



Bargaining and workplace relationships

Sunsetting of 'zombie' agreements

These amendments form part of an Australian Government commitment to ensure the process for agreement terminations is fit for purpose and fair.

What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to automatically terminate agreement-related instruments made prior to the commencement of the *Fair Work Act 2009* (the Act) and during the 'bridging period' (1 July to 31 December 2009).

These workplace agreements, commonly referred to as 'zombie' agreements, will automatically sunset at the end of 6 December 2023. By the end of 6 June 2023, relevant employers are required to notify affected employees that they are covered by a zombie agreement, and that the agreement will terminate unless an application to extend the agreement is made to the Fair Work Commission (the Commission).

After a zombie agreement has ceased to operate, minimum pay and conditions will typically be set by the relevant modern award, unless a new enterprise agreement is negotiated.

The provisions provide that zombie agreements can be extended for periods of up to 4 years by the Commission if the employees are better off under the agreement, or bargaining for a replacement agreement is occurring, and it is appropriate in the circumstances. The Commission can also extend an agreement if it is otherwise reasonable in the circumstances. Zombie agreements can be extended more than once.

The Commission is required to publish its reasons to extend, or not extend, zombie agreements. The Commission must also publish the agreement or instrument if it decides to extend, unless it is an individual agreement.

What do these changes mean?

Unlike enterprise agreements made from 2010, zombie agreements were not required to be compared against modern awards. Employees covered by zombie agreements are likely to have less beneficial terms and conditions of employment than they would otherwise receive under the relevant modern award.

Without these amendments, zombie agreements would continue to operate until they are terminated or replaced.

Sunsetting instruments made before the commencement of the modern award safety net will mean that employees are covered by the ordinary arrangements provided in the Act, such as a modern award or an enterprise agreement that has been assessed against a modern award.

When will these changes come into effect?

These changes came into effect on 7 December 2022.

For more information on the *Secure Jobs, Better Pay* package visit:

www.dewr.gov.au/workplace-relations.