

## iGlobal Law Annual Alert 2023 : Australia

Legal Change	Effective Date	Action required
<p><b>A positive duty to eliminate workplace sexual harassment and discrimination</b></p> <p>The Australian Government has introduced the <i>Anti-Discrimination and Human Rights Legislation Amendment (Respect@Work) Bill 2022</i> in an effort to strengthen the legal framework for preventing sexual discrimination in the workplace.</p> <p>The Respect@Work legislation proposes a new approach to promoting gender equality by:</p> <ul style="list-style-type: none"> <li>• placing a <b>positive duty</b> on employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation in the workplace (as far as possible);</li> <li>• giving the Australian Human Rights Commission the power to assess and enforce compliance with the new positive duty (e.g. the capacity to issue compliance notices to non-compliant employers); and</li> <li>• prohibiting conduct that results in a hostile workplace environment on the basis of sex.</li> </ul>	<p>TBC – 12 month transition period from the date the legislation receives royal assent</p>	<p>The new requirements will not come into force until 12 months after the Respect@Work Bill receives Royal Assent (which is expected to occur before 2023).</p> <p>In preparation, employers are encouraged to start making necessary changes in the workplace to ensure that they are compliant with the positive duty to eliminate unlawful sex discrimination and/or harassment.</p> <p>Employers operating in Victoria have been under a virtually identical positive duty for over a decade under State legislation, so should be well prepared.</p> <p>Having up to date policies, training and a proactive risk assessment in respect of sexual harassment in the workplace will be a ‘must have’ for every employer.</p>
<p><b>Fundamental changes to the Fair Work Act</b></p> <p>The <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> introduces the most fundamental reforms to the <i>Fair Work Act 2009</i> that we have seen in over a decade.</p> <p>While the Act covers many topics, in a snapshot it:</p> <ul style="list-style-type: none"> <li>• prohibits pay secrecy clauses in contracts;</li> <li>• introduces a ‘workplace right’ for employees to ask other employees about their remuneration, terms and conditions;</li> <li>• prohibits sexual harassment at work though in no different terms than already exist in various other statutes;</li> <li>• imposes restrictions for fixed or maximum term contracts – the general rule is that such contracts must not run for a period greater than 2 years (unless an exception applies);</li> <li>• provides for multi-enterprise bargaining;</li> <li>• converts the right to request flexible work arrangements under the FW Act into an enforceable right that can be determined by the Fair Work Commission; and</li> </ul>	<p>December 6<sup>th</sup> 2022</p>	<p>It is important to note that various sections of the Secure Jobs Better Pay Act do not come into effect for a period of time.</p> <p>Employers are encouraged to monitor the Act for further updates and seek legal advice to determine what steps – if any – need to be taken to ensure that the business is compliance with the sweeping range of changes.</p> <p>At a minimum, this will include reviewing confidentiality provisions in employment contracts, assessing the use of fixed term/maximum term contracts, and determining ways to prevent and prohibit sexual harassment in the workplace.</p> <p>A failure to comply with some of these changes – including the pay secrecy provisions – may render an employer liability for a civil penalty.</p>