

Written notice requirement

Pre-2010 agreements ('zombie agreements')

A guide for employers

Certain kinds of registered agreements that were made before 1 January 2010, continued to operate when the *Fair Work Act 2009* (Cth) (Fair Work Act) fully commenced on 1 January 2010 (pre-2010 agreements).

Many of these pre-2010 agreements no longer cover anyone and so have ceased to operate. For example, many:

- have been replaced by new enterprise agreements
- only covered employers, projects or worksites that no longer exist
- only covered named employees who are no longer employed by the employer, or
- have been terminated by the parties or by the Fair Work Commission (Commission).

However, some employers and their employees are still covered by pre-2010 agreements and these agreements continue to operate today. These are also known as 'zombie agreements'.

A pre-2010 agreement will terminate on 7 December 2023 unless an application is made to the Commission before 7 December 2023 to extend the default period for the agreement. This is known as 'sunsetting'.

The sunsetting arrangements are set out in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act). Depending on the kind of pre-2010 agreement, you can find the sunsetting arrangements in the Transitional Act at item 20A of [Schedule 3](#), item 26A of [Schedule 3A](#) and item 30 of [Schedule 7](#).

It is important for you to know if you and one or more of your employees are still covered by a pre-2010 agreement.

If you are covered by a pre-2010 agreement, you must **give written notice to all of your employees who are covered by the agreement** about the sunsetting of the agreement.

You must give this written notice **before 7 June 2023** and the written notice must meet the requirements of the Transitional Act.

Our checklist below may help you find out if you have a pre-2010 agreement and what to do if you have one.

If you're not sure, you should seek advice from an employer organisation or a workplace lawyer.

Checklist

1. Are you covered by a registered agreement?

Are you and one or more of your employees covered by a registered agreement?

- You and all of your employees are only covered by a modern award – **You don't need to do anything**
- You and one or more of your employees are covered by a registered agreement – **Check the agreement** to see when it was made.

2. Check when your registered agreement was made


If you and your employees are covered by a registered agreement, check when it was made.

There are 3 different kinds of pre-2010 agreements – 'agreement-based transitional instruments', 'Division 2B State employment agreements' and 'enterprise agreements made during the bridging period'.

Agreement-based transitional instruments include certified agreements, collective agreements, Australian Workplace Agreements (AWAs) and Individual Transitional Employment Agreements (ITEAs) made under the *Workplace Relations Act 1996* (Cth).

Division 2B State employment agreements include collective and individual agreements that were registered under state industrial relations laws in New South Wales, Queensland, South Australia and Tasmania, and were recognised for the purposes of the Fair Work Act.

Enterprise agreements made during the bridging period are enterprise agreements made between 1 July 2009 and 31 December 2009.

 If you're not sure whether your agreement is a pre-2010 agreement, you should seek independent advice.

3. Give written notice to your employees


- You and one or more of your employees are covered by a pre-2010 agreement – **You must give written notice to the employees.**

Failing to give the required written notice to your employees is a breach of a civil penalty provision. This means a financial penalty may be imposed on you by a court.

In broad terms, the written notice must tell employees 3 things:

1. Which kind of pre-2010 agreement they are covered by – either an agreement-based transitional instrument, a Division 2B State employment agreement, or an enterprise agreement made during the bridging period
2. That the agreement will terminate unless an application is made to the Commission before 7 December 2023 to extend the default period, and
3. That the amendments introducing the sunset provisions commenced on 7 December 2022.

You should refer to the Transitional Act for further details of what the written notice must tell employees. Depending on the kind of pre-2010 agreement, the notice requirements are set out in the Transitional Act at item 20A(3) of [Schedule 3](#), item 26A(3) of [Schedule 3A](#) and item 30(3) of [Schedule 7](#).


 You can use our [template written notice](#) to give notice to your employees, but you don't have to.


4. What to do next

A pre-2010 agreement will terminate on 7 December 2023 unless the default period for the agreement is extended by the Commission.

If the pre-2010 agreement terminates

The pre-2010 agreement will cease to operate. The employees' minimum pay and conditions might then be set by a modern award that covers the employees, or an enterprise agreement that covers the employees (if you have an enterprise agreement in place).

 To find out which modern award would apply, you can use the Fair Work Ombudsman's [Find my award](#) tool.

 You can find out [how to make a new enterprise agreement](#) on the Commission's website.

You can apply to the Commission to extend the default period for the pre-2010 agreement

You must apply before 7 December 2023.

Employees covered by the pre-2010 agreement and unions who represent employees covered, can also apply to the Commission to extend the default period.

 Find out about [extending a pre-2010 agreement \('zombie agreement'\)](#) on our website.