

Fixed term contracts

Legal information for community organisations

This fact sheet covers:

- ▶ what a fixed term contract is
- ▶ what a maximum term contract is
- ▶ limitations on fixed term contracts
- ▶ exceptions to the fixed term contract provisions
- ▶ what if your organisation breaches the requirements?



This fact sheet covers the use of fixed term and maximum term contracts.



Disclaimer

This fact sheet provides general information about fixed term contracts and the Fair Work Act only. This fact sheet is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

Recent amendments to the *Fair Work Act 2009 (Cth)* (**Fair Work Act**), introduced through the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, place new restrictions on the use of fixed term contracts.

These rules limit both:

- the duration of the fixed term contract, and
- the number of consecutive contracts an employer can offer to an employee to perform the same, or substantially similar, work

These rules also extend to maximum term contracts.

The difference between a fixed term contract and a maximum term contract

A **fixed term contract** terminates (ends) at the expiry of the agreed date (**Termination Date**) and does not give an unqualified right to the employer or employee to terminate the employment before the Termination Date. However, the fixed term contract can be terminated if the employee engages in serious misconduct before the Termination Date.

A **maximum term contract** specifies the maximum duration of the contract and will terminate at the end of an identifiable period (**End Date**). The difference is that a maximum term contract provides a qualified right

to the employer or employee to terminate the contract before the End Date in accordance with the terms of the contract.

For the purpose of this fact sheet, unless we specify otherwise, references to fixed term contracts include maximum term contracts.



Note

Employers must provide all employees entering into a new fixed term contract a copy of the Fixed Term Contract Information Statement prepared by the Fair Work Ombudsman before, or as soon as practicable after, the employee starts work.

The Fixed Term Contract Information Statement sets out details on the fixed term contract limitations, exceptions and the dispute resolution procedure.

The Fixed Term Contract Information Statement must be provided together with the Fair Work Information Statement which contains information about employees' working rights in Australia and the conditions of their employment.



The limitation on fixed term contracts apply to contracts entered into on or after 6 December 2023, as well as any consecutive contracts entered into before 6 December 2023.

The limitations on fixed term contracts

An employer must not enter into a fixed term contract with an employee, or prospective employee, where the fixed term contract:

- is for an identifiable period longer than two years (including any extensions)
- provides an option or right to extend or renew the contract more than once, or
- may be renewed or extended more than once (even if the overall period is less than two years)

There are also restrictions on some consecutive contracts. Consecutive contracts can't be used to extend the identifiable period beyond two years.

These restrictions do **not** apply to casual employees.



What about fixed term contracts in place before 6 December 2023?

A fixed term contract that started before 6 December 2023:

- will continue in force until the end of the term, which can exceed two years, but
- (unless an exception applies) may not be extended or renewed after 6 December 2023 so that the total term would be more than two years



When will a fixed term employee become an ongoing employee due to consecutive contracts?

An employee will be deemed an ongoing employee, where no exception applies, in circumstances where **all the following four criteria** have been met:

1. your organisation has an employee whose existing employment contract (which is for an identifiable period) expires on or after 6 December 2023 (**Previous Contract**)
2. your organisation enters into a further fixed term contract (**Current Contract**) for the employee to perform the same, or substantially similar, work
3. there is substantial continuity of the employment during the period between the Previous Contract terminating and the Current Contract coming into effect, **and**
4. at least one of the following also applies:
 - the total duration from the Previous Contract and the Current Contract is for two or more years
 - the Current Contract contains an option for renewal or extension
 - the Previous Contract contained an option for extension that has been exercised, or
 - the employee has been engaged under another fixed term contract before the Previous Contract, which was for the employee to perform the same, or substantially similar, work and there was substantial continuity of the employment relationship



What constitutes ‘the same, or substantially similar, work’?

Work is considered the **same**, or **substantially similar**, when the overall nature or character of the role remains unchanged, even if some of the duties are different.

This means the focus is on the substance of the role, not just the day-to-day tasks. It must be real and exercised in practice, rather than it be substantially different on paper.

Note – the provisions of the Fair Work Act relating to fixed term contracts expressly state that an employer must not change the nature of the work or tasks the employee is required to perform or otherwise alter an employment relationship for the purposes of avoiding the operation of the limitation provisions on fixed term contracts.

