better off overall test (BOOT), meaning that employees covered by those agreements may have less beneficial terms and conditions than they would otherwise receive under the applicable modern award. All 'zombie' agreements will automatically sunset on 7 December 2023. However, this period can be extended for up to 4 years by making an application to the Fair Work Commission on or before 6 December 2023.

An application to extend the operation of the agreement may be made by an employer, an employee covered by the instrument, or an industrial association entitled to represent the interest of one or more employees covered by the instrument.

Changes to initiating bargaining

Employees (via a bargaining representative) will be permitted to write to their employer to initiate bargaining for a proposed single-enterprise agreement in the following circumstances:

- the proposed agreement is to replace an existing agreement; and
- the existing agreement's nominal expiry date is within the past 5 years; and

the scope of the existing agreement is substantially similar to the proposed agreement.

Dealing with errors in enterprise agreements

The FWC can more easily correct obvious errors, defects or irregularities in enterprise agreements and address situations where the incorrect version of an enterprise agreement has been mistakenly submitted to, and approved, by the FWC – removing the current complexity in rectifying these issues.

Prohibited non-compliant job advertisements

From 7 January 2023, job advertisements (ads) can't include pay rates that would breach:

- the Fair Work Act, or
- a fair work instrument (such as an award or enterprise agreement).

This means that job ads can't include pay rates that undercut employees' minimum entitlements. Employers advertising pieceworker positions where the employee would also be entitled to a periodic rate of pay (for example an hourly or weekly rate of pay) need to:

- specify the periodic pay rate that applies, or
- state in the ad that a periodic pay rate will apply.

Employers face fines for breaching these provisions unless they have a reasonable excuse for not complying.

Prohibiting sexual harassment in connection with work

The Fair Work Act prohibits sexual harassment in connection with work, which includes in the workplace. (This protection doesn't apply to sexual harassment of a worker that started before 6 March 2023.) This protection applies to:

- workers including employees, contractors, work experience students and volunteers
- future workers
- anyone conducting a business or undertaking.

A person or company is also liable for sexual harassment committed by an employee or agent in connection with work, unless they can prove that they took all reasonable steps to prevent the sexual harassment. The Commission has expanded powers to deal with disputes about sexual harassment, including to arbitrate disputes by consent. Someone who experiences sexual harassment in connection with work (or an industrial association entitled to represent them) can now pursue civil proceedings, if the Commission can't resolve their dispute. The Fair Work Ombudsman also has the power to start court proceedings for alleged breaches of the new prohibition.

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Establishment of a number of new Expert Panels

Expert Panels for pay equity, the Care and Community Sector and pay equity in the Care and Community Sector.

Flexible Work

The Act builds on the existing rights to request flexible working arrangements under section 65(1A) of the Fair Work Act 2009 (Cth) by expanding the circumstances in which an employee may request flexible work arrangements to include situations where an employee, or a member of their immediate family or household experiences "family and domestic violence", as defined in section 106B(2) of the Act.

Currently, employers must consider and respond 'reasonably' to flexible work requests from employees who are:

- Over 55
- Living with a disability
- Caring for infants or school-aged children
- Carers (within the meaning of the Carer Recognition Act 2010), or
- Experiencing family and domestic violence, or caring for someone else who is.

The Act also inserts a new section 65A, which requires an employer who receives a request for flexible working arrangements to:

- meet with an employee to discuss their flexible work request; and
- where the employer intends to refuse the flexible work request, agree upon alternative changes to the employee's working arrangements and note the agreed changes in the employer's written response; or
- if the employer still intends to refuse the request, outline the employer's reasonable business grounds for refusal and address the following:
- changes to the employee's working arrangement that would accommodate (to any extent) the employee's circumstances and that the employer would be willing to make; or
- that there are no such changes the employer could make to accommodate the employee's circumstances.

For the first time the Act introduces a dispute resolution mechanism for circumstances where an employer has:

- refused a flexible work request; or
- not provided a written response to a flexible request within 21 days; and
- the parties are unable to resolve the dispute through discussion at the workplace level.
- The Act stipulates that, where a flexible working arrangement dispute arises, conciliation should be the first avenue of dispute resolution (unless there are "exceptional circumstances").

