



Bargaining and improving workplace relationships

Better Off Overall Test

These amendments form part of an Australian Government commitment to remove unnecessary complexity for workers and employers.

What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* will amend the *Fair Work Act 2009* (the Act) to simplify the operation of the Better Off Overall Test (BOOT), while maintaining strong employee protections.

The intention of the BOOT is to ensure each employee covered by an enterprise agreement is better off overall when compared to their relevant modern award. The amendments will:

- clarify that the BOOT is a global assessment to ensure each employee is better off overall, and is not a line-by-line comparison between the proposed agreement and relevant modern award
- require the Fair Work Commission (the Commission) to only consider patterns or kinds of work, or types of employment that are reasonably foreseeable, having regard to the nature of the enterprise/s to which the agreement relates
- require the Commission to consider the views of the parties and give primary consideration to any common view shared by employee organisations and employers about whether the agreement passes the BOOT. However, the Commission must still undertake its own independent assessment in applying the BOOT
- enable the Commission to amend an agreement where this is necessary to address a concern that it does not otherwise meet the BOOT, and
- enable an agreement to be reassessed against the BOOT if relevant circumstances were not properly considered during the approval process, and for the agreement to be

amended (including with retrospective effect) if necessary to address a concern that it does not pass the BOOT.

What do these changes mean?

The complexity of the BOOT had caused many enterprise agreements to be approved with undertakings from employers, which led to an increase in the Commission's approval timeframes and may have contributed to the decline in enterprise bargaining.

The amendments provide employers with greater certainty about how the BOOT is applied, while ensuring that employees are protected by appropriate safeguards and will not be worse off.

When will these changes come into effect?

These changes will come into effect on 6 June 2023, or an earlier date to be fixed by proclamation. They will then apply to any enterprise agreement 'made' (i.e. voted up by employees) on or after commencement.

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

www.dewr.gov.au/workplace-relations