



Fair Work Amendment Act 2015

No. 156, 2015

An Act to amend the *Fair Work Act 2009*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Fair Work Amendment Act 2015

No. 156, 2015

An Act to amend the *Fair Work Act 2009*, and for other purposes

[Assented to 26 November 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fair Work Amendment Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 November 2015
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	27 November 2015
5. Schedule 1, Parts 5 and 7	The day after this Act receives the Royal Assent.	27 November 2015
8. Schedule 1, Part 10	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 January 2016 (F2015L02007)
9. Schedule 2	The day after this Act receives the Royal Assent.	27 November 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of the operation of amendments

- (1) The Minister must cause an independent review of the operation of the amendments made by Part 5 of Schedule 1 to be undertaken and completed within 2 years after the commencement of that Part.
- (2) The review must consider:
 - (a) the effect of the amendments made by Part 5 of Schedule 1;
and
 - (b) any other related matter that the Minister specifies.
- (3) The person who undertakes the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sittings days of receiving it.

Schedule 1—Amendments

Part 1—Extension of period of unpaid parental leave

Fair Work Act 2009

1 After subsection 76(5)

Insert:

Discussion

- (5A) The employer must not refuse the request unless the employer has given the employee a reasonable opportunity to discuss the request.

Part 5—Greenfields agreements

Fair Work Act 2009

19 Section 12 (at the end of the definition of *appointment*)

Add “or 177(c)”.

20 Section 12 (definition of *bargaining representative*)

Omit “section 176”, substitute “sections 176 and 177”.

21 Section 12

Insert:

notified negotiation period for a proposed single-enterprise agreement that is a greenfields agreement: see section 178B.

22 Subsection 172(1) (note 2)

After “enterprise agreement”, insert “that is not a greenfields agreement”.

23 After section 176

Insert:

177 Bargaining representatives for proposed enterprise agreements that are greenfields agreements

The following paragraphs set out the persons who are *bargaining representatives* for a proposed single-enterprise agreement that is a greenfields agreement:

- (a) an employer that will be covered by the agreement;
- (b) an employee organisation:
 - (i) that is entitled to represent the industrial interests of one or more of the employees who will be covered by the agreement, in relation to work to be performed under the agreement; and
 - (ii) with which the employer agrees to bargain for the agreement;

- (c) a person who is a bargaining representative of an employer that will be covered by the agreement if the employer appoints, in writing, the person as his or her bargaining representative for the agreement.

24 At the end of subsection 178(2)

Add:

- ; and (c) for an appointment made by an employer that will be covered by a proposed single-enterprise agreement that is a greenfields agreement—be given, on request, to an employee organisation that is a bargaining representative for the agreement.

25 Paragraph 178A(3)(b)

After “a proposed enterprise agreement”, insert “, other than a single-enterprise agreement that is a greenfields agreement”.

26 After subsection 178A(3)

Insert:

- (3A) A copy of an instrument under subsection (1) made by an employer that will be covered by a proposed single-enterprise agreement that is a greenfields agreement must be given to the bargaining representative and, on request, to an employee organisation that is a bargaining representative for the agreement.

27 At the end of Division 3 of Part 2-4

Add:

178B Notified negotiation period for a proposed single-enterprise agreement that is a greenfields agreement

- (1) If a proposed single-enterprise agreement is a greenfields agreement, an employer that is a bargaining representative for the agreement may give written notice:
 - (a) to each employee organisation that is a bargaining representative for the agreement; and
 - (b) stating that the period of 6 months beginning on a specified day is the *notified negotiation period* for the agreement.
- (2) The specified day must be later than:

- (a) if only one employee organisation is a bargaining representative for the agreement—the day on which the employer gave the notice to the organisation; or
- (b) if 2 or more employee organisations are bargaining representatives for the agreement—the last day on which the employer gave the notice to any of those organisations.

Multiple employers—agreement to giving of notice

- (3) If 2 or more employers are bargaining representatives for the agreement, the notice has no effect unless the other employer or employers agree to the giving of the notice.

28 At the end of section 182

Add:

- (4) If:
 - (a) a proposed single-enterprise agreement is a greenfields agreement that has not been made under subsection (3); and
 - (b) there has been a notified negotiation period for the agreement; and
 - (c) the notified negotiation period has ended; and
 - (d) the employer or employers that were bargaining representatives for the agreement (the **relevant employer or employers**) gave each of the employee organisations that were bargaining representatives for the agreement a reasonable opportunity to sign the agreement; and
 - (e) the relevant employer or employers apply to the FWC for approval of the agreement;the agreement is taken to have been **made**:
 - (f) by the relevant employer or employers with each of the employee organisations that were bargaining representatives for the agreement; and
 - (g) when the application is made to the FWC for approval of the agreement.

Note: See also section 185A (material that must accompany an application).

29 Subsection 185(1A)

After “the agreement is a”, insert “multi-enterprise agreement that is a”.

30 At the end of section 185

Add:

Single-enterprise agreements that are greenfields agreements

- (6) This section does not apply to an agreement made under subsection 182(4).

31 At the end of Subdivision A of Division 4 of Part 2-4

Add:

185A Material that must accompany an application under subsection 182(4) for approval of a greenfields agreement

An application under subsection 182(4) for approval of an agreement must be accompanied by:

- (a) a copy of the agreement; and
(b) any declarations that are required by the procedural rules to accompany the application.

32 Subsection 186(1)

After “made under”, insert “subsection 182(4) or”.

33 At the end of section 187

Add:

- (6) If an agreement is made under subsection 182(4) (which deals with a single-enterprise agreement that is a greenfields agreement), the FWC must be satisfied that the agreement, considered on an overall basis, provides for pay and conditions that are consistent with the prevailing pay and conditions within the relevant industry for equivalent work.