Where conciliation is unsuccessful, or "if urgency is required", the Fair Work Commission will have the power to "deal with a dispute as it considers appropriate" or through mandatory arbitration, in accordance with new section 65C (Arbitration Clause), under which the Fair Work Commission can make binding decisions, including:

- an order that an employer be taken to have refused a flexible work request, where the employer has not responded within the prescribed 21 days; or
- where the employer has refused the request, an order that it would be appropriate for the grounds on which the employer refused the request to be taken, or not to be taken, as reasonable business grounds; or
- an order that the employer provide the employee with a written response to their flexible work request under s 65A of the Act.

Unpaid Parental Leave Requests

There are changes to how employers need to respond to requests for extending unpaid parental leave. These new requirements apply to requests for an extension of unpaid parental leave made from 6 June 2023.

When an employee makes a request to extend their unpaid parental leave, the employer can:

- agree to the request, or
- discuss and agree with the employee to a different extension period.

The employer needs to put this in writing to the employee within 21 days of the request. If an employer refuses a request to extend unpaid parental leave, the employer needs to:

- respond to the request in writing within 21 days
- only refuse a request if:
  - the employer has discussed and genuinely tried to reach an agreement with the employee about an extension, but not reached an agreement
  - the employer has considered the consequences of refusing the extension
  - the refusal is on reasonable business grounds.

The written response needs to include details of the reasons for refusal, including the employer's particular business grounds and how those grounds apply to the request, state an alternative period of extension the employer would be willing to agree to or that there isn't any extension they would agree to and refer to the new dispute resolution provisions that the Commission will have. The Commission also now has the power to deal with disputes about requests for extending unpaid parental leave, which include arbitration.

Better off overall test

The better off overall test (BOOT) will be amended to address inflexibilities in its implementation which have arisen over time, including ensuring that it is applied as a global assessment (not as a line-by-line comparison) as well as ensuring that the FWC will only have regard to patterns of work or types of employment (and not hypothetical working patterns), for both existing and 'reasonably foreseeable' employees (being a person who if he or she was an employee of an employer covered by the agreement at the 'test time' would be covered by the agreement and the relevant modern award).

Bargaining disputes

The FWC will have the power to issue an intractable bargaining declaration if it is satisfied there is no reasonable prospect of bargaining parties reaching an agreement. If this declaration is made, the FWC would consider whether to exercise its discretion to provide the parties with a further period to negotiate (a post-declaration negotiation period), taking in account the relevant circumstances and

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whether the post-declaration negotiation period would assist the parties in reaching an agreement. Following this period the FWC will have the power to make a workplace determination to resolve matters still in dispute.

Industrial Action

Various amendments have been made to the industrial action provisions of the FW Act that:

- extend the validity of a protected action ballot for a period of three months from the declaration of the ballot results (instead of 30 days);
- allow the FWC to pre-approve persons authorised to conduct the ballot in addition to the Australian Electoral Commission;
- require bargaining representatives to attend a conference conducted by the FWC during the protected action ballot period when directed to do so by the FWC;

in respect to single interest employer agreements and supported bargaining agreements, 120 hours' written notice will be required to be provided before protected industrial action can be taken.

Supported bargaining, single-interest employer authorisations and co-operative workplaces

The Act does not introduce new streams of multi-employer bargaining, but reduces barriers to access the existing multi-employer bargaining streams:

- Supported bargaining – this is a stream of multi-enterprise bargaining designed to assist industries with low agreement coverage. The administrative side of the new supported bargaining stream is not dissimilar to the low paid bargaining stream (which it replaces), but the Act has sought to overcome the historical issues with the low paid stream by removing the definition of low paid, which was interpreted narrowly and precluded employees accessing the stream, with a broader common interest test. This allows the FWC to consider matters such as the prevailing pay and conditions in the industry and whether the employers have common interests. The intention is to make it easier for employees to access this stream than the old low paid bargaining stream. While employees can apply to the FWC to have themselves and their employer added to a supported bargaining authorisation without the employer's consent, the vote is done by employer cohort, meaning that if employees of one named employer don't vote in favour of the agreement, the agreement won't apply to them.
- Single interest employer authorisations – the Act makes significant changes to the single interest employer authorisation scheme. One such change is that it repeals the term "single interest employers", instead introducing "common interest employers" who can bargain together for a multi-enterprise agreement. Despite removing this term, the FWC may still issue a single-interest employer authorisation using updated criteria for assessing whether employers are common interest employers. The Act clarifies that single interest employer agreements will now be a form of multi-enterprise agreement. The Act amends the Fair Work Act to ensure employers with clearly identifiable common interests can more easily bargain together. It provides that the operations and business activities of common interest employers must be reasonably comparable for the purposes of making or varying a single interest authorisation or agreement. For employers with 50 or more employees, the onus is on the employer to establish it is not a common interest employer or its operations and business activities are not reasonably comparable with the other employers. The changes also make it easier for employers to be added to an existing single enterprise agreement, or an existing single-interest employer authorisation, including without the employer's consent (provided a majority of employees approve), with the following caveats:
    - Employers who employ fewer than 20 employees may not be added to a single interest employer agreement or authorisation without their agreement; and
    - The FWC will have the discretion to refuse an application to add a new employer to a single interest employer agreement or authorisation if the FWC is satisfied that, on the day it will approve the relevant application, less than 9 months have passed since the most recent nominal expiry date of an agreement.

