

JOB S AND SKILLS SUMMIT

Expected changes and their implications for employers

September 2022

LANDER
& ROGERS



SUMMARY

The Jobs and Skills Summit was held in Canberra from 1-2 September 2022.

This guide explores the key expected changes arising from the Summit and how they may impact employers.

It also looks at existing commitments made by the Commonwealth Government prior to the Summit that will have significant implications for business.

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TIMELINE



CHANGES AND IMPLICATIONS FOR EMPLOYERS

Following the Summit, the Commonwealth Government released its Jobs + Skills Summit Outcomes paper (**Outcomes Paper**).

Below is a summary of some of the key expected changes arising from the Summit and potential implications for employers.

Summit outcome and changes as detailed in Outcomes Paper	Observations
Multi-employer bargaining for enterprise agreements Remove limitations on access to single and multi-employer agreements.	This outcome has received considerable media attention to suggest it will provide a return to "industry-level" bargaining across multiple employers, at least in some sectors and industries, as well as industry-wide industrial action in support of broader bargaining. The reported intended aim of this change is to improve outcomes for employees in sectors with comparatively low terms and conditions of employment or historical lack of access to enterprise bargaining. For those employers already engaged in bargaining, exclusions might be included to permit bargaining to continue where agreed by all parties. It remains to be seen how this will impact the future of enterprise-level bargaining.
Simplify the BOOT Make the Better Off Overall Test (BOOT) simple, flexible and fair.	Many employers hold concerns about the complexity of the BOOT and the "line by line" and "better off in every respect" approach to modern award comparison that has been taken in recent years. If the changes achieve a simplification of the BOOT, it will be well received by employers.
Termination of enterprise agreements Changes to the Fair Work Act to ensure the process for agreement terminations is fit for purpose and fair, and sunsets "zombie agreements".	In instances where bargaining has become deadlocked after a lengthy period, it has been possible, in certain circumstances, to seek to have the relevant enterprise agreement (EA) terminated. Once an EA is terminated, the underpinning modern award reverts to cover the employees. While the modern awards are favourable to employees, a concern is that this means that the employer effectively receives a "clean slate" to start from, and employees lose previously secured entitlements. An additional limb or extra aspect may be added to the termination test to prevent an application for termination being made while bargaining is on foot. This item also appears to be intended to address recent concern with "zombie agreements", or agreements that are long past their nominal expiry dates and don't necessarily reflect current workplace practices, but remain in operation because they have not been replaced or terminated.

CHANGES AND IMPLICATIONS FOR EMPLOYERS

Summit outcome and changes as detailed in Outcomes Paper

Observations

Good faith bargaining

Update the Fair Work Act to ensure all workers and businesses can negotiate in good faith for agreements that benefit them, including small businesses, women, care and community services sectors, and First Nations people.

Managing disputes about good faith bargaining can be time consuming. This change may support a return to industry bargaining, and additional processes for parties in bargaining.

Bargaining representatives

Update the Fair Work Act to provide proper support for employer bargaining representatives and union delegates.

This change suggests the introduction of more terms in the Fair Work Act to protect the role of bargaining representatives on both the employer and union side.

Flexible work and parental leave

Update the Fair Work Act to provide stronger access to flexible work arrangements and make unpaid parental leave more flexible.

This change may mean penalties for non-compliance with the flexible work provisions in the NES, perhaps with civil penalties for breach/refusal by employers. It might also mean an expansion of the groups of employees who can request flexible work arrangements under the Fair Work Act. It appears that there will also be further flexibility in the ways unpaid parental leave can be taken.

Adverse action, discrimination, and harassment

Update the Fair Work Act to provide stronger protections for workers against adverse action discrimination and harassment.

The harassment protections in the Fair Work Act have been recently expanded to include stop sexual harassment orders. This change may indicate a change to strengthen the existing reverse onus in the adverse action provisions. If so, this would make it harder for employers and other respondents to disprove alleged wrongdoing. This proposal may also indicate changes to the current civil penalty regime for adverse action.

CHANGES AND IMPLICATIONS FOR EMPLOYERS

Summit outcome and changes as detailed in Outcomes Paper

Observations

Fair Work Commission

Amend the Fair Work Act to give the Fair Work Commission the power to proactively help workers and businesses reach agreements that benefit them, particularly new entrants and small-to-medium businesses.

Some have suggested this may herald a return to compulsory arbitration. It may also mean that the Fair Work Commission will be granted powers to intervene in matters where it considers it in the public interest to do so.

Gender equality - employers with 500+ employees

Strengthen existing reporting standards to require employers with 500 or more employees to commit to measurable targets to improve gender equality in their workplace.

Many employers already have robust programs in place to improve gender diversity in the workplace. The effectiveness of this provision will turn on the definition of gender equality and how these targets are reported on and reviewed.

Gender equality - employers with 100+ employees

Employers with 100 or more employees must publicly report their gender pay gap to the Workplace Gender Equality Agency.

