

New IR legislation Update:

Contentious Closing Loopholes (No. 2) Bill receives Royal Assent

As members will recall from our previous [Bulletin](#), the contentious Closing Loopholes Bill was split in December 2023 following a deal being reached with the Albanese Government and crossbench Senators David Pocock and Jacqui Lambie. Like its predecessor, the No. 2 Bill was also rushed through the Australian Parliament, without proper scrutiny, on 12 February 2024.

TACC notes that a significant number of amendments were made to the original No. 2 Bill by the Senate crossbench to address concerns raised in our advocacy on behalf of members. Whilst improved, it remains in our view poor legislation that will increase complexity and uncertainty for employers and employees and decrease flexibility and productivity in the workplace.

On **26 February 2024**, the *Fair Work Legislation Amendment (Closing Loopholes (No. 2)) Act 2024* received Royal Assent, amending the *Fair Work Act 2009*.

Changes that commence from 27 February 2024

- **civil penalties** provisions amended to provide a **five-fold increase** to contraventions to body corporates with **15 or more employees**, and reduction of “**serious contravention**” threshold test to include non-systematic and reckless conduct
- **sham contracting** defence for deemed employers tightened to a ‘**reasonable belief**’ test
- **enterprise bargaining** changes, including a prohibition on Fair Work Commission (FWC) ‘intractable bargaining’ arbitrations providing any worse terms for employees.

Changes that will take effect 1 July 2024

- **right of entry** provisions amended to make it easier for a union official to enter a workplace to investigate a **suspected underpayment** with **no advance written notice to the employer** if FWC satisfied that providing the advance written notice would hinder an effective investigation
- FWC empowered to resolve workplace relations-related **unfair contractual terms disputes** between **independent contractors** (earning below the contractor high income threshold) and principals.

Changes that will take effect no later than 27 August 2024

- **definition of casual employment** amended under the Fair Work Act with a new test that, in addition to the terms of the employment contract, includes additional consideration of a range of **post-employment** factors in a manner at odds with the common law
- **employee choice casual conversion** pathway commences, enabling a casual employee to notify conversion after 6 months (or 12 months for a small business) if they believe they no longer meet the definition of casual employment, subject to an **employer right to refuse** on reasonable operational grounds
- employers must provide the **Casual Employment Information Statement (CEIS)** to casual employees more often. For businesses with **15 or more employees**, this will be on commencement; after 6 months employment; after 12 months employment; and after any subsequent 12 months employment. For **small business** employers (less than 15 employees), the CEIS must be provided on commencement and after 12 months employment
- **sham casual contracting** provisions commence, prohibiting misrepresentation and the dismissal of a full-time or part-time employee to engage them as a casual employee
- **right to disconnect** commences (for **businesses with 15 or more employees**), enabling an employee to refuse contact from their employer (and third parties in relation to work) **outside of their working hours**, provided the refusal is **not unreasonable**
- **definition of employment** under the Fair Work Act commences, that in addition to the terms of the written contract between the parties, requires the consideration of additional factors in a manner at odds with the common law to determine whether a person is an **independent contractor or employee**
- FWC empowered to set **binding minimum standards** (and access to consent-based collective agreements and 'unfair activation' dispute resolution) for **independent contractors** engaged in '**employee like**' **work on digital platforms**
- FWC empowered to set **binding minimum standards** (and access to consent-based collective agreements and 'unfair termination' dispute resolution) for **independent contractors** engaged in the **road transport industry**.

Changes that will take effect no later than 27 February 2025

- **right to disconnect** commences for **small businesses** (less than 15 employees), enabling an employee to refuse contact from their employer (and third parties in relation to work) **outside of their working hours**, provided the refusal is **not unreasonable**.

TACC will provide members with further detail on the key amendments of most relevance to the automotive industry in the next Workplace Update.

In the interim, members seeking further information are encouraged to contact VACC's Workplace Relations team on 03 9829 1123 or ir@vacc.com.au

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