Co-operative workplaces – the new term for multi-enterprise agreements, the co-operative workplaces stream will have some key differences, including the ability for employer and employees to become covered by an existing multi-enterprise agreement and to be added to a multi-enterprise agreement.

Fixed term contracts

From 6 December 2023, employers can no longer employ an employee on a fixed term contract that:

- is for 2 or more years (including extensions)
- may be extended more than once, or
- is a new contract:
- that is for the same or a substantially similar role as previous contracts
- with substantial continuity of the employment relationship between the end of the previous contract and the new contract, and either:
    - the total period of the contracts is 2 or more years,
    - the new contract can be renewed or extended, or
    - a previous contract was extended.

Employers must not take certain actions to avoid the new restrictions from applying. For example, they can't:

- delay re-engaging an employee for a period
- re-engage the employee and engage someone else instead to do the same or substantially similar role.

Some exceptions will apply, including if the fixed term contract is:

- for a training arrangement, or
- the employee is covered by an award that allows fixed term contracts in the above circumstances.

From 6 December 2023, employers will have to give employees they're engaging on new fixed term contracts a Fixed Term Contract Information Statement. This statement will be made available by the Fair Work Ombudsman who will also have the power to start court

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proceedings for alleged breaches of these provisions. The Commission will be able to hear disputes about the new requirements and employees will be able to access small claims court too, should they want to take civil action instead.

Small Claims

Employees can commence their own legal action against their employer to seek to recover underpayments, and in respect of certain disputes regarding casual conversion requests, in the Federal Circuit and Family Court (Division 2) and State and Territory Magistrates' Courts or their equivalent. In such proceedings, the Court is not bound by rules of evidence and can act in an informal matter without regard to legal forms and technicalities. Parties need to obtain leave to be represented. There are two key changes that will commence on 1 July 2023:

1. Increase of the monetary cap on the amount that can be awarded under the Fair Work Act in a small claims proceeding from $20,000 to $100,000.
2. enable the Court in a small claims proceeding, to award to a successful claimant any filing fees they paid to the Court as costs from the other party.

This is intended to override the general rule as to costs under section 570 of the Fair Work Act and enable the Court to apply the "usual rule" (subject to the Court's overriding discretion in the interests of justice) that a successful party is entitled to their costs. This means that an applicant employee (or organisation) can generally expect to recover their filing fee if their claim is successful and also ensures that any compensation received is not diminished by the costs incurred in lodging the claim, therefore encouraging more claimants to use the small claims procedure.

Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Act 2023

The Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023 passed in parliament on 30 March 2023.

Whilst the legislation does not impose any new reporting obligations on employers, the Workplace Gender Equality Agency (WGEA) will start divulging the gender pay gaps of companies with 100-plus employees next year, drawing on data already provided by employers. Under the newly passed law, gender pay gaps will be published on the Workplace Gender Equality Agency (WGEA) website.

The Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023

The Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 was introduced to Parliament on Wednesday 29 March 2023 and was passed by the Senate on Thursday the 22nd of June 2023. The legislation makes a number of changes including:

Flexible Unpaid Parental Leave

A number of amendments have been made to the unpaid parental leave entitlement in the FW Act to align with recent changes made to the paid parental leave scheme, giving families greater flexibility in how they access the leave.

