

# IR POLICY AND GOVERNANCE UPDATE



## PVCA IR LEGISLATION WEBINAR Q&A

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### ***Is the 'pay secrecy' clause in effect now?***

Yes, from 7 December 2022 such clauses are invalid. This may have implications across employee agreements and conditions of employment. These amendments introduce a positive ability that permits employees to disclose, or discuss with another employee, their remuneration or the terms of their employment. This amendment will also invalidate any existing contractual term that otherwise prohibits employees from discussing remuneration or employment terms.

Also, worth noting here is that advertising vacancies at less than the Award minimum rates are now banned.

### ***What happens if employees discuss their rates of pay amongst themselves and start disputing any differences?***

It is important to note that while there is a right to discuss such information between employees, there is no obligation on an employee to divulge that information. If an employee has a dispute with another employee there may be the requirement for the employer to clearly communicate with the employees that while they have a right to discuss, any related discussion should be respectful and not result in the bullying of another coworker.

### ***How does the multi-employer agreement work exactly?***

Essentially, the amendments to the Fair Work Act will allow the Fair Work Commission to consider, and if determined to be appropriate, permit multiple-employers and their employees who are determined to have identifiable 'common interests' to bargain on a single-interest enterprise agreement that would cover those businesses and their employees. Employers with less than 20 employees are excluded, unless they agree to participate.

In determining whether there is a common interest between businesses, the Commission must be satisfied that the businesses and their activities are reasonably comparable with the other employers proposed to be covered by the agreement. This will include reviewing the size, scope and nature of the operations, as well as the terms and conditions of employment across each business, and their geographical locations.

### ***Can a group of employees ask to be part of a multi-employer agreement, even if the majority of employees refuse?***

Effectively, a group of employees could ask to be part of a multi-employer agreement, but ultimately if the majority of employees don't support such an initiative the Fair Work Commission will not give the go ahead to negotiate and bargain on such an agreement. The corollary is that if a majority vote down such a proposed agreement, the company and its employees would not be covered by such an agreement.

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***If we are a group of companies, with one having an existing EBA, what is the likelihood the same EBA will be expanded across the other companies?***

Effectively, and based on the decipherable drafting of the amendments, if an employer already has a single-enterprise agreement in place, this will offer some protection from being roped in to another agreement with other companies externally or within the group. Conversely it does not appear that a currently operative single-enterprise agreement can be morphed into a multi-employer agreement to cover other businesses within the group.

***Can you explain more about zombie agreements and the process of terminating agreements? Also does this apply to collective agreements?***

Zombie agreements, as the term suggests, are agreements that have passed their expiry date but remain on foot within workplaces. Specifically, there are some businesses that have agreements that were made and implemented under the Workplace Relations Act 1996 and related scheme, and although expired, were never terminated or replaced under the Fair Work Act.

Under the new legislative amendments those pre-Fair Work Act transitional instruments will be phased out and sunset after 12 months from the enactment of the amendments.

At that time, affected businesses would be bound by the relevant modern Award which sets employees' pay and conditions (alone or in combination with contracts of employment), or may opt to bargain for a new enterprise agreement better suited to their circumstances.

***If I have some employees on fixed/maximum term but renewable contracts, how will the fixed term contract amendments affect me?***

From December 2023, the fixed term agreements are capped at two (2) years, with one (1) extension to two (2) years maximum. Exceeding these terms may entitle the contractor to permanent employment and deliberately delaying the re-engagement is prohibited. Exceptions include high income threshold employees, over \$162,000 and all arrangements or benefits are able to be included in the determination of the high threshold.

***What are the immediate steps I need to take when I receive notice from employees or a bargaining organisation, that they want to start negotiating an enterprise agreement with my company?***

***How should I respond?***

The first step is to accept the communication and read through the content. Not all agreement requests will be the same and will differ from business to business. The Fair Work Commission is working through the detail across this and it will be a process in the first year to build some consistency across reasonable and unreasonable inclusions. Engage the PVCA, contact Charles Watson, GM – IR, Policy & Governance – [charles\\_watson@pvca.org.au](mailto:charles_watson@pvca.org.au) as early as you can in the process to assist you across your communications, negotiations and engagement with your employees. It is important to engage the support from the PVCA in the immediate phase to ensure consistent communications from beginning to end.

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***Do the election rules still apply as they have done previously or has this changed? Can a company do it on its own?***

The Fair Work Act does not specifically prescribe a particular voting method, but contemplates a vote will occur by ballot which can be undertaken in a variety of ways – worksite ballot box, show of hands (not recommended), postal voting, and online voting. Often, and so as to ensure neutrality and no disputation, the AEC or a private electoral company may be utilised to undertake the process for the vote. The voting is usually by a method agreed between the employer and the employee bargaining representatives.

***With regards to the Discrimination and Harassment changes through 2023, does the PVCA have a policy template or can you recommend actions I can take to apply positive duty across this if a policy itself isn't enough?***

The PVCA does have related policies available for members to use. In addition to implementing a policy there are numerous “reasonable and proportionate” additional steps a member can take so as to evidence their business is taking its positive duties seriously. These include developing a sexual harassment strategy, implementing processes for employees to report harassment and procedures for handling any related complaints, conducting surveys among your workforce to clarify if such behaviour occurs in your workplace and requires addressing, along with delivering regular workplace training and education on sexual harassment.

***About the Print & Visual Communication Association***

The Print and Visual Communication Association (PVCA) is the recognized peak industry body for the print, paper, publishing, packaging, graphic design, distribution, and media technology industries in Australia, operating for over 130 years.

A registered organisation with direct signatory to the nine (9) Awards across our industry and membership. Offering an end-to-end industry association solution that is relevant in all that it undertakes. Whether advocating the relevance of the established media – print – that we all belong to, developing global partnerships and translating to regional requirements, awarding excellence, investing in products, and arming our industry with sales tools, sustainability collateral, industrial relations representation and more.

The largest print industry body committed to building a stronger united leadership to deliver the goals of our members. United we will lead strong advocacy, government advisory, skills and training programs, protection, and promotion of our industry channels and more to ensure our member’s businesses operate within a future-proofed strategy for success.

Please visit the [Print & Visual Communications Association](https://www.pvca.org.au) for more information or contact:

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