

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

In our first IR Bulletin for 2024 we look at some recent code updates on managing vehicle roll-aways in the workplace, some ACCC related environmental claims guidance, and updates on small business bankruptcy and redundancy pay, the effective use of non-solicit clauses in employment contracts, and we remind members of the legislative changes to fixed-term contracts.

PLANT RISKS IN THE WORKPLACE: UPDATES TO THE MODEL CODE OF PRACTICE

Safe Work Australia has updated the model Code of Practice: Managing the risks of plant in the workplace to include guidance on vehicle roll-aways and safe immobilisation. Essentially, vehicle roll-aways are the unintentional movement of a vehicle that has not been properly immobilised, and are a major cause of work-related fatalities and injuries in Australia.

Roll-aways can occur with cars, forklifts, trucks, tractors and trailers, on worksites, car parks, maintenance yards or when a vehicle is parked on the side of the road. When vehicles that have not been safely immobilised roll away, a person can be hit, crushed, trapped or run over – leading to death or serious injuries. The updated Code now includes guidance on control measures to prevent roll-aways, including parking on a level surface where possible and using wheel chocks. Members can access a copy of the updated model Code of Practice [here](#), and a copy of the related fact sheet [here](#).

ACCC ENVIRONMENTAL CLAIMS GUIDANCE

As part of its 2023-24 Compliance and Enforcement Priorities, the ACCC is prioritising consumer, product safety, fair-trading and competition concerns in relation to environmental and sustainability claims. To assist businesses, the ACCC has published eight principles to ensure any environmental marketing and advertising claims they make about products and services are accurate and do not mislead consumers.

The principles comprise the ACCC's [final guidance on environmental claims](#), which sets out the ACCC's view of good practice when making environmental claims, as well as making businesses aware of their obligations under the Australian Consumer Law.

Ensuring such claims are clear and accurate not only helps consumers making purchasing choices, but also means the right incentives are in place for businesses to compete fairly and differentiate themselves based on genuine investment and innovation. The eight key principles are:

1. Make accurate and truthful claims
2. Have evidence to back up your claims
3. Don't hide or omit important information
4. Explain any conditions or qualifications on your claims
5. Avoid broad and unqualified claims
6. Use clear and easy-to-understand language
7. Visual elements should not give the wrong impression
8. Be direct and open about your sustainability transition

IR POLICY AND GOVERNANCE UPDATE



In early 2024, the ACCC will release further guidance for businesses and consumers on emission and offset claims, as well as the use of trust marks. The ACCC will also develop guidance to help consumers confidently assess and rely on environmental claims.

INSOLVENCY RELATED SMALL BUSINESS REDUNDANCY PAY EXEMPTION

Until 15 December 2023, small businesses (national system employers under the FW Act that employ fewer than 15 employees at a particular time) were not required to pay redundancy pay to employees who were made redundant. However, section 121 of the FW Act has now been amended to provide for some limited circumstances where small businesses will be required to pay redundancy pay.

The exception will apply if the employer was not previously a small business and only became a small business due to terminating employees as part of their move to insolvency. The criteria for the obligation to pay redundancy pay are that at the time of making the relevant employee redundant:

- the employer is bankrupt or in liquidation (other than voluntary winding up); and
- the employer previously terminated various employees either six months before becoming bankrupt or going into liquidation, or due to the insolvency of the employer.

NON-SOLICITATION CLAUSES IN EMPLOYMENT CONTRACTS

A non-solicit clause within a contract of employment is one form of post-employment restraint where the employer seeks to protect its proprietary interests if a former employee becomes employed by a competing business or sets up their own business in competition with their former employer. Generally, such clauses will seek to prohibit a former employee, usually for a period of time, from poaching employees and approaching clients and suppliers of their former employee.

There is no one size fits all approach when seeking to utilise non-solicit clauses as part of any post-employment restraint. To be enforceable they should be clearly drafted and reasonable under the particular circumstances. From an enforcement perspective, such clauses can be deemed invalid by a Court unless held to be genuinely necessary to protect your commercial interests. However, if such a clause is not contained within the contract of employment enforcing any form of restraint is extremely difficult, if not unlikely. From a practical perspective it can be worthwhile to remind a departing employee of the existence of such restraints surviving after the employment has ended.

FIXED TERM CONTRACT AMENDMENTS NOW IN PLACE

And we remind members that as of the 6th December 2024, new legislative regulations and requirements relating to fixed term contract came into effect. Essentially there are three (3) rules that need to be followed.

1. A fixed term contract can't be for longer than 2 years, including extensions and renewals.
2. A fixed term contract can't have an option to extend or renew the contract so that employment period (including the extension or renewal period) is longer than 2 years, or extend or renew the contract more than once.
3. An employer can't employ someone on a new fixed term contract if the contract is for mainly the same work as a previous fixed term contract, there isn't a substantial break in the employment relationship between the previous and new contracts, and any of the following apply:

IR POLICY AND GOVERNANCE UPDATE



- > the total period of employment for the previous contract and the new fixed term contract is more than 2 years, or
- > the new fixed term contract can be renewed or extended, or
- > the previous fixed term contract was extended, or
- > there was an initial fixed term contract in place (before the previous contract) that:
 - was for mainly the same work, and
 - there was continuity of the employment relationship from the period of time (if any) between the initial contract and the previous contract.

If a contract doesn't meet these new rules, the contract's end date will no longer apply. Other terms and conditions in the contract will still apply, including entitlements from any relevant legislation, award or agreement.

For fixed term contracts entered into before 6 December 2023, the limitations don't apply, however that contract will need to be considered when applying the consecutive contracts limitation for a new fixed term contract that is entered into on or after 6 December 2023. If a related dispute arises, and that can't be resolved at the workplace, the Fair Work Commission may deal with the dispute. Either the employee or the employer may lodge a dispute with the Commission. Further, the Fair Work Ombudsman has the power to commence proceedings for alleged breaches of these provisions.

Exceptions

There are exceptions that may apply, including where:

- > in the year the contract is entered into, the amount of the employee's earnings under the contract is above the high-income threshold for that year, including pro-rata for a part-time employee.
- > the employee is engaged under the contract to perform only a distinct and identifiable task involving specialised skills.
- > the employee is employed under a training contract such as an apprenticeship.
- > the employee is engaged under the contract to undertake essential work during a peak demand period.
- > the employee is engaged under the contract to undertake work during emergency circumstances or during a temporary absence of another employee.

To Do List

- > Employers must provide employees they're engaging on new fixed term contracts a Fixed Term Contract Information Statement (FTCIS), available [here](#).
- > This new information statement is in addition to the Fair Work Information Statement, available [here](#), or the Casual Employment information Statement, available [here](#).
- > Review any fixed-term contracts so as to ensure compliance with, or exception from, the new regulations and requirements.

IR POLICY AND GOVERNANCE UPDATE



CONTACT

Any Industrial Relations Member who has a related query should contact the HR Hotline on 1800 835 167 or contact Charles Watson, GM – IR, Policy and Governance via email: charles@visualmediaassociation.org.au

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