



## *Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022 – Job Advertisements and Small Claims Jurisdiction*

On 2 December 2022, the [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) (Cth) (**Amendment Act**) was passed by the Commonwealth Parliament and received Royal Assent on 6 December 2022.

The Amendment Act introduces major changes to the Fair Work Act 2009 (FW Act) including a new prohibition on non-compliant job advertisements and the monetary threshold to the small claims jurisdiction

This Summary provides an overview to the new requirements on the contents of job advertisements and the change small claims jurisdiction.

### **Job Advertisements**

The Amendment Act prohibits employers from advertising, or causing to be advertised, a job with a pay rate that would breach the FW Act or a fair work instrument. For example, a job advertisement that specifies a rate of pay below the applicable modern award rate would contravene the new provision.

The Amendment Act also requires advertisements that include specific piece rates to specify any periodic rate of pay to which the pieceworker would be entitled. For example, the Horticulture Award 2020 contains a minimum wage guarantee. This means that growers who propose to hire an employee under a fair work instrument that contains both a piece rate and a minimum wage, and who choose to specify a piece rate in their advertisement, would need to also specify either the hourly or weekly rate which would be payable, or include a statement to the effect that a periodic rate of pay applies.

Fair Work Inspectors can now also issue compliance notices if a reasonable belief is formed that the provision has been contravened. A compliance notice can required employers take specified action to remedy the contravention, which in this case could require an employer take down or revise the advertisement.

The FW Act introduces a civil remedy provision to enable Fair Work Inspectors and unions to commence legal proceedings for breaches of this provision. A failure to comply with a compliance notice is also a civil remedy provision.

An employer will not contravene this provision if they have a 'reasonable excuse' for non-compliance. The term 'reasonable excuse' is not defined. What a reasonable excuse is will depend on the circumstances, considering the purpose of the provision. For example, an employer may have a reasonable excuse if they exercised due diligence to ensure they advertised compliant rates of pay, but incorrect advice about the applicable rates was given to them and they reasonably relied upon on it.

### **When do these changes come into effect?**

These provisions commenced on 7 December 2022 and are already in operation.

### **What should Growers do?**

As a matter of legal compliance, it will be necessary to ensure that all job advertisements contain the correct rates of pay in line with the minimum rates of pay and entitlements relevant to the applicable modern award, or other instrument that may apply.

## **Small Claims**

Under the FW Act, an employee can make an application in the small claims jurisdiction within the Fair Work Division of the Federal Circuit and Family Court of Australia, or a Magistrates Court, and seek orders for compensation relating to entitlements that an employer was required to pay to, or on behalf of, an employee.

Currently, an employee can make an application for compensation in the small claims court if the claim is \$20,000 or less and the order for compensation of unpaid/underpaid entitlements relates to:

- a term of a NES;
- a term of a Modern Award;
- a term of an enterprise agreement;
- a workplace determination;
- a national minimum wage order;
- an equal remuneration order; or
- a safety net contractual entitlement (which could include a contractual entitlement that relates to the NES or any term that is permitted by a modern award, for example minimum wages, overtime, penalty rates, allowances etc).

Employees are also permitted to make an application in the small claims jurisdiction to settle some disputes that relate to the conversion of casual employment to full-time or part-time employment.

The small claims jurisdiction is not bound by the ordinary rules of evidence and may inform itself in any manner it thinks fit, without regard to legal forms or technicalities and therefore the process is generally informal compared to most court proceedings. Further, lawyers do not have an automatic right of appearance and are not permitted to appear on behalf of parties unless permission is granted from the court.

From 1 July 2023, the Amendment Act increases the maximum monetary threshold on amounts that can be awarded in small claims proceedings from \$20,000 to \$100,000 (exclusive of interest). The types of claims that can be brought by an employee (limited to those listed above) not changed.

The court in a small claims proceeding will also be empowered to award to a successful claimant any filing fees they paid to the court, as costs from the other party (which is not currently available).

### **When do these changes come into effect?**

These provisions commence on 1 July 2023