WR Reform Agenda 2024

The Government is focussed on implementing remaining WR commitments

- In 2024, the Government will continue to implement its agenda to improve and modernise Australia's workplace relations framework by delivering on its election and Job and Skills Summit commitments.
- The ***Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023*** passed both houses on 12 February 2024.
- The ***Closing Loopholes Act*** builds on the Government's workplace relations reforms by addressing loopholes in the workplace relations system that can undermine principles of fairness, secure jobs, and better pay.
    - The Act implements key Government commitments, including to:
        - 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, and
        - stand up for casual workers.
    - For the full list of measures included in the Bill see **SB24-000003.**
- Other workplace relations commitments the Government will continue to develop in 2024 and beyond include:
    - consultation with state and territory governments, unions and industry to develop, where it is practical, portable entitlement schemes for Australians in insecure work
    - a national framework for labour hire regulation
    - working with states and territories to amend the model work health and safety laws to include a prohibition on the use, supply and manufacture of all engineered stone, with the majority of jurisdictions to commence the prohibition from 1 July 2024
    - consideration of improvements to modern awards and the National Employment Standards
    - combatting migrant worker exploitation through implementing remaining recommendations of the Migrant Workers' Taskforce and progressing the package of reforms to address migrant worker exploitation, announced by Government in June 2023 (*Note: this is being progressed jointly by Home Affairs and DEWR*).

The 2024 WR Agenda builds off reforms already implemented in 2022 and 2023

- In 2022, the Government passed:
    - the ***Paid Family and Domestic Violence Leave Act 2022***, which legislated 10 days of paid family and domestic leave for employees, including casuals.
    - the ***Secure Jobs, Better Pay Act 2022***, which aimed to improve the workplace relations framework by boosting bargaining, improving job security and pay equity, and improving workplace conditions and protections.
- In 2023, the Government passed:
    - the ***Protecting Worker Entitlements Act 2023***, which aimed to further enshrine worker entitlements, promote gender equality and improve fairness in our workplace relations system.
    - the ***Fair Work Legislation Amendment (Closing Loopholes) Act 2023*****,** which aimed to further strengthen the workplace relations framework, providing certainty, fairness and a level playing field for businesses and workers. The Act also contains reforms to better ensure safe working conditions.
        - For the full list of measures in the Act see **SB24-000002**.
        - For information on Closing Loopholes impact analysis **see SB24-000001.**

The Government will continue to consult throughout 2024

- Ongoing consultation on workplace relations reforms will continue throughout 2024 with employer groups, unions, and other stakeholders. For more information see **SB24-000006.**

2023-24 Budget announcements

- $10 million over four years from 2023-24 to **tackle the incidence of silicosis** and other silica-related diseases in the workplace (see **SB24-000028**).
- $27.4 million over four years from 2023-24 to improve the safety and fairness of workplaces and continue detailed consultation with key industries. Funding includes:
    - $20 million over two years for the **Productivity, Education and Training Fund grant program** (in addition to the $5 million over three years announced in the October 2022-23 Budget).
    - $4.4 million over four years to establish the **National Construction Industry Forum** (legislated by the Secure Jobs, Better Pay Act 2022) (see **SB24-000005**).
    - $2 million over two years for the development and delivery of a train-the-trainer package on psychosocial hazards in the workplace for organisations who train Health and Safety Representatives in the Commonwealth jurisdiction.
    - $800,000 in 2023-24 to support the Fair Work Commission to conduct a **review of modern awards**.
    - $300,000 in 2023-24 for a specialist review into the operations of the Office of the Fair Work Ombudsman.
- Cost saving of $15.8 million over four years from 2023-24 by reducing the departmental operating funding of the Office of the Fair Work Ombudsman by 2.5 per cent.
- The office of the Fair Work Ombudsman also received $27.3 million over four years from 2023-24 under the **'Enhancing Pacific Engagement'** measure in the Foreign Affairs and Trade portfolio.

2023-24 MYEFO announcements

- The Government will provide $94.6 million over four years from 2023-24 (and $22.7 million per year ongoing) to **close loopholes** that prevent workers in Australia from achieving secure, safe, and well-paid jobs free from discrimination and exploitation.
    - This will further safeguard the wages and conditions of workers and provide clarity and a more level playing field for businesses and workers.
    - These changes are also expected to increase non-tax revenue by $85.8 million over four years from 2023-24 (and $28.7 million per year ongoing).
    - See **'Background'** for full breakdown per measure.
- $1.4 million over two years from 2023-24 to provide support for the Seafarers Safety Net Fund and for consultation on reforms to address issues that currently discourage insurers from participating in the **Seacare** workers' compensation scheme.
- $9.3 million over two years from 2023-24 to deliver a six-month advertising and public relations campaign around decisions to **prohibit or limit the use of engineered stone** (see **SB24-000028**).
- $4.3 million over three years from 2023-24 to establish an independent panel to undertake a comprehensive **review of the *Safety, Rehabilitation and Compensation Act 1988*,** which underpins the Comcare workers' compensation scheme.
- The office of the Fair Work Ombudsman also received $3.9 million over two years from 2024-25 to support new approaches to tackle the exploitation of migrant workers under the **'Migration System Integrity'** measure in the Home Affair portfolio**.**

Background

- The Government's Closing Loopholes funding package includes the following measures from 2023-24:
  - $63.1 million in non-tax revenue over four years (and $20.7 million per year ongoing) by increasing the maximum penalties for breaches of underpayment related Fair Work Act civil remedy provisions and non-compliance with compliance notices.
  - $55 million over 4 years from 2023-24 (and $12.5 million per year ongoing) to implement the new criminal offence for intentional wage theft, legislated in the Closing Loopholes Act.
    - This includes $49.5 million in additional funding for the Fair Work Ombudsman ($11.0 million per year ongoing), and funding for the Commonwealth Director of Public Prosecutions, and DEWR.
    - Costs partially offset by expected non-tax revenue of $22.6 million over 3 years from 2024-25 ($8 million per year ongoing) in anticipated penalties. Net negative impact on underlying cash is $32.4 million over 4 years.
  - $18.1 million over four years (and $5.2 million per year ongoing) to establish a new jurisdiction in the Fair Work Commission to make orders setting minimum standards and provide deactivation protections for employee-like digital platform workers.
  - $6.8 million over four years (and $1.9 million per year ongoing) to implement the 'Closing labour hire loopholes' measure, which will enable applications to the Fair Work Commission for an order to provide that labour hire employees are paid the full rate of pay they would receive under the host's enterprise agreement.
  - $5.4 million over four years (and $1 million per year ongoing) to establish a new jurisdiction in the Fair Work Commission to handle disputes between independent contractors and principals about unfair contractual terms.
  - $4.9 million over four years (and $1.1 million per year ongoing) to establish a new jurisdiction in the Fair Work Commission to make orders setting minimum standards to ensure the road transport industry is safe, sustainable and viable, and provide unfair termination of contract protections for road transport workers.