



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

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) and other laws including provisions around pay secrecy including:

- The creation of a new workplace right allowing employees to ask one another about, as well as to disclose, or not disclose, their remuneration and any terms and conditions of their employment that are reasonably necessary to determine remuneration outcomes.
 - That a term of an employment contract or a fair work instrument that is inconsistent with this new workplace right will have no effect.
 - That an employer that enters into a contract of employment or other written agreement with an employee that includes a term that is contrary to the new prohibitions will be liable for a civil penalty.
- This summary provides an overview to the new pay secrecy laws introduced by the Amendment Act.

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

New workplace rights

Under the Amendment Act, an employee will be provided with new protected workplace rights:

- to disclose the employee's remuneration to anyone;
- to ask any other employee (including an employee employed by a different employer) about their remuneration; and
- to not disclose the employee's remuneration to anyone.

The workplace right also extends to disclosure of other terms and conditions of the employee's employment that are reasonably necessary to determine remuneration outcomes, such as hours of work arrangements and likely employer incentive and bonus schemes.

The creation of these new workplace rights relating to remuneration disclosure results in the Amendment Act expanding the application of the FW Act's General Protections such that an employer is prohibited from taking adverse action against an employee because of these new rights (see s.340 of the FW Act for the broad framing of workplace rights which includes, for instance, an employee also proposing to exercise, or not exercise a workplace right).

Inconsistent provisions are of no effect

Any terms in an instrument or contract of employment which are inconsistent with the new workplace rights are rendered inoperative by the Amendment Act. Once this occurs, the employer cannot rely on the provisions in any way, including to discipline the employee.

Prohibition

The Amendment Act prohibits an employer from entering into a contract of employment, or written agreement with an employee, containing a term that is inconsistent with the Amendment Act's new workplace rights relating to the disclosure of remuneration.

An employer who contravenes this prohibition may be liable for financial penalties.

When do the changes take place?

The prohibition on entering contracts containing terms inconsistent with the new workplace rights for pay disclosure will commence on 7 June 2023. The prohibition does not apply where the contract was entered into before then.

The new workplace rights and the provision rendering secrecy clauses in contracts ineffective took effect on 7 December 2022. However, where the employer and employee entered into the contract before 7 December 2022, the rights do not apply and the secrecy terms of the contract remain unaffected until the contract is varied or it is replaced by a new contract. Once either of those events occur the workplace rights come alive and any terms in the contract which are inconsistent with those rights are then deprived of effect.

What should Growers do?

As a matter of legal compliance, Growers should consider the following:

- removing any terms in standard employment contracts which require pay confidentiality. This also includes any reference to confidentiality in letters concerning periodic salary/pay reviews or promotions where new remuneration details are included.
- The above also includes any such similar terms that may also be included or form policies etc. Growers should consider reviewing policies and procedures to ensure that employees' rights to discuss or keep their remuneration confidential are not prejudiced, and ensure that employees who exercise these rights do not receive prejudicial treatment.
- ensure that decision makers have received sufficient training so that they are aware of the changes, the new rights and protections for workers and how to manage the relevant processes to assist in reducing the likelihood of adverse action claims.