

# *Fair Work Legislation Amendment [Secure Jobs, Better Pay] Act 2022*

## *- Bargaining and Industrial Action*

The process for commencing bargaining for 'replacement'/'roll-over' single enterprise agreements has now been simplified.

The FWC's power to intervene in intractable or protracted bargaining has been expanded, including the ability to make workplace determinations (i.e. FWC made enterprise agreements) when agreement cannot be reached.

Protected industrial action can now be taken in relation to multi-enterprise bargaining, meaning that industrial action can occur across multiple businesses or across an industry.

The multi-enterprise bargaining process has been expanded to three streams:

- Supported bargaining stream – where employers can be compelled to participate in multi-employer bargaining subject to certain exceptions;
- Single interest employer stream – where groups of employers can agree to bargain together and obtain an order of the FWC in support of this;
- Cooperative workplace stream – multi-enterprise agreements which are not in the other two streams (for example, the currently existing form of multi-enterprise agreement).

The better off overall test has been simplified to avoid consideration of unreasonable scenarios and give weight to the support of employees and employers.

The basis on which parties can apply for an enterprise agreement that has passed its nominal expiry date to be terminated without agreement has been narrowed to avoid these applications being used as tools during bargaining negotiations.

The FWC's power to amend enterprise agreements to correct errors or other issues has been expanded, reducing the scope of these issues to derail approval of enterprise agreements.

Zombie agreements (i.e. agreements that were made under previous industrial relations legislation and made during the bridging period of 1 July 2009 to 31 December 2009) will automatically terminate on 7 December 2023 unless an extension is obtained from the FWC.

The test for assessing genuine agreement in approving an enterprise agreement has been simplified.