An employer may be subject to civil penalties if they are found in breach of the fixed term contract provisions.



Caution – consideration of previous fixed term contracts

A fixed term contract that was in place with an employee before 6 December 2023 will be taken into account when applying the consecutive contract limits.

For example, if an employer entered into a new contract with an employee on or after 6 December 2023, a fixed term contract that existed between the parties before 6 December 2023 will count towards assessing if there have been more than two contracts, and in assessing how long the employee has been employed on a fixed term contract.



A preschool example – fixed term contracts from 6 December 2023

The manager of a not-for-profit preschool is considering staffing arrangements for Term 1 2024. They have the following questions:

- **Can the organisation employ a new teacher from 1 January 2024 on a 12-month contract?**

Yes, fixed term contracts with an identifiable period of two years or less are permitted.

- **Can the teacher's contract include a right to extend their employment for a further term?**

Yes, that would be fine provided that the contract contains the right to extend the contract for only one additional term, and, if that right is exercised, the contract will be for a total term of two years or less.

- **The preschool has an existing teacher on a fixed term contract which expires on 30 December 2024 (Current Contract). Will the school be able to offer them another fixed term contract after this?**

Fixed term contracts entered into before 6 December 2023 will continue to have effect, including that their fixed end date will apply. However, unless an exception applies, you cannot offer a new consecutive fixed term contract to the teacher if any of the following applies:

- the total period of the Current Contract and the new contract will be greater than two years
- the new contract contains an option for renewal or extension
- the Current Contract contained an option for extension that has been exercised, or
- the employee has been engaged under two previous consecutive fixed term contracts to perform the same, or substantially similar, work and there was substantial continuity of the employment relationship

- **Can the organisation continue to use its template fixed term contract from 6 December 2023? It says the employer and employee can agree to renew the contract for up to two additional terms.**

No, unless an exception applies, the legislation prohibits the use of 'renewable contracts' where the sum of the identifiable period and any other period for which the contract may be extended or renewed is greater than two years, or the contract provides an option or right to extend or renew the contract more than once.

Exceptions to the fixed term contract provisions

The limitations on fixed term contracts won't apply to certain fixed term contracts, including where:

- the employee is engaged under the contract to perform only a distinct and identifiable task involving specialised skills (for example, a technology professional engaged to provide specialised technology support on a particular project)
- the employee is engaged under the contract under a training arrangement (for example, as an apprentice or trainee)
- the employee is engaged under the contract to do essential work during a peak demand period (for example, seasonal work)
- the employee is engaged under the contract to work during emergency circumstances or a temporary absence of another employee (for example, replacing a permanent employee who is on parental leave)
- 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 (this is \$183,100 from 1 July 2025 and indexed each year)
- the contract relates to a position that is funded in whole or in part by government funding or funding of a kind prescribed by the *Fair Work Regulations 2009* (**Regulations**), provided that:

- the funding is payable for more than two years, and
- there are no reasonable prospects that the funding will be renewed after the end of that period
- the contract relates to a governance position that has a time limit under the governing rules of a corporation or association
- a modern award that covers the employee includes terms that permit the use of fixed term contracts beyond the limitations, or
- the Regulations permit the contract to be made (for example, contracts in organised sports)

Contracts permitted by Regulations



Note

The Regulations permit certain categories of contracts to be exempt from the fixed term limitations under specific circumstances.

Contracts covering certain roles relating to ‘organised sport, high performance sport’ and in the ‘higher education sector’ (as defined in the Regulations) entered into between 6 December 2023 and 1 November 2025 are excluded from the fixed term limitations.

There are also exceptions relevant to some contracts entered into **on or after 1 November 2024 and before 1 November 2025** in the medical or health research sector employees and public hospital employees.

Charities and not-for-profit sector employees

Fixed term contracts for charity and not-for-profit sector employees who perform work that is funded in whole or in part by government, a philanthropic entity or through a testamentary gift or contribution will be exempt from the fixed term contract limitations, provided that the applicable pre-conditions are met (see below).

