

# Closing Loopholes reforms – Key changes

## Closing Loopholes Act 2023

Passed both Houses on 7/12/23 and received Royal Assent on 14/12/23:



## Closing Loopholes (No. 2) Act 2024

Passed both Houses on 12/02/24 and received Royal Assent on 26/02/24:



### Same job same pay orders (closing the labour hire loophole)

Empowering the FWC to make orders requiring certain employers who supply their employees to perform work for a 'regulated host' to pay their employees the same rate of pay as employees of the host who perform work of substantially the same kind covered by an EA (except service contractors)



### Strengthening protections against discrimination

Stronger protections against discrimination for employees who have been, or continue to be, subjected to family and domestic violence



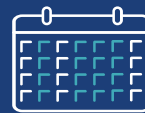
### Workplace delegates' rights [Part 1]

New requirements on employers to allow workplace delegates paid time to attend training and reasonable time and facilities at the workplace to communicate with employees who are current or prospective union members (excluding non-employee regulated workers)



### Workplace delegates' rights [Part 2]

New requirements on employers to allow workplace delegates paid time to attend training and reasonable time and facilities at the workplace to communicate with non-employee regulated workers who are current or prospective union members



### Changes to casual employment

A new casual employee definition which will consider the totality of the employment relationship, the introduction of an anti-avoidance and 'employee choice' framework, increased access to the small claims jurisdiction, and the repeal of the residual right of employees to request, and the obligation on employers to offer, casual conversion every 6 months (to remove duplication with the new 'choice' framework)



### Road transport and employee-like worker conditions / unfair contracts

Introducing minimum conditions, collective agreements and rights to challenge termination / deactivation, for certain non-employee gig economy workers and road transport contractors, a new FWC unfair contracts jurisdiction for services contracts and a new Digital Labour Platform Consultative Committee to be established as a consultation platform



### Enterprise bargaining changes

Empowering the FWC to determine certain 'model terms' for enterprise agreements, changing the interaction rules between new single-enterprise agreements and in-term multi-enterprise agreements and limiting the ability for the FWC to wind conditions backwards in intractable bargaining (etc.)



### Small business redundancy exemption

Creating a carve out to this exemption for employers who are not initially a 'small business employer' but gradually become one during a bankruptcy or liquidation process



### Workplace health and safety

Introducing a Cth industrial manslaughter offence, increasing maximum penalties, increasing the focus on silica related diseases, enabling certain employees suffering PTSD easier access to workers' compensation, and clarifying right of entry obligations for union officials who attend site to assist health and safety representatives



### Underpayments, compliance and enforcement [Part 1]

New criminal offence for wage and superannuation theft. A minor clarification has also been made to the requirement for bargaining representatives to attend conciliation conferences relating to protected action ballot orders



### Underpayments, compliance and enforcement [Part 2]

Higher civil penalties, lowering of the bar for what constitutes a 'serious contravention' and allowing snap rights of entry for underpayments after the granting of a FWC exemption certificate



### Strengthening workplace protections

A 'right to disconnect' which entitles employees to ignore unreasonable contact outside work hours and empowers the FWC to issue 'stop orders' to enforce this right



### Sham contracting arrangements

An amendment to the defence that is available to an employer who misrepresents employment as an independent contracting arrangement



### Definition of employment

A new "ordinary meaning" definition of employee and employer, designed to revert the employee vs independent contractor characterisation to the multi-factorial test and unwind recent High Court authority



### Withdrawal from registered organisation amalgamations

Limiting the FWC's capacity to accept applications for a ballot of members of a constituent part of a union to withdraw from the union (i.e. unwinding recent amendments to these rules)