Note: In considering the prevailing pay and conditions within the relevant industry for equivalent work, the FWC may have regard to the prevailing pay and conditions in the relevant geographical area.

34 Paragraph 190(1)(a)

After “made under”, insert “subsection 182(4) or”.

35 Subsection 192(1)

After “made under”, insert “subsection 182(4) or”.

36 Subsection 193(6)

After “made under”, insert “subsection 182(4) or”.

37 After subsection 201(2)

Insert:

(2A) If:

- (a) an agreement is made under subsection 182(4) (which deals with a single-enterprise agreement that is a greenfields agreement); and
 - (b) the FWC approves the agreement;
- the FWC must note in its decision to approve the agreement that the agreement covers each employee organisation that was a bargaining representative for the agreement.

38 Paragraph 211(1)(a)

After “made under”, insert “subsection 182(4) or”.

39 Paragraph 211(4)(d)

After “(6) to”, insert “subsection 182(4) or”.

40 At the end of subsection 228(1)

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

41 At the end of subsection 229(1)

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

42 At the end of subsection 230(1)

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

43 At the end of section 232

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

44 Section 234 (note)

After “Note”, insert “1”.

45 At the end of section 234

Add:

Note 2: See also section 255A (limitations relating to greenfields agreements).

46 At the end of subsection 235(1)

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

47 Subsection 238(1)

After “a proposed single-enterprise agreement”, insert “(other than a greenfields agreement)”.

48 At the end of subsection 240(1)

Add:

Note: See also section 255A (limitations relating to greenfields agreements).

49 At the end of subsection 255(1)

Add:

- ; or (d) an employer to give a notice under section 178B; or
- (e) an employer to specify a particular day in a notice under section 178B; or
- (f) an employer to agree to the giving of a notice under section 178B.

50 After section 255

Insert:

255A Limitations relating to greenfields agreements

(1) If:

- (a) a proposed single-enterprise agreement is a greenfields agreement; and

- (b) there has been a notified negotiation period for the agreement; and
 - (c) the notified negotiation period has ended;
- then:
- (d) the following provisions do not apply in relation to the agreement at any time after the end of the notified negotiation period:
 - (i) section 228 (which deals with good faith bargaining requirements);
 - (ii) sections 229 and 230 (which deal with bargaining orders);
 - (iii) sections 234 and 235 (which deal with serious breach declarations);
 - (iv) section 240 (which deals with bargaining disputes); and
 - (e) a bargaining order that relates to the agreement ceases to have effect at the end of the notified negotiation period.
- (2) Paragraph (1)(e) has effect despite anything in section 232 (which deals with the operation of bargaining orders).

51 At the end of subsection 269(1)

Add:

Note 3: See also section 271A (limitations relating to greenfields agreements).

52 At the end of Division 4 of Part 2-5

Add:

271A Limitations relating to greenfields agreements

If:

- (a) a proposed single-enterprise agreement is a greenfields agreement; and
 - (b) there has been a notified negotiation period for the agreement; and
 - (c) the notified negotiation period has ended;
- section 269 (which deals with bargaining related workplace determinations) does not apply in relation to the agreement at any time after the end of the notified negotiation period.

Part 7—Protected action ballot orders

Fair Work Act 2009

56 After subsection 437(2)

Insert:

(2A) Subsection (1) does not apply unless there has been a notification time in relation to the proposed enterprise agreement.

Note: For *notification time*, see subsection 173(2). Protected industrial action cannot be taken until after bargaining has commenced (including where the scope of the proposed enterprise agreement is the only matter in dispute).

Part 10—Unclaimed money

Fair Work Act 2009

79 Before subsection 559(4)

Insert:

Interest

(3A) If:

- (a) an amount is paid to a person under subsection (3) at a particular time; and
- (b) the amount is at least \$100; and
- (c) the amount is attributable to an amount that was paid to the Commonwealth under subsection (1) more than 6 months before that time;

the Fair Work Ombudsman, on behalf of the Commonwealth, must also pay to the person the amount of interest (if any) worked out in accordance with an instrument under subsection (3B).

(3B) The Minister may make an instrument for the purposes of subsection (3A).

(3C) An instrument under subsection (3B) may involve different rates of interest for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(3D) An instrument made under subsection (3B) is a legislative instrument.

80 Subsection 559(4)

Omit “this section”, substitute “subsection (3)”.

Schedule 2—Application and transitional provisions

Fair Work Act 2009

1 At the end of the Act

Add:

Schedule 5—Amendments made by the Fair Work Amendment Act 2015

Note: See section 795A.

1 Definition

In this Schedule:

amending Act means the *Fair Work Amendment Act 2015*.

2 Part 1 of Schedule 1 to the amending Act

The amendment made by Part 1 of Schedule 1 to the amending Act applies in relation to a request made after the commencement of that Part.

9 Part 5 of Schedule 1 to the amending Act

The amendments made by Part 5 of Schedule 1 to the amending Act, so far as they concern proposed enterprise agreements, apply in relation to a proposed enterprise agreement if an employer agrees to bargain for the proposed enterprise agreement after the commencement of that Part.

11 Part 7 of Schedule 1 to the amending Act

The amendment of section 437 made by Part 7 of Schedule 1 to the amending Act applies in relation to an application made under that section, if the application was made after the commencement of that Part.

14 Part 10 of Schedule 1 to the amending Act

Paragraph 559(3A)(c) applies in relation to an amount that was paid to the Commonwealth under subsection 559(1) after the commencement of Part 10 of Schedule 1 to the amending Act.

*[Minister's second reading speech made in—
House of Representatives on 27 February 2014
Senate on 27 August 2014]*

(13/14)