The pre-conditions for charity and not-for-profit sector contracts being exempt from fixed term limitations are:

- the employer must be a philanthropic entity or a person on behalf of a philanthropic entity (registered with ACNC) (**Employer**)
- the employee must be engaged under a fixed term contract with the Employer
- the contract must relate to the performance of work that is wholly or partly funded by:
 - government funding by way of a grant or procurement and excludes any payments made to individuals with an entitlement under law, or payments made for the purposes of the Commonwealth Home Support Program
 - a philanthropic entity (other than the Employer or associated entity of the Employer), or
 - a testamentary gift or contribution made for a charitable purpose of the Employer
- the work is to be performed for a specific program or project to which the funding relates
- the funded program or project runs for no more than five years
- the term of the contract does not substantially extend beyond the program or project end date
- if the employee is already employed or has previously been employed by the Employer, the fixed term contract cannot result in an employment period of more than seven years
- the employee must not be covered by the *Higher Education Industry-Academic Staff-Award 2020* or the *Higher Education Industry-General Staff-Award 2020*
- the fixed term contract must relate to government funding granted on or after 1 November 2024, and

- the fixed term contract must be entered into after 1 November 2024 and before 1 November 2025



Note

After 31 October 2025 your charity won't be able to use this exemption for new fixed term contracts. Any fixed-term contracts your charity has already entered into (after 1 November 2024 and before 1 November 2025) in accordance with this exemption will not be affected.



For more information about these exceptions, see the [Fair Work Ombudsman webpage 'Additional fixed term contract exceptions'](#). Seek legal advice if you are unsure or wish to understand whether your organisation is covered by one of these exceptions

Which funding exemption will apply?

Two exceptions apply to funded positions – one applies for more than two years (the **General Exception** Act), the other applies for up to five years (**Regulation Exception**).

A not-for-profit organisation will be able to rely on either exception if the specific conditions are satisfied.

Key differences between the exceptions are summarised below

| Conditions | General Exception | Regulation Exception |
|---|---|--|
| What type of funded employers are eligible for the exception? | All employers | Philanthropic entities registered as a charity under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth) |
| Renewal requirements | No reasonable prospect of the funding being renewed | Funding (and the contract) may be for a period of no more than five years. |
| Start date of project or program to be funded | Starts on any date | Starts on or after 1 November 2024 |
| What is the requirement for the funding? | The funding must be in whole or in part by the government, or funding of a kind prescribed by Regulations | The funding must be received from the government, other philanthropic entities or testamentary gifts or contributions for a charitable purpose |

Charitable purpose is defined broadly and can include: for the purpose of advancing health, education, social or public welfare, religion, culture, the natural environment, or the security or safety of Australia or the Australian public.

It also includes:

- promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- promoting or protecting human rights, preventing or relieving the suffering of animals, or
- any other purpose beneficial to the general public that is analogous to, or in the spirit of, any of the mentioned causes



What happens when an employee's hours are reduced because of funding changes?

If an employer would like to change an employee's ordinary hours of work due to funding changes, including circumstances where the employee has become an ongoing employee as a result of these changes to fixed term contracts under the Fair Work Act, then the employer must seek the employee's agreement in relation to this change.

If the employee agrees to reduce their hours, the organisation should formalise this change in writing, by having the employee sign a variation to the contract.

However, if an employee does not agree to reduce their hours, the organisation should seek legal advice.



Can the community sector rely on the terms of a modern award that permit the use of fixed term contracts as an exception to the changes to fixed term contracts under the Fair Work Act?

The *Social, Community, Home Care and Disability Services Industry Award 2010* (**Social Award**) covers many community organisations.

Currently, the Social Award does not include any terms that permit the use of fixed term contracts.



What happens if a fixed term employee becomes ongoing and now must be made redundant due to non-renewal of government funding?

Generally, all employees (other than fixed term and casual employees) are entitled to a redundancy pay provided they have worked at least one year of continuous service and their employment is terminated by the employer because the role is no longer required to be performed by anyone. However, there is no requirement to pay redundancy pay where the redundancy is due to the **ordinary and customary turnover of labour** unless the applicable modern award says otherwise or is a small business employer (which has less than 15 employees).

The ordinary and customary turnover of labour means the ending of employment in this way is common and it's a typical or a longstanding practice. For example, the ending of a construction project.

