



Protection for migrant workers

Interaction between the *Fair Work Act 2009* and the *Migration Act 1958*

What has changed?

The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* amends the *Fair Work Act 2009* (the Act) by inserting a new provision to deal with the interaction between the Act and the *Migration Act 1958* (Migration Act). Specifically, the effect of the amendment is to confirm that a breach of the Migration Act, or an instrument made under it, does not affect the validity of a contract of employment or a contract for services for the purposes of the Act.

The reform gives effect to Recommendation 3 of the Report of the Migrant Workers Taskforce (MWT) and Recommendation 3 of the Senate Education and Employment Legislation Committee inquiry into the Government's Secure Jobs, Better Pay legislation.

The change addresses a concern expressed by stakeholders, reflected in the MWT Report, that there is a need to ensure the application of Australian workplace laws and conditions to migrant workers.

What does this change mean?

The intent of this amendment is to make explicit that a migrant working in Australia is entitled to the benefit of the Act, regardless of their migration status, including in relation to wages and entitlements conferred by the Act, or a fair work instrument such as a modern award or an enterprise agreement. This includes, but is not limited to, circumstances where:

- a migrant worker has breached a work-related visa condition,
- a migrant worker does not have work rights, or
- a migrant worker does not have the right to be in Australia.

The operation of any sanctions under the Migration Act for breaches of immigration law remain unaffected by this amendment.

When will this change come into effect?

The amendment commenced on 1 July 2023.

For more information on the Protecting Worker Entitlements package visit:

www.dewr.gov.au/protecting-worker-entitlements