

# Frequently asked questions

## Changes to fixed term contract provisions

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These frequently asked questions explain changes to fixed term contracts in relation to the Pacific Australia Labour Mobility (PALM) scheme. For further information on fixed term contracts please refer to the [Fixed Term Contract Information Statement](#) on the Fair Work Ombudsman website.

### What is changing and why?

The Australian Government is implementing changes to limit the use of fixed term contract provisions.

- From 6 December 2023, the changes limit the use of fixed term contracts for the same role to 2 consecutive contracts, or a maximum contract length of 2 years - whichever is shorter.
- Exceptions will apply in limited circumstances where genuine fixed term contracts are required.
- In practice, this means after 2 years or 2 consecutive contracts, if an employer intends to reengage the same employee, any further offers of employment must be permanent and ongoing.
- If an employer offers a further fixed term contract, or the existing contract is extended or renewed, it will be in breach of the provisions and the expiry date of the contract will not be valid. This means the employee is permanent and gains the entitlements of permanent employees from the commencement date of that contract.
- From 6 December 2023, employers will have to give employees they're engaging on new fixed term contracts a Fixed Term Contract Information Statement. This statement will be made available on the Fair Work Ombudsman website on 6 December 2023.
- Refer to [New rules for fixed term contracts - Fair Work Ombudsman](#) for further information on changes to fixed term contracts that apply from 6 December 2023.

### When do the changes commence?

Changes to the fixed term contract provisions come into effect on 6 December 2023.

### What recruitments will they apply to?

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

### What if there is a contract in place before 6 December 2023?

Any fixed term contract that was entered into before 6 December 2023 will not be subject to the new rules, unless the contract is extended or another fixed term contract is entered into after the provisions commence.

### What if I want to extend a contract that was entered into before 6 December 2023?

If you seek to extend a contract that was entered into before 6 December 2023, then the new rules will apply. The pre-6 December 2023 contract will count toward the consecutive contract limit and a third fixed term contract will be prohibited. If the contract is extended, the time limitation will also apply if the total length of the contract, including the pre-6 December contract, exceeds 2 years.

For more information, please contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.

### What if I want to renew a contract that was entered into before 6 December 2023?

If you seek to renew a contract, that was entered into before 6 December 2023, then the new rules will apply. The pre-6 December 2023 contract will count toward the time limitations. For example, the total length of employment of the pre-6 December 2023 contract plus the length of the new contract cannot total more than 2 years. You also can't renew a fixed term contract more than once.

For more information, please contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.

### Are there any exceptions from the fixed term contract provisions?

Exceptions may apply to certain roles. Some exceptions that may be relevant to PALM scheme workers, where fixed term contract provisions would not apply, are:

- the worker is engaged under the contract in relation to an arrangement for the training of a worker under state or territory law; or
- the worker is engaged under the contract to undertake essential work during a peak demand period (such as harvest); or

- the worker is engaged under the contract to undertake work during emergency circumstances or temporary replacement of an employee; or
- the worker is engaged for work under an award that allows for different fixed term contract options.

For example, where PALM scheme workers are engaged on a contract to specifically undertake work during a period of peak demand such as seasonal harvest related work or Christmas surge in retail and hospitality work, the contract may be exempt from fixed term contract provisions. Where PALM scheme workers are engaged for a period that is longer than the peak period or has ongoing work after a peak period has concluded, the exception would not apply.

For a full list of the exceptions refer to the [Fair Work Ombudsman](#).

### What do I have to do if I employ short-term workers?

Short-term workers in the scheme can be employed for placements of up to 9 months. Workers engaged on a casual basis are **not** subject to fixed term contract provisions. The fixed term contract provisions may not apply where the contract is only for a peak harvest period.

Generally fixed term contract provisions will not apply to contracts of employment for short-term PALM scheme workers for one placement or where the worker returns (after the mandatory offshore period of 3 months when the PALM scheme workers return to their home country) to a different employer.

