

iGlobal Law 2024 Annual Alert : Australia

Legal Change	Effective Date	Action required
<p>Fair Work Legislation Amendment (Closing Loopholes) Bill 2023</p> <p>The bill is an effort to close what are described as loopholes that undermine pay and conditions, and improve work health and safety laws. It proposes to achieve these goals by:</p> <ul style="list-style-type: none"> • giving the Fair Work Commission (the Commission) the ability to set minimum standards in the road transport industry, such as terms about payments, deductions, working time and insurance; • empowering the Commission to set minimum standards for ‘employee-like’ workers (i.e., gig-economy workers) who work for a digital labour platform; • allowing employees, unions, and host employers to apply to the Commission for an order that labour hire employees must be paid at least what they would receive under a host’s enterprise agreement or equivalent public sector determination; • establishing a new low cost, flexible and informal jurisdiction in the Commission to allow independent contractors (who earn below a certain threshold) to apply to the Commission for dispute resolution in relation to unfair terms in a services contract to which they are a party; • amending the <i>Fair Work Act 2009</i> (Cth) to change the tests for determining whether a person is an employee or an independent contractor as well as defining a casual employee so that the practical reality of the employment relationship is relevant, not just the contractual description (thus seeking to reverse the effect of recent High Court decisions); • granting casual employees ongoing rights to seek conversion to ongoing employment every six months; and • expanding the rights of union delegates including access to union training at the employer’s expense. 	<p>The Bill was introduced on September 4th 2023 but referred to a Senate committee due to report back in February 2024.</p>	<p>Employers are encouraged to monitor the progress of the Bill through Parliament. If and when passed, the changes are likely to come into effect at different times and employers will need to be across these dates. Even at this stage, employers should be reviewing their use of casual and fixed term employment; their use of labour hire; and whether independent contractors are more accurately and correctly classified as employees.</p>
<p>Changes to Fixed Term contract rules</p> <p>New rules on fixed term contracts impose restrictions on the use of fixed or maximum term contracts. The general rule is that such contracts</p>	<p>December 6th 2023</p>	<p>From December 6th 2023, the circumstances in which employers can engage employees on fixed or maximum term contracts are extremely limited. In addition,</p>

must not run for a period greater than 2 years, or be renewed more than once. If these rules are breached, the contract will still be valid, except for the term of the contract that provides for its expiry on a set date. There are onerous anti-avoidance provisions.

A range of exceptions are available to allow fixed term contracts beyond 2 years when genuinely necessary and appropriate, including:

- performing a discrete, identifiable task involving specialised skills;
- apprentices or trainees;
- undertaking essential work during a peak demand period;
- temporarily replacing another employee on leave (for example, parental leave);
- earning above the high-income threshold (this is \$167,500 from 1 July 2023 and indexed each year);
- a position that is funded in whole or in part by government funding in certain circumstances;
- a governance position that has a time limit under the governing rules of a corporation or association; or
- a modern award that covers the employee and includes terms that permit the use of fixed term contracts.

A failure to comply with these changes may render an employer liable to a civil penalty.

employers must give employees they're engaging on new fixed term contracts a Fixed Term Contract Information Statement (FTCIS).

Employers must provide this information before they start employment, or as soon as possible thereafter. The statement will be available on the [Fair Work Ombudsman fixed term contract webpage](#) from December 6th 2023.

Employers should take these actions to prepare for the fixed-term contract changes:

- review how the organisation or company uses fixed term labour and consider if this can continue under the new fixed term contract provisions;
- seek legal advice about their specific situation to assess if an exception applies; and
- review fixed term contract templates to ensure they are compliant with the changes.