In determining whether the ordinary and customary turnover of labour exception applies, it is necessary to consider whether a reasonable person in the position of both parties to the employment contract would have understood or expected that the employment was not of a permanent or an indefinite nature but would come to an end within a reasonably foreseeable timeframe.

See below for a case study.

Note that the exception does not prevent an employer from seeking any redeployment opportunity for such employee.



Case study – when can an employer rely on the exception?

Organisation Outreach (an organisation that provides temporary shelter and community support) engages Total Services to assist in providing maintenance services at a camp facility as part of the construction of a new regional outreach centre. Total Services engages Ebony at the camp facility as part of the construction.

Ebony's contract of employment terms state that Ebony is engaged for the project and their employment is subject to the ongoing contract between Total Services and Organisation Outreach. Ebony is also subject to an enterprise agreement which contains a clause that stipulates that the termination of the employment due to a change or end of a contract between Total Services and a client is a usual reason for a change to Total Services' workforce and would be part of the ordinary and customary turnover of labour.

Total Services can terminate Ebony's employment after the project ends due to the ordinary and customary turnover of labour. Ebony and Total Services both know that Ebony's employment is finite and that Ebony will be made redundant or redeployed once the project is completed. Accordingly, the termination of the employment will be part of the ordinary and customary turnover of labour exception.



Note

Whether this exception will apply requires consideration of the whole employment relationship. If an organisation wishes to rely on this exception, it will need to make it clear to employees that their employment will end on the completion of a project or is subject to the ongoing contract between the employer and its client.

Seek legal advice before any relying on this exception as there are serious risks and penalties involved for non-payment of redundancy pay.

What if your organisation breaches the requirements?

If a fixed term contract is made in breach of the requirements, the contract will still be valid, except that the contract term that provides for its expiry on a set date will be of no effect. Essentially, the employee will become an ongoing employee.

This means the employee will generally gain:

- entitlements to notice of termination and redundancy payments, either through the National Employment Standards or their relevant industrial instrument (calculated from the start of the employment relationship), and
- access to unfair dismissal protections from the end of their employment for any reason

Employers who breach the requirements or do not provide a Fixed Term Contract Information Statement may also be subject to civil penalties.

Under the provisions, the Fair Work Commission is empowered to resolve disputes in relation to an employee's status, the length, and exception to fixed term contracts if the parties can't agree to resolve the dispute at the workplace level. Both the employee and employer are allowed to take the dispute to the Fair Work Commission. Employees are still able to take civil action in the small claims court.

Other protections

Anti-avoidance provisions in the Fair Work Act apply from 6 December 2023. These provisions provide that a person must not do any of the following to avoid any right or prohibition under the fixed term contract provisions:

- terminate an employee's employment for a period
- delay re-engaging an employee for a period
- not re-engage an employee and instead engage another person to perform the same, or substantially similar, work for the person as the employee had performed for the person
- change the nature of the work or tasks the employee is required to perform for the person, or
- otherwise alter an employment relationship



Do the pay transparency requirements apply to fixed term contracts?

Yes, the pay transparency requirements apply to all employment contracts entered into from 7 June 2023.

This means that any new employment contracts can't include a pay secrecy clause or prohibit an employee from disclosing any terms and conditions of their employment that are reasonably necessary to determine their remuneration. An employee may also ask any other employee their remuneration and any terms and conditions of their employment that are reasonably necessary to determine remuneration outcomes.

Steps your organisation can take to comply with these changes include:

- ☐ Reviewing how your organisation is using fixed-term labour and consider if this can continue under the fixed term contract provisions
- ☐ Seeking legal advice about your specific situation to assess if an exception is likely to apply, and to minimise the possibility of breaching the fixed term contract provisions
- ☐ Reviewing your fixed term contract templates to ensure your organisation is compliant with the fixed term contract provisions
- ☐ Ensuring you provide fixed-term employees with a Fixed Term Contract Information Statement and Fair Work Information Statement for any contracts entered into from 6 December 2023



For more information, see:

- the [fact sheet on limiting the use of fixed-term contracts](#) published by the Department of Employment and Workplace Relations, and
- the [Fair Work Ombudsman webpage 'New rules for fixed term contracts'](#)
- the [Fixed Term Contract Information Statement](#)