Research Paper

Fair Work Legislation Amendment Act of 2022

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Changes to Enterprise Bargaining

The Fair Work Legislation Amendment Act of 2022 brought about a number of changes across the industrial relations realm. Among the changes brought by the law are those to enterprise bargaining. These range from multi-enterprise bargaining to prohibition of fixed term contracts, and further on to intractable bargaining.

Multi-Enterprise Bargaining

Because of the new law, there is now an expanded consideration of the concept of multi-enterprise bargaining. Hamberger (2022) notes that this effectively brings more employees in more industries under the cover of collective bargaining. That is, the law now obligates organisations to work together with others in the bargaining of employment and work terms for their workers. An organisation would therefore have to bargaining with its employees, alongside its competing or supplying organizations. By including the requirement for multi-enterprise bargaining, the law has now forced organisations to work in tandem with others -, rather than alone, when negotiating employment and labour relations terms with its workers. Searing et al. (2023) clarify that the law only requires such collective approach to bargaining from entities that share interests in operations. Thus organisations from the mining industry, for example, with more than fifty employees, would only have to work together with other entities in the sector. That is the multi-employer bargaining stream can only made up of organisations and entities whose operations and activities are deemed to be reasonably comparable. However, the law now also expressly excludes small organisation with employee numbers below 20 from such requirement. Finally, in regards to the multi-enterprise bargaining provision, the law now accords the line minister the powers to determine and declare whichever industries eligible for supported bargaining (Stanford, Macdonald, and Raynes, 2022). That is, the legislation accords executive powers to the labour minister to determine what industries in the Australian economy ought to pursue the multi-enterprise bargaining route.

The changes to the law on multi-enterprise bargaining also place the responsibility upon organisations wishing to be exempted therefrom, to prove that their operations are not comparable to those of other entities. Even where entities have more than 50 employees, only the demonstration of their uniqueness of operations would exclude them from multi-enterprise bargaining streams (Izzo and Kingston, 2022). In addition, the exclusion of an employer from the collective bargaining streams could result from a history of good faith and effective bargaining. Searing et al. (2023) note that such exemption would need be accompanied by a less-than nine-month lapse since the expiry of existing bargaining agreements. Essentially, the changes now allow the exemption of employers from collective single-interest multi-enterprise bargaining if they can prove both good faith and effective bargaining, in the face of a less-than nine month gap between the expiry of previous agreements and intended negotiations. In summary, the amendment now limits the exemption of employers from collective bargaining.

Prohibition of Fixed Term Contracts

The Fair Work Legislation Amendment Act 2022 has also brought changes to enterprise bargaining in the form of prohibiting fixed term contracts. Thew (2022) defines fixed term contracts as the contractual relationship between an employer and their employee, specifying the date of expiry and the events that may lead to such expiry before lapse of set time. By placing the prohibition on fixed-term contracts, the law seeks to introduce fairness in the realm of labor relations in Australia. For example, the law now prevents employees from onboarding employers on such contract with the aim of infusing fairness into employment. According to Schofield-Georgeson (2022), the prohibition of such contracts ensures the protection of employees from unfair treatment by their employers. Thus, an employee may not be forced to cover for another one or face the sack. Instead, the law now requires that employers fulfill the basic rights that their employees enjoy – specifically that protecting them from unfair dismissal based on fixed-term contracts.

Intractable Bargaining

The new law now sets a minimum period of time required to lapse before a declaration of intractable bargaining is made. Ben and Sage (2022) note that the law foresees the issuance of notice by an employee union or bargaining representative, at the onset of such fact. That is, the law now vacates requirements that had previously been there on notice issuance. However, the law also recognizes limits on this to start-up entities. Further, the law also allows the Fair Work Commission to vary enterprise agreements during approval rather than rely on the enterprises themselves (Fair Work Commission, 2023). However, organisation could apply for a re-examination of such agreement during its lifetime.

Significance of the Fair Work Amendment Act

The *Fair Work Amendment Act* of 2022 was significant, and the changes it heralded by introducing fairness to the Australian workplace remain impactful. The law, particularly as concerns multi-enterprise bargaining agreements, has helped expand the scope of collective bargaining, enhance equality in the workplace, and promote the job security of employees in Australia.

Enhancement of Collective Bargaining & Prevention of Industrial Action

For one, the law has had the effect of enhancing collective bargaining at the workplace. Hamberger (2022) notes that the changes to the law have now redefined the minimum period allowed for bargaining. If any party to the bargaining agreement is aggrieved, the law now recommends the involvement of the Fair Work Commission. In this way, the law has significantly widened the extent of bargaining engagements within the Australian workplace. Resultantly, the law now extends the regulatory and oversight role of the

FWC over enterprise operations, specifically in connection to labour and employment relations. Overall, the Fair Work Amendment act continues to be significant because it enhances stability in the Australian workplace.

Similalry, the new law introduces changes that are significant because it now establishes the concept of multi-enterprise agreements that involve many organisations working together with their employees' unions to craft labor relations contracts. Searing et al. (2023) point out how the law requires employers to work together with other entities in their industry of operation while developing labour relations agreements. More particularly, the law requires entities with more than fifty employees to seek, and work with, other organisation in their industries. This is meant to harmonize the working conditions and labor guiding agreements within various industries. This change also helps infuse greater inflexibility to collective bargaining agreements realised by employees. For example, an organisation may not vary the terms of its collective bargaining agreement without involving other entities party to such development. Effectively therefore, the legislation is significant to the extent that it ties bargaining engagements to the participation of multiple enterprises within a given industry.