This outcome will continue the trend in favour of transparency of pay data to address long-standing pay differentials.

CHANGES AND IMPLICATIONS FOR EMPLOYERS

Summit outcome and changes as detailed in Outcomes Paper

Observations

Labour shortages

Increase the permanent migration program planning level to 195,000 in 2022-23 to help ease widespread, critical skills shortages.

This is intended to help address staff resourcing issues which many businesses are currently experiencing. This change will be well-received by those in sectors such as aged care and health care, where the shortage of skilled workers has had a significant impact.

Construction industry

Establish a tripartite National Construction Industry Forum to constructively address issues such as mental health, safety, training, apprentices, productivity, culture, diversity and gender equality in the construction industry.

Organisations in the construction industry have many programs in place to address these issues. This is creating an industry-wide forum which should facilitate sharing of ideas throughout the industry.

Defence industry

Commonwealth and South Australian Governments will co-chair a South Australian Defence Industry Workforce and Skills Taskforce to support delivery of Australia's defence capabilities, including critical maritime capabilities such as frigates and submarines.

The defence industry continues to grow, and support for industry to address skill shortages is important.

EXISTING COMMITMENTS



The Outcomes Paper also outlines a broad range of "complementary existing commitments".

These range from financial investment in skills and workforce planning initiatives, including additional Commonwealth-supported university places; creation of a new visa; legislation of "same job, same pay", and criminalisation of wage theft.

Once implemented, many of the commitments will have significant implications for business. For example:

- **Legislating same job, same pay.** This legislation is expected to require employers to ensure that all third-party workers (such as those engaged through labour hire providers) receive the same pay and conditions as direct employees. This will be a difficult change to manage, particularly for those employers who have implemented annualised salaries and loaded rates of pay that include compensation for specific rosters worked by employees which are not comparable to those worked by others.

- **Extending the powers of the Fair Work Commission** to include "employee-like" forms of work, allowing it to make orders for minimum standards for new forms of work, such as gig work.
- **Limiting the use of fixed-term contracts.** This could take different forms, including potentially imposing a "cap" on the number of fixed term contracts an employee can be engaged under, or the number of employees who can be engaged on these types of contracts.
- **Legislating an objective test** for determining when a worker is casual.

We outline some of the key commitments in more detail on slides 9 and 10.

Some of the areas identified for further work include amending relevant legislation to give workers the right to challenge unfair contractual terms. While this right previously existed in some state legislation (and there is Federal independent contractors legislation already in place), this heralds a potential change at a national level.

EXISTING COMMITMENTS

The Commonwealth Government has committed to making a range of changes in key areas, separate to the Summit outcomes.

Change	Outcome
Wage theft	To be criminalised at a Federal level.
Same job, same pay	To be legislated. Based on the Bill presented by the Commonwealth Government in November last year (when in Opposition), this will be implemented via changes to the Fair Work Act.
Fixed term contracts	Ability to use fixed term contracts to be limited.
Pay secrecy	To be prohibited.
Fair Work institutions	“Restore balance”.
Secure Australian Jobs Code	Prioritise secure work in government contracts; use government purchasing power to support business with fair, equivalent, ethical and sustainable practices.

FAIR WORK ACT CHANGES PLANNED PRE-SUMMIT

A range of additional changes are planned for the Fair Work Act, which were committed to prior to the Jobs and Skills Summit.



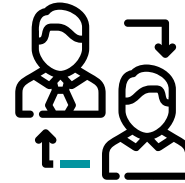
Equal Remuneration Principle



New panels for pay equity



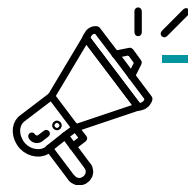
Objective test for casual employment



Extension of powers to “employee-like” work



Right to superannuation in the NES



Express prohibition on sexual harassment



Enhanced compliance and enforcement framework

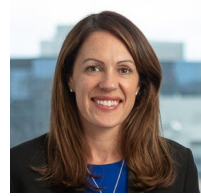
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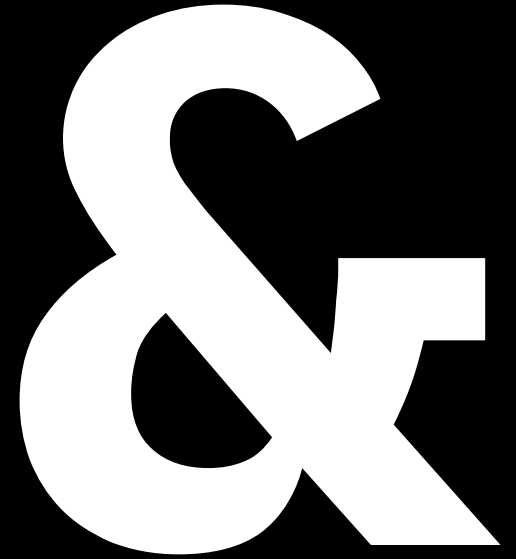
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