

Fixed term contracts

Legal information for community organisations

This fact sheet covers:

- ▶ fixed term and maximum contracts
- ▶ restrictions on using fixed term contracts
- ▶ restrictions on consecutive fixed term contracts
- ▶ exceptions to the fixed term contract limitations
- ▶ consequences of breaching the fixed term contract rules



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.

The *Fair Work Act 2009 (Cth)* (**Fair Work Act**) places restrictions on the use of fixed term contracts.

These restrictions were introduced by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and generally apply to fixed terms contracts entered into on or after 6 December 2023.

The rules restrict:

- how long a fixed term contract can operate
- when a fixed term contract may be renewed or extended, and
- when an employer can enter into consecutive fixed term contracts with an employee performing the same or substantially similar work

The restrictions also apply to maximum term contracts.

Fixed term contracts and maximum term contracts

A **fixed term contract** ends on a specified date and does not provide a general right for either party to end the employment before that date, except where permitted by the contract or by law.

A **maximum term contract** specifies the latest date on which the employment will end, but permits the employer or employee to terminate the employment before that date in accordance with the contract.

For the purposes of this fact sheet, references to fixed term contracts include maximum term contracts unless otherwise stated.



Information statements employers must provide

Before, or as soon as practicable after, an employee starts work under a fixed term contract, the employer must provide:

- the [Fixed Term Contract Information Statement](#), and
- the [Fair Work Information Statement](#)

The Fixed Term Contract Information Statement explains the fixed term contract limitations, available exceptions and dispute resolution procedures. The Fair Work Information Statement outlines employees' workplace rights and minimum employment conditions.

When the fixed term contract limitations apply

The fixed term contract limitations apply to contracts entered into on or after 6 December 2023.

Contracts entered into before 6 December 2023 may still be relevant when assessing whether the restrictions on consecutive fixed term contracts apply.

Contracts entered into before 6 December 2023

A fixed term contract that commenced before 6 December 2023 may continue until the end of its agreed term, even if that term exceeds two years.

However, unless an exception applies, an employer generally cannot renew or extend that contract after 6 December 2023 in a way that contravenes the fixed term contract limitations.

Limits on fixed term contracts

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

- is for an identifiable period longer than two years (including any extensions)
- contains more than one option to renew or extend the contract, or
- may be renewed or extended more than once

The legislation also places restrictions on certain consecutive contracts. Employers cannot rely on consecutive fixed term contracts to effectively extend employment beyond the statutory limits.

These restrictions do not apply to casual employees.

Restrictions on consecutive fixed term contracts

An employer may be prohibited from entering into a further fixed term contract where:

- an existing fixed term contract expires on or after 6 December 2023
- the employer enters into another fixed term contract with the employee
- the employee will perform the same or substantially similar work
- there is substantial continuity of the employment relationship, and
- at least one additional condition is satisfied

The additional conditions include:

- the total duration of the contracts is two years or more
- the new contract contains an option to renew or extend the contract
- a previous option to renew or extend has already been exercised, or
- the employee has previously performed the same or substantially similar work under another fixed term contract where there has been substantial continuity of employment

Meaning of the same or substantially similar work

Work may be substantially similar even if some duties differ. The focus is on the overall nature of the role in practice, rather than its description on paper.

Employers must not alter duties or employment arrangements to avoid the fixed term contract rules. Breaches may result in civil penalties.



Caution – previous fixed term contracts remain relevant

Fixed term contracts entered into before 6 December 2023 still be relevant when assessing the consecutive contract restrictions, including the total period of fixed term employment and whether the employee has performed the same or substantially similar work under multiple contracts.



Example: preschool staffing arrangements

The manager of a not-for-profit preschool has questions about how the fixed term contract limitations apply.

Engaging a teacher on a 12-month fixed term contract?

A not-for-profit organisation can generally employ a new teacher on a 12-month fixed term contract.

The Fair Work Act permits fixed term contracts with an identifiable period of two years or less, provided the contract does not otherwise contravene the fixed term contract limitations.

Including an extension option in a fixed term contract?

A fixed term contract can include an option to extend or renew the contract once.

However, organisations should ensure that:

- the contract contains no more than one extension or renewal option, and
- the total duration of the contract, including any extension, does not exceed two years unless an exception applies

Offering a further fixed term contract?

Where a teacher is already employed under a fixed term contract, the organisation should carefully assess whether the restrictions on consecutive contracts apply before offering another fixed term contract.

Factors that may be relevant include:

- the total duration of the contracts
- whether extension rights have previously been exercised
- whether the teacher has previously performed the same or substantially similar work under earlier fixed term contracts, and
- whether an exception applies

Using contracts with multiple renewal options?

An employment contract that allows multiple renewal or extension opportunities will generally not comply with the fixed term contract limitations.

Organisations should review existing template contracts to ensure they do not contain provisions that permit multiple renewals or extensions contrary to the legislation.

