



## 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](http://www.dewr.gov.au/protecting-worker-entitlements)