### What happens if I employ PALM short term workers on multi-season visas?

PALM short term workers may be recruited using a multi-season visa whereby they return to Australia for up to 9 months each year for up to 4 years.

If you employ a short-term PALM scheme worker on a fixed term contract (who is not a casual employee) and then re-employ the same PALM scheme worker (after the mandatory offshore period of 3 months when PALM scheme workers return to their home country) there are some circumstances where fixed term contract provisions could apply.

For more information please contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.

**Will PALM scheme workers in the short-term stream who are employed on a casual basis for multiple contracts over their 9 months stay in Australia attract fixed term contract provisions and need to be engaged on a permanent ongoing basis?**

No. Fixed term contract provisions will not apply to casual workers with no fixed term of employment in their contract. This includes where the PALM scheme worker is engaged on multiple casual contracts.

### What do I have to do if I employ long-term workers?

Long-term workers in the scheme can be employed for placements of between 1 and 4 years. Long-term PALM scheme workers generally are employed on fixed term contracts at full-time equivalent hours.

The changes limit the use of fixed term contracts for the same role to 2 consecutive contracts or a maximum duration of 2 years, whichever is shorter. This means that contracts beyond 2 years, or 2 consecutive contracts, would be considered permanent (ongoing) employment.

If you

- engage a worker on a contract of more than 2 years duration, or
- seek to extend a contract more than once, or
- engage a worker on a long-term visa on a contract for 1 year initially and then want to offer another 2-year contract, then

You must offer permanent (ongoing) employment under the fixed term contract provisions (unless an exception applies).

Although these PALM scheme workers would be considered permanent (ongoing) employees, their employment would terminate when their right to work in Australia ceases i.e., when their visa expires.

For example, if a PALM scheme worker who has already completed a 1-year contract with you, without a substantial break in continuity of employment, is then offered a 2-year contract extension this would be in breach of the provisions (as it exceeds the maximum 2 years total time limit allowed by the provisions). The contract end date of the second contract would no longer apply, and the worker would be considered a permanent (ongoing) employee.

You will need to ensure that PALM scheme workers understand when they are required to return home under their visa. A discussion between you and the worker should be conducted at the start of the relevant notice period under the applicable Fair Work Instrument<sup>1</sup> related to terminations, or earlier, to ensure the worker understands that, although they are engaged as a permanent (ongoing) employee, their employment ceases when their visa expires and their right to work in Australia ends.

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<sup>1</sup> Fair Work Instrument has the meaning given by the PALM scheme deed.

If you require further assistance, please contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.

### **Will I need to pay any end of employment entitlements to PALM scheme workers who are terminated at the expiry of their visa (e.g., redundancy payment)?**

For PALM scheme workers engaged for more than 2 years to whom the fixed term contract limitation does apply, if their employment is terminated because the worker's visa expired, the worker will not be entitled to a redundancy payment.

You are required to give workers notice of termination of their employment due to the termination of their work rights, or payment in lieu of notice, where the PALM scheme worker is not engaged on a fixed term contract.

Casual workers are not entitled to redundancy pay or payment in lieu of notice. Note there are obligations in the PALM Guidelines regarding ending PALM workers' employment, refer to Chapter 11.

For more information, please contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.

### **Next steps: where to from here?**

You should:

- Review any fixed term employment contract arrangements you currently have in place. If required, renew any that expire before 6 December 2023, and start planning for any that will come up for renewal after 6 December 2023.
- Review your employment contract templates to ensure they do not contain any terms that are inconsistent with the new rules.
- When a fixed term contract is due for renewal, ensure that the renewal of the worker's contract does not breach the new rules.
- Ensure your hiring managers are aware of the new provisions relating to the use of fixed term contracts.
- Watch for the release of the new Fixed Term Contract Information Statement and provide this to workers entering into a fixed term contract on or after 6 December 2023.
- Contact the Fair Work Ombudsman (FWO) for advice. Information about how to contact FWO can be found here - [Contact us - Fair Work Ombudsman](#) or call 13 13 94.