

ZOMBIE AGREEMENTS

What Are Zombie Agreements

Certain kinds of registered agreements that were made before 1 January 2010, continued to operate for the purposes of the Fair Work Act 2009 (Fair Work Act) when the Fair Work Act fully commenced on 1 January 2010 (pre-2010 agreements). These registered agreements outlined the employment terms and conditions that are applied in the workplace.

The pre-2010 agreements that continue to operate today are commonly known as 'zombie' agreements.

The Australian Government has introduced the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 which amends the Fair Work Act to change a number of existing provisions and introduces a range of new workplace laws, importantly, this has mandated that a pre-2010 agreement that continues to operate (a 'zombie agreement') will automatically terminate (or 'sunset') on 7 December 2023, unless before 7 December 2023 an application is made to the Commission to extend the default period for the agreement.

Currently, Flagstaff workers are covered by an 'Agreement-based Transitional Instrument' called 'The Flagstaff Group Certified Agreement 2004' and that Transitional Instrument has been identified as a Zombie Agreement.

What will Flagstaff be doing as an Employer?

As part of the 'sunsetting' process that commenced on 7 December 2022, Flagstaff is required to give all employees notice that their Agreement-based Transitional Instrument will terminate on 7 December 2023 unless before 7 December 2023 an application is made to the Fair Work Commission under item 20A(4) of Schedule 3 to the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 to extend the default period for the Agreement-based Transitional Instrument.

At this time, Flagstaff does not intend to make an application to extend the default period. Rather, when the Agreement-based Transitional Instrument terminates on 7 December 2023, two Modern Awards will apply to the Flagstaff workforce, namely:

- The Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100] will apply for all employees in the 'Life Choices' division.
- The 'Supported Employment Services Award 2020 [MA000103]' will apply for all other employees including our Flagstaff commercial operations.

What does this mean for Flagstaff Employees?

The move from the Agreement-based Transitional Instrument (i.e. The Flagstaff Group Certified Agreement 2004) to the two underpinning modern awards will **not** result in any reduction in wage for any worker and no worker will need to re-apply for their position.

Based on Flagstaff's reviews to date of the Social, Community, Home Care and Disability Services Industry Award 2010 and the Supported Employment Services Award 2020, Flagstaff has not identified any instance where any workplace entitlement or condition is lessened or adversely impacted for any employee. However, should Flagstaff identify any circumstance where a workplace entitlement or condition is lessened or where an employee is adversely impacted, employees will be notified individually.

You can find information about the termination of Agreement-based Transitional Instruments and applications to extend the default period on the Fair Work Commission's website at www.fwc.gov.au, or you can find information about pay and employment conditions on the Fair Work Ombudsman's website at www.fairwork.gov.au.

Any Flagstaff stakeholder who wants more information can contact Steve Burgess, Flagstaff's Executive Manager People & Culture on (02) 4272 0214 or at Steve.Burgess@flagstaffgroup.com.au.