

Federal Parliament passes Albanese Government's contentious 'Secure Jobs, Better Pay' Bill

On 2 December 2022, the amended *Fair Work Amendment (Secure Jobs, Better Pay) Bill 2022* (the Bill) passed both houses of federal parliament. The passage of the Bill through the Senate was assured following a deal being done with independent Senator David Pocock – who joined Labor and the Greens in supporting the Bill. The Bill is expected to receive Royal Assent later this month.

Concerns with the Bill

Members will recall from previous [articles](#), that VACC views the Bill's significant amendments to the *Fair Work Act 2009* (FW Act) relating to multi-enterprise agreements as fundamentally flawed – and one that in practice will not lead to either 'secure jobs' or 'better pay' in industries such as automotive. Rather, the Bill is focussed on trying to increase trade union membership through the introduction of 'one-size-fits-all' multi-enterprise 'pattern' agreements that mandate compulsory union involvement as a bargaining representative. In doing so, the Albanese Government has ultimately chosen to abandon, rather than fix, the enterprise bargaining system that was originally introduced by the Hawke/Keating Labor Government to improve productivity in the workplace.

Practical implications for industry

As the major beneficiary of the Albanese Government's new multi-enterprise bargaining amendments, the trade union movement will now undoubtedly seek to convert its legislative 'win' into a financial windfall through increases in union membership numbers. However, this will ultimately rely on employees being convinced that union pattern agreements are in their individual best interests. Given such 'one size fits all' arrangements serve to reduce workplace flexibility and productivity – which in turn, inevitably leads to a reduction in the over-award component of wages received by employees and/or reductions in head count – this will likely prove particularly challenging for unions. Indeed, where both an employer and a majority of its employees are against being signed up to a union multi-enterprise agreement (regardless of whether under the 'single-interest' or 'supported' bargaining streams), neither unions, nor the Fair Work Commission (FWC), can force them to. Similarly, for the 90% of private sector workers who choose not to be a member of a union, freedom of association laws still apply - meaning they cannot be forced to join a union.

Therefore, whilst the new multi-enterprise agreement arrangements are expected to commence operation in June 2023, the immediate focus for automotive businesses should remain on maintaining a strong relationship with employees, with competitive terms and conditions of employment underpinned by the *Vehicle Repair, Services and Retail Award 2020* and supplemented by individually tailored common law employment contracts (including commissions/bonus agreements where relevant), enabling additional flexibilities and over-award 'market' wage rates.

Timeline of Commencement

Assuming Royal Assent is received this year, the expected timeline of commencement for the amendments of most relevance for the automotive industry are as follows:

- Addition to **anti-discrimination** provisions, to include breastfeeding, gender identity and intersex status as protected attributes: **December 2022**
- Prohibition on **pay secrecy** clauses in contracts or employment instruments: **December 2022**, with **penalties** commencing from **June 2023**
- Changes to **workplace sexual harassment** under the FW Act, including introduction of a positive duty for employers and new FWC powers: **March 2023**
- Introduction of new **multi-enterprise bargaining** arrangements: **June 2023**
- Expanded rights for workers to **request flexible working conditions**: **June 2023**
- Increase in **small claims threshold** from \$20,000 to \$100,000: **July 2023**
- Prohibition on consecutive **fixed term contracts** that last for more than two years (unless an exemption applies): **December 2023**

Members seeking further information or assistance, including in relation to common law employment contracts, are encouraged to contact the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

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