



Fair Work Legislation Amendment (Secure Jobs Better Pay) Act 2022 – Termination of ‘Zombie Agreements’

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, particularly in relation to enterprise bargaining.

One change is the automatic termination (or ‘sunsetting’) of so-called ‘zombie agreements’, i.e. agreements made before 1 January 2010.

All ‘zombie agreements’ will automatically cease to operate on 7 December 2023 (unless this period is extended by the FWC for a particular agreement).

Employers must give affected employees notice of the automatic sunsetting by 6 June 2023, including information about the timing and the FWC’s role in extending the default period (failure to do so is a breach of a civil penalty provision).

This Summary provides an overview of the termination of zombie agreements.

What is a ‘zombie agreement’?

The Amendment Act will sunset all remaining transitional instruments currently preserved by the FW Act and commonly referred to as ‘zombie agreements’ (i.e. instruments that were made prior to 1 January 2010), namely:

- agreement-based transitional instruments, which encompasses:
 - collective agreement-based transitional instruments, such as collective agreements made under the previous Workplace Relations Act 1996; and
 - individual agreement-based transitional instruments, such as AWAs and ITEAs;
- Division 2B State employment agreements; and
- enterprise agreements made under the FW Act during the ‘bridging period’ (from 1 July 2009 to 31 December 2009).

When will the termination occur?

All zombie agreements will automatically cease to have effect from 7 December 2023 unless the FWC extends the default date for a particular instrument as explained below.

Applications to extend a zombie agreement

The Amendment Act provides a process for an employer, employee or union covered by the agreement to apply to the FWC to extend the default termination date.

The FWC may to extend the termination for a period of up to 4 years if the FWC is satisfied it is reasonable to do so, and either:

- bargaining is underway for a replacement agreement with the affected employee or employees; or
- it is likely the affected employees would be better off overall than if the modern award applied.

The Amendment Act does not limit on the number of applications that may be made.

Notification requirements

Employers must give affected employees notice of the automatic sunseting not later than six months before it will occur (i.e. by 6 June 2023). The notice must be in writing and advise employees:

- that the employee is covered by an agreement-based transitional instrument; and
- include information about timing and the FWC's role in extending the default period.

Failure to do so will be a breach of the FW Act's civil penalty provisions.

What happens to an employee's entitlements once a zombie agreement terminates?

Once a zombie agreement passes the sunset date it will cease to cover, and can never cover again, any employees, employers, or other persons. Unless a new enterprise agreement has replaced the zombie agreement, the relevant modern award which covers an employee will begin to apply.

What should Growers do?

Growers that are currently covered by a zombie agreement are encouraged to:

- Urgently consider how the zombie agreement compares to the modern award that would otherwise apply and what arrangements will need to be made to be if your business was to be required to apply such award(s).
- Plan a communication strategy for the notification required no later than 6 June 2023.
- Consider whether it would be beneficial to start bargaining with employees for a new enterprise agreement to replace the zombie agreement. This should include consideration if whether this should commence before the multi-employer bargaining provisions of the Amendment Act commence (which will be 6 June 2023 unless the Minister proclaims an earlier date)
- Consider whether it may be necessary or viable to make an application to the FWC to extend the operation of the zombie agreement.