

## Article Information

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## The Secure Jobs, Better Pay Bill is here: What are the proposed changes to Australia's industrial relations landscape?

**On 27 October 2022, the Albanese Government's Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Bill) was tabled in Federal Parliament. In a series of Insights, Piper Alderman's Employment Relations team unpacks the proposals and how they will impact workplaces around the nation.**

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The Bill, which runs to nearly 250 pages, proposes important changes to the *Fair Work Act 2009* (Cth) (**FW Act**) and related legislation. Many of the reforms had been flagged in the policy platform that Labor took to the May 2022 election. Others, such as those related to bargaining and flexible work requests, reflect commitments made by the government following the [Jobs and Skills Summit](#) in September 2022.

Key proposals include:

- broadening the capacity for employees to request flexible working arrangements;
- making it harder to maintain secrecy about pay rates;
- restricting the use of fixed term contracts;
- addressing the lack of pay equity for female workers;
- adding a prohibition on work-related sexual harassment to the FW Act;
- expanding the options for multi-employer bargaining;
- simplifying the processes for making and varying single-enterprise agreements;
- expanding access to protected industrial action and altering the process for taking it;
- making it easier for the Fair Work Commission to resolve "intractable" bargaining disputes;
- changing the rules for the termination and sunset of enterprise agreements;
- expanding access to the small claims procedure for recovering underpayments;
- prohibiting the advertisement of pay rates that contravene the FW Act; and
- abolishing the Australian Building and Construction Commission (**ABCC**) and the Registered Organisations Commission (**ROC**).

There are also many further changes still to come. A second major round of FW Act amendments in 2023 is expected to address matters such as the use of casual employment, the principle of "same job, same pay" for labour hire workers, minimum wages and conditions for "employee-like" workers, penalties for underpaying employees, and possibly also the composition of the FWC. There will also be changes to the *Paid Parental Leave Act 2010* (Cth), as flagged in the recent Budget.

Over the coming days, Piper Alderman will be publishing specific insights into the various proposals in the Bill, in particular with relation to how the Bill will impact the management of employees, gender equality and safety at work, and bargaining arrangements. For now, we will focus solely on the last three items on the list above, then discuss what is likely to happen next with the Bill.

### Compliance and enforcement

Given Labor's pledge to address the issue of "wage theft", it is surprising to see so little on matters of compliance and enforcement in the Bill. In particular, there is no new criminal offence for underpaying workers, or any increases in civil

penalties. It seems certain, however, that those matters will appear in the next tranche of amendments, expected to be introduced in 2023.

What the Bill does propose is to lift the monetary cap on the amounts that can be awarded in small claims proceedings under the FW Act, from \$20,000 to \$100,000. Where an applicant is successful in such a proceeding, the defendant could also be ordered to pay the applicant's court filing fees by way of a costs order.

There is also a prohibition on employment advertisements that include pay rates that would contravene the FW Act or an award or enterprise agreement, unless the employer can show a reasonable excuse. Advertisements for piecework jobs would also need to specify any periodic rate of pay to which the relevant type of pieceworker would be entitled.

### **Abolition of the Australian Building and Construction Commission and Registered Organisations Commission**

In accordance with the policy Labor took to the election, the Bill proposes to abolish both the ABCC and ROC, and remove the special rules applicable to bargaining and industrial action in the building industry.

As part of that last process, the *Building and Construction Industry (Improving Productivity) Act 2016* would be amended to remove all provisions bar those relating to the Work Health and Safety Accreditation Scheme and the Office of the Federal Safety Commissioner. The Act would be renamed the *Federal Safety Commissioner Act 2022*. The Code for the Tendering and Performance of Building Work 2016 would also be repealed.

The ABCC's enforcement functions would be transferred to the Fair Work Ombudsman, a process that has indeed already started. That would include taking over responsibility for court proceedings initiated by the ABCC.

As for the ROC, its functions would revert to the FWC and its General Manager, in line with the position that applied prior to 2016.

### **What's Next?**

The government would like to see the Bill passed by the time Parliament rises for the summer on 1 December, following a fast-track Senate inquiry for which submissions are due by 11 November.

With the Liberal and National Parties certain to be opposed, Labor will need the support of the Greens and at least one other crossbencher in the Senate. The scope and complexity of the Bill may well make that difficult to achieve this year. At the very least, there seem likely to be amendments, including from the government itself as it responds to concerns over the new bargaining regime.

That said, it seems likely that the Bill will eventually pass, albeit possibly with some elements deferred to the next round of amendments. Organisations can get ready by, among other things, reviewing their current arrangements on matters such as flexible work requests, fixed term contracts and pay secrecy, and considering how they might be impacted by the changes to agreement-making.

Piper Alderman will continue to monitor the Bill and its progress, and will be running a client webinar on 16 November 2022 to discuss the proposed changes and their possible impacts. [Click here to register now.](#)