



Closing Loopholes Review

Terms of Reference

Context

During the 47th Parliament (2022–2025), the Australian Government secured the passage of significant reforms to Australia’s workplace relations laws to close loopholes and improve fairness and safety in the workplace.

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) and *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (Closing Loopholes No. 2 Act) were passed by the Parliament and received Royal Assent on 14 December 2023 and 26 February 2024 respectively. A list of the measures in this legislation is at **Attachment A**.

The *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Family and Domestic Violence Leave Act) provides ten days paid family and domestic violence leave in a 12-month period for full-time, part-time and casual employees.

Statutory Review

The Closing Loopholes Act and the Closing Loopholes No. 2 Act (the Closing Loopholes legislation) require the Minister for Employment and Workplace Relations to initiate a statutory review to be undertaken within 2 years of commencement.

- Section 4 of the Closing Loopholes Act requires the Minister to cause a review of the operation of the amendments made by the Act to commence by 15 December 2025.
- Section 4 of the Closing Loopholes No. 2 Act requires the Minister to cause a review of the amendments made by the Act, including but not limited to the new jurisdictions relating to regulated workers and the right to disconnect to commence by 27 February 2026.

Both Acts require that:

- the persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review

- the Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives it.

The Family and Domestic Violence Leave Act was reviewed in line with its statutory requirements in 2024, and in its response to that review the government committed to further review of the Act.

Conduct of the review

The Government has decided the statutory reviews of the Closing Loopholes legislation will be conducted together as a joint review (the Closing Loopholes Review). The review will also cover the Family and Domestic Violence Leave Act as agreed in the *Australian Government Response to the Independent Review of the operation of the paid family and domestic violence leave entitlement in the Fair Work Act 2009 (Cth)*.

The Closing Loopholes Review will be led by an independent reviewer appointed by the Minister for Employment and Workplace Relations (the Minister). The Department of Employment and Workplace Relations will provide secretariat support to the review.

The Closing Loopholes Review will commence by 15 December 2025. Without limiting the matters that may be considered, the review must:

- consider whether the operation of the amendments is appropriate and effective
- identify any unintended consequences of the amendments
- consider whether further amendments to the *Fair Work Act 2009*, or any other legislation, are necessary to improve the operation of the amendments or rectify any unintended consequences that are identified.

The review must also further consider the effectiveness of the amendments made by the Family and Domestic Violence Leave Act, taking into account the 2024 independent statutory review of this Act which found that while the entitlement is operating as intended, more time was needed for employers and employees to experience the existing entitlement before further calls for reform were progressed.

The review must provide a document setting out preliminary findings and draft recommendations to the Minister on or before 15 May 2026. The preliminary findings and draft recommendation/draft report are to be published for stakeholder comment. A final Report is to be delivered to the Minister on or before 15 June 2026.

In conducting the Closing Loopholes Review, the reviewer will consider any relevant qualitative and quantitative research.

The review must be informed by stakeholder perspectives, which may include expert advice, and stakeholders must be given an opportunity to provide submissions and evidence on the matters to be considered by the review. Submissions to the review will be published where appropriate, or unless parties request that their submissions remain confidential.

The final Report must detail the reviewer's findings and recommendations about each of the matters to be considered by the review.

Publication

The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days after the Minister receives the report.

Attachment A: Measures contained in Closing Loopholes legislation

Closing Loopholes Act

- Compliance and enforcement: Criminalising wage theft
- Regulated labour hire arrangement orders (Closing the labour hire loophole)
- Enhancing delegates' rights
- Provide stronger protections against discrimination, adverse action and harassment
- Addressing anomalous consequences of the small business redundancy exemption in insolvency contexts
- Conciliation conference orders
- Entry to assist Health and Safety Representatives
- Amendments to *Asbestos Safety and Eradication Agency Act 2013*
- Amendments to the *Safety Rehabilitation and Compensation Act 1988*
- Industrial manslaughter and other work, health and safety reforms

Closing Loopholes No. 2 Act

- Extend the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers
- Allow the Fair Work Commission to set minimum standards to ensure the road transport industry is safe, sustainable and viable
- Give workers the right to challenge unfair contractual terms
- Amending the definition of casual employee and providing the employee choice pathway
- Compliance and enforcement: Civil penalties and sham contracting
- Meaning of 'employee' and 'employer' in the *Fair Work Act 2009*
- Enabling multiple franchisees to access the single enterprise agreement stream
- Strengthening right of entry to investigate underpayments
- Fair Work Commission preparing enterprise agreement model terms
- Transitioning from multi-enterprise agreements
- Repeal de-merger from registered organisations amalgamation provisions
- Workplace determinations
- Right to disconnect