

# IR OMNIBUS BILL – FACT SHEET



## Enterprise Agreements

### Bargaining Process

- The time for issuing the Notice of Employee Representational Rights is increased from 14 days to 28 days.
- A new model National Employment Standards (NES) interaction term has been introduced, which will be a mandatory term of all enterprise agreements to avoid delays seeking undertakings for such terms.

### Access Period

- The access period now ceases on the day prior to commencement of the vote as opposed to the period ending immediately before the start of the voting process. Therefore, 7 clear calendar days forms the access period with half days and ballot days effectively being excluded.
- Casual employees are excluded from the voting group, unless the casual employee performed work during the access period (i.e. not before the access period and not after). Further, an employee will not be entitled to vote on an agreement if they commenced employment after the time the request to vote is made. This clarifies the applicable group of employees who can cast a vote.
- The bill allows for a reduction in the nature of the material which is to be provided to employees during the access period. Relevantly, publicly available information, such as the relevant modern award or the NES, need not be included in access period materials.

### Approval Process

- An improved Better Off Overall Test (BOOT) is provided for in the bill, which does not test agreements against award provisions that have unlikely hypothetical application in a workplace or which workers are never likely to face.
- Non-monetary benefits (such as flexible working arrangements, time off in lieu and health care benefits) are part of the BOOT considerations.
- Prescriptive requirements for assessing whether an agreement is "genuinely agreed" have been removed. The assessment of genuine agreement requirements are proposed to ensure that employees make an informed decision to approve the agreement. The opportunity will be reasonable if it was objectively sensible, rational, practical and logical in the circumstances.

- The bill provides for a 21 day deadline for enterprise agreement approval by the Fair Work Commission unless there is a written and published notice of "exceptional circumstances".
- There is limited discretion for the Fair Work Commission for 2 years to approve agreements that do not meet the BOOT where the parties are affected by Covid-19 subject to the views of employees and employers as to the terms of the proposed agreement.
- The bill restricts intervention by non-bargaining representatives in agreement approval applications to cases where significant public interest concerns about the enterprise agreement exist (e.g. possible human rights issues, or implications for the economy or public health and safety).

### Enterprise Agreement Operation

- A new franchise employer is permitted to opt in to an existing enterprise agreement with a vote of only that new franchisee's employees.
- There are restrictions on termination agreements past the nominal expiry date to be made 3 months after the nominal expiry date has passed. This is designed to prevent termination applications which may change the negotiation of a successor agreement.
- Where an employee, on their own initiative (e.g. resignation), seeks and is employed in an associated entity, the general rule that their old enterprise agreement will transfer with them is "switched off" to allow the associated entities enterprise agreement to apply to that employee.
- Pre-FW Act agreements and instruments will sunset on 1 July 2022. This removes legacy instruments and should simplify the system to being confined to FW Act instruments from 1 July 2022 onwards.

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