The changes introduced by the law are also significant because they prevent the resort to industrial action by employees. Hamberger (2022) notes that because of the amended act, in the event of a breakdown in labor relations, employees are now obligated to attend a mediation talk organised by the Fair Work Commission before resorting to industrial action. Only then would such action be protected under law. That is, employees and their unions are required to give chance to mediations with their employers before resorting to industrial action. In this way, the law significantly reduces the likelihood of said actions, and ensures sustained productivity of enterprises. Organisations are therefore able to receive adequate notice of impending actions, work to resolve them even with the help of the commonwealth government, and where such is not possible – prepare for the eventuality. Evidently therefore, the law the changes made by the legislation are significant, and portend far-reaching impacts.

Promotion of Job Security

As law, the Fair Work Amendment has introduced significant changes that promote job security in Australia. First, the law- through the multi-enterprise bargaining streams therein, enables employees to request for flexible work arrangements from their employers if need be. That is, the law has expanded the scope of arrangement for flexible work, allowing employees to work on a non-fixed schedule. However, such requests are subject to assessment by the employer, who could refuse to grant said request. To prevent blanket rejection of flexible work requests, the law requires employers to give reasons for refusal. Further, the law also places a limit on the possible reasons that could warrant an employer's refusal of an employee's flexible work requests (Lee et al., 2022). Disputes regarding such refusal are then forwarded to the Fair Work Commission for arbitration. Even so, changes made by the multi-enterprise bargaining agreement on the termination of contracts have helped reduce the scope of such action. Ben and Sage

(2022) indicate that the new law limits employers' termination of contracts to within 12 months of commencement. In this way, the new law prevents the termination of employee contracts before the lapse of a year after the effectuation of such.

In addition to this, the legislation also strictly obligates employers to respond to, and mostly grant, their employees' requests for unpaid parental leave. In prohibiting fixed-term contracts, the law helps to cover employees from the outcomes of both extended parental, and sick leave. The law now builds upon existing provisions for parental leave, and empowers employees to seek form their employers extension on parental leave - if need be. To ensure compliance, the law mandates the FWC to intervene in the event of a dispute. The Fair Work Commission (2023) writes that the law however absolves the employer from paying the employer during such extension on the parental leave. Summarily, by enabling flexible work arrangements between employers and employees, the law now allows employees - in conjunction with their employers, to schedule their work around non-conventional timetable, without losing such employment. In this way, the changes heralded by law, as envisioned under the auspices of multi-enterprise bargaining, are significant because they increase job security for Australian workers.

Greater Workplace Equality

On workplace equality, changes to the law on multi-enterprise bargaining is significant because it pursues greater equality in the workplace. According to Lee et al. (2022) the law also seeks to allow more Australians to offer their efforts to their employers without being discriminated against on irrelevant bases. The Fair Work Amendment law imposes on employers the obligation to take special measures meant to achieve equality at work. Among these include the provision of gender-neutral provisions, and breastfeeding areas. By expanding the scope of the existing workplace anti-discrimination regulations, the law seeks to enhance equality at work. In this manner, the changes that the law introduced were, and continue to be significant to Australia. Boucher, Breunig, and (2022) observe that the country is an attractive destination for a diverse population of global professionals and students. By placing the onus on employers to ensure that their organisations are designed for equality, the law in effect recognizes - and welcomes, the changing demographics of the Australian labour pool.

Additionally, the legislation has also been significant in enhancing gender equality in workplaces across the commonwealth of Australia. By expressly spelling out the terms of engagement on flexible work, the law allows female employees to request and receive flexible working arrangements from their employers. This is meant to enable them contribute their labor to the employers even with the rigors of biology. In this manner, the legislation seeks to enhance gender equality within the workplace, allowing female employees to gain and do work, just as their male counterparts. The legislation obligates employers to put in place modalities for the prevention of, and response to sexual harassment at work. Even though some of the workplace sexual harassment victims are male, females still form the majority thereof (Curphey, 2022). By expressly prohibiting the vice at work, the law therefore enhances the fairness of the workplace for

female employees. Lee et al. (2022) notes that the legislation mandates employers to effectively control sexual harassment in the workplace, imposing vicarious liability on the employer in such occurrence. In this way, the law enhances gender equality in the workplace by obligating employers to prevent any possible instance of sexual harassment.

Further, the law on enterprise bargaining is also significant because it enhances equality in the workplace by expressly dictating pay equity. The Fair Work Commission (2023) notes that the legislation has opened up the scope of the previous law, now allowing the FWC to intervene in equitable pay disputes. Through this, the law makes it mandatory for employers to reveal pay information – upon request, for the purposes of enhancing equity. The law prohibits pay secrecy by employers in a bid to improve equity in the remuneration process. To oversee this, the law levies penalties to defaulting entities for any non-compliance. The Fair Work Commission (2023) further notes that the amendment has also improved focus on low-pay, particularly in industries and sectors with a higher female worker presence. Overall, by making pay equity mandatory in the Australian workplace, the law has made a significant change to the attractiveness of Australia for the diverse talents, offering them an equal platform of reward for their contribution.

Conclusion

Enacted in 2022, the changes to the Fair Work legislation are significant. The amendment heralded many different changes in employment law, from multi-enterprise bargaining, to pay equity, and contract of employment terms and conditions, and further on to the search for greater equity, equality, and an end to discrimination. Overall, the changes contained in the law, have had substantive ramifications on the Australian workplace. These changes have helped establish the modalities of employer management of their workforces, and setting the terms and conditions necessary for the existence of an employment contract.

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