Exceptions to the fixed term contract limitations

The Fair Work Act recognises that fixed term contracts continue to play an important role in some industries and circumstances.

For this reason, the legislation contains a range of exceptions to the fixed term contract limitations.

The limitations generally do not apply where:

- the employee is engaged to perform a distinct and identifiable task involving specialised skills
- the employee is engaged under a training arrangement, such as an apprenticeship or traineeship
- the employee is engaged to perform essential work during a peak demand period
- the employee is engaged to work during emergency circumstances
- the employee is replacing an employee who is temporarily absent, such as during a period of parental leave
- the employee's earnings exceed the applicable high income threshold in the year the contract is entered into
- the contract relates to certain funded positions
- the contract relates to a governance position that has a fixed term under the organisation's governing rules
- a modern award expressly permits the use of fixed term contracts in the relevant circumstances, or
- an additional exception in the *Fair Work Regulations 2009* (**Fair Work Regulations**) applies

Organisations relying on an exception should maintain records showing why they believe the exception applies.

Additional exceptions under the Fair Work Regulations

The Fair Work Regulations contain several additional exceptions that operate alongside those contained in the Fair Work Act.

These exceptions apply only in specific circumstances and should be interpreted carefully.

The Fair Work Regulations currently contain exceptions relevant to areas including:

- organised sport
- high performance sport
- some charity and not-for-profit sector positions, and
- some medical or health research positions

Charities and not-for-profit sector employees

The Fair Work Regulations provide a specific exception for certain employees engaged in the charity and not-for-profit sector.

Broadly speaking, the exception may apply where:

- the employer is a qualifying charity or philanthropic entity
- the employee is employed under a fixed term contract
- the employee is performing work connected with a specific funded program or project
- the funding source satisfies the regulatory requirements, and
- all other eligibility criteria are met

Funding may include:

- government funding
- funding from certain philanthropic entities, or
- certain testamentary gifts or charitable contributions



Because this exception is detailed and highly technical, organisations should carefully assess whether all requirements are satisfied before relying upon it.

Conditions for the charity and not-for-profit sector exception	
Eligible employer	The employer is a philanthropic entity registered with the ACNC, or a person acting on behalf of a philanthropic entity (Employer).
Eligible employee and contract	- The employee is engaged under a fixed term contract with the Employer. - The employee is not covered by either the <i>Higher Education Industry-Academic Staff Award 2020</i> or the <i>Higher Education Industry-General Staff Award 2020</i>.
Eligible funding	The contract must relate to work funded wholly or partly by one or more of the following: - government funding provided through a grant or procurement arrangement (excluding payments made to individuals under a legal entitlement and payments made under the Commonwealth Home Support Program) - a philanthropic entity (other than the Employer or an associated entity of the Employer), or - a testamentary gift or contribution made for a charitable purpose of the Employer
Eligible program or project	- The work must be performed for a specific program or project to which the funding relates. - The funded program or project must run for no more than five years. - The term of the fixed term contract must not substantially extend beyond the program or project end date.
Limits on the employment period	If the employee is already employed or has previously been employed by the Employer, the fixed term contract must not result in a total employment period of more than seven years.
Relevant dates	- The contract must relate to government funding granted on or after 1 November 2024. - The fixed term contract must be entered into on or after 1 November 2024 and before 1 November 2026.
Additional revenue requirements	For fixed term contracts entered into on or after 1 November 2025, the following additional requirements apply: - The relevant philanthropic entity must have total annual revenue of less than \$10 million. - If the philanthropic entity is part of a reporting group under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth), it will generally be taken to have the total annual revenue of the reporting group unless the entity can demonstrate otherwise.



Note

After 31 October 2026 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 2026) in accordance with this exemption will not be affected.



Note

The additional exceptions in the Fair Work Regulations have been amended several times since the fixed term contract reforms began. Organisations should ensure they are relying on the current version of the Regulations, as some exceptions have expired, some have been extended and others have been made ongoing.



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

Funding-related exceptions

Not-for-profit organisations should be aware that there may be more than one funding-related exception available.

General funding exception

The Fair Work Act contains an exception that may apply where:

- a position is funded wholly or partly by government funding, or funding prescribed by the Regulations
- the funding is payable for more than two years, and
- there are no reasonable prospects that the funding will be renewed when it expires

Regulation-based exception

The Fair Work Regulations also contain additional funding-related exceptions that may be available to some charities and not-for-profit organisations.

Because the eligibility criteria differ, organisations should assess each exception separately.

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

The concept of **charitable purpose** is defined broadly under Australian charity law and may include purposes such as: advancing health, advancing education, advancing social or public welfare, advancing

religion, advancing culture, advancing the natural environment, promoting reconciliation, mutual respect or tolerance, promoting or protecting human rights, preventing or relieving animal suffering, and other purposes beneficial to the general public that are analogous to recognised charitable purposes.