The changes include:

- increasing an employee's entitlement to flexible unpaid parental leave from 30 days over 24 months to 100 days, removing the restriction that prevents couples taking more than 8 weeks of unpaid parental leave concurrently, and allowing pregnant employees to take some of their flexible unpaid parental leave starting six weeks prior to the expected date of birth.
- allowing parents to commence unpaid parental leave at any time in the 24 months following the birth or placement of their child.
- giving pregnant employees the option to take flexible unpaid parental leave from up to 6 weeks before their child's expected birth date, without requiring permission from their employer.
- allowing employees to take flexible unpaid parental leave before as well as after a period of continuous unpaid parental leave.
- removing the concept of "concurrent leave" and allowing employees to take unpaid parental leave at the same time without limitation to promote shared caring responsibilities between parents.
- removing provisions relating to "employee couples" and allowing all employees to take up to 12 months' unpaid parental leave and request a further 12 months of unpaid parental leave, regardless of how much leave their spouse or partner takes, up to a total of 24 months each.
- simplifying the rules about the date at which the employee must have completed 12 months' service in order to qualify for unpaid parental leave, being the expected birth date of the child (for unpaid special parental leave or birth-related leave commencing before the birth of the child) or the date on which leave is to commence (in any other case).
- repealing the existing notice requirements and replacing them with a single notice from the employee which includes the start and end dates of continuous unpaid parental leave and the total number of flexible unpaid parental leave days the employee intends to take
- replacing terms such as "he", "she" and "maternity leave" with gender-neutral terms such as "employee" and "parental leave".

Workplace Determinations

Amends the FW Act to clarify that an enterprise agreement ceases to apply when it is replaced by a workplace determination.

Superannuation

An employee's entitlement to superannuation contributions will now form part of the National Employment Standards (NES). This provision introduces a requirement for employers to make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay the superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 (SGC Act) in relation to the employee. It establishes a mechanism through which a broader range of employees (or an employee organisation or the FWO on their behalf) could enforce and recover unpaid superannuation.

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The ATO will still have primary responsibility for ensuring compliance with the superannuation guarantee and associated obligations. All employees will continue to report superannuation underpayments to the ATO. The FWO would be able to continue to make referrals of unpaid superannuation to the ATO and in appropriate circumstances, pursue unpaid superannuation in a complementary role to the ATO.

Payroll Deductions

Expands the circumstance in which employees can authorise employers to make valid deductions from payments due to employees, only in instances where the deductions remain principally for the employee's benefit. Specifically, it amends s324 of the FW Act and allows for employees to agree to ongoing or multiple deductions for amounts that vary from time to time provided that the deductions are not for the direct or indirect benefit of the employer.

This is in contrast to the current provisions which require employees to provide employers with a new written authority on each occasion the amount of an authorised deduction varies.

Migrant Workers

It introduces a new item that deals with the interaction between the Fair Work Act 2009 (the FW Act) and the Migration Act 1958. The effect of this item is that a breach of the Migration Act 1958, or an instrument made under it, does not effect the validity of a contract of employment, or the validity of a contract for services, for the purposes of the FW Act.

The explanatory memorandum (EM) states that: "In this way and consistent with general established practice, the item makes explicit the policy position that a migrant worker working in Australia would be entitled to the benefit of the FW Act regardless of migration status, including in relation to wages and entitlements conferred by the statute or a fair work instrument."

The following conduct would not affect the validity of an individual's contract of employment or contract for services for the purposes of the FW Act:

- that the individual is without work rights for the purposes of the Migration Act 1958;
- that the individual has contravened the Migration Act 1958 or breached a condition of a visa granted under that Act; or

that the individual is no longer entitled to remain in Australia in accordance with a visa granted under the Migration Act 1958.

Long Service Leave for Casual Mineworkers

Amends the Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992 and the Coal Mining Industry (Long Service Leave) Administration Act 1992 and includes amendments to the definition of 'eligible wages', 'qualifying service' and 'working hours' so these terms better reflect the working patterns of casual employees, and ensure casuals are not disadvantaged when accruing and accessing long service leave. Specifically, this will enact changes to the rate of pay casuals receive while taking long service leave and how service entitling a casual to accrue long service leave is calculated.

Psychosocial Hazards

PCBUs have a duty to ensure, so far as is reasonably practicable, the health and safety of each worker while at work. Health includes physical and psychological health.

This means that PCBUs must ensure that psychosocial hazards at work are effectively managed.

The PCBU's duty to workers includes ensuring the health and safety of workers from harmful acts from third parties, such as clients, visitors, or patients.

Examples of what the PCBU is required to do to manage psychosocial hazards include ensuring they provide and maintain:

- a safe working environment
- safe systems of work
- safe use, handling, and storage of equipment, structures and substances
- adequate facilities at work
- necessary information, training, instruction or supervision of workers, and
- conditions at the workplace are monitored to ensure any risks remain adequately controlled.

https://www.worksafe.qld.gov.au/safety-and-prevention/mental-health/Psychosocial-hazards

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