What if funding changes mean an employee's hours need to be reduced?

Funding arrangements can change during an employment relationship.

Where an organisation wishes to reduce an employee's ordinary hours because available funding has decreased, it will generally need the employee's agreement unless another lawful mechanism applies. If agreement is reached, the change should be documented in writing.

Organisations should obtain legal advice before reducing an employee's hours without their agreement, particularly where the employee has become ongoing or where awards, enterprise agreements or consultation obligations may apply.



Can a modern award allow the use of fixed term contracts?

Some modern awards contain provisions dealing with fixed term employment. Community organisations are commonly covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (**Social Award**).

The Social Award does not currently contain terms permitting fixed term contracts beyond the limitations in the Fair Work Act.



What if government funding ends?

The restrictions on fixed term contracts mean some employees who would previously have been engaged on fixed term contracts may become ongoing employees. Where funding ends or work is no longer required, organisations may need to consider whether redundancy obligations arise.

An employee whose position is no longer required may be entitled to redundancy pay under the National Employment Standards unless an exception applies. Eligibility for redundancy pay depends on the circumstances of the employment relationship and the specific statutory requirements.

Ordinary and customary turnover of labour

One possible exception to redundancy pay obligations relates to the ordinary and customary turnover of labour. This exception is narrowly applied and should not be assumed to apply merely because a project or funding arrangement ends.

When determining whether the exception applies, it is generally relevant to consider whether a reasonable person in the position of the parties would have understood that the employment was not indefinite and would end within a reasonably foreseeable period.

Organisations should obtain legal advice before relying on this exception.



Case study – when the exception may apply

A not-for-profit organisation receives funding to deliver a three-year community outreach program.

The organisation employs Ebony to work exclusively on that program. Ebony's employment contract clearly states that:

- Ebony is employed specifically to work on the funded program
- the position depends on the continuation of the funding arrangement, and
- the organisation expects the role to end when the program and funding conclude

When the program ends and the funding ceases, the organisation argues that the end of Ebony's employment forms part of the ordinary and customary turnover of labour.

These facts may support that argument. However, whether the exception applies will always depend on the particular circumstances and the overall employment relationship.



Note

Whether this exception applies depends on the whole employment relationship and the surrounding circumstances. Clear contractual wording about the connection between employment and a project, funding arrangement or client contract may be relevant, but will not determine whether the exception applies by itself.

Seek legal advice before relying on this exception. Incorrectly treating an employee as ineligible for redundancy pay can expose an organisation to significant legal risk.

Consequences of breaching the fixed term contract rules

If a fixed term contract is entered into in breach of the Fair Work Act and no exception applies, the contract will generally remain valid. However, the term that provides for the employment to end on a specified date will have no effect.

In practice, this may mean that the employee continues as an ongoing employee rather than their employment ending on the date stated in the contract.

As a result, the employee may become entitled to rights that apply to ongoing employees, including:

- notice of termination under the National Employment Standards or an applicable industrial instrument
- redundancy pay (where applicable), and
- protection from unfair dismissal, if the employee is otherwise eligible to access those protections

Employers who breach the fixed term contract provisions, or fail to provide a Fixed Term Contract Information Statement, may be liable for civil penalties.

The Fair Work Commission can deal with disputes about the operation of the fixed term contract provisions where the parties are unable to resolve the issue at the workplace level.

Anti-avoidance rules

The Fair Work Act contains anti-avoidance provisions designed to prevent employers from avoiding the fixed term contract limitations.

An employer must not take action to avoid the operation of the fixed term contract provisions by:

- terminating an employee's employment for a period
- delaying the re-engagement of an employee
- engaging another person to perform the same or substantially similar work instead of re-engaging the employee
- changing the nature of the employee's duties, or
- otherwise altering the employment relationship

Employers that breach these provisions may be subject to civil penalties.



Do the pay transparency requirements apply to fixed term contracts?

The pay transparency provisions in the Fair Work Act apply to fixed term contracts in the same way they apply to other employment contracts.

Generally, employers cannot include terms that prohibit employees from disclosing their remuneration or information reasonably necessary to determine remuneration outcomes.

Practical compliance checklist

Before entering into a fixed term contract, your organisation should:

Review whether a fixed term contract is appropriate and whether the role should instead be ongoing employment. ☐

Check whether the contract complies with the fixed term contract limitations, including restrictions on contract duration, renewal rights and consecutive contracts. ☐

Assess whether an exception applies and retain records explaining the basis for relying on the exception. ☐

Review contract templates to ensure they are consistent with the Fair Work Act and do not contain non-compliant renewal or extension provisions. ☐

Provide employees with the required information statements, including the Fixed Term Contract Information Statement and the Fair Work Information Statement. ☐

Seek legal advice where there is uncertainty, particularly when relying on an exception or managing employees whose employment may become ongoing. ☐



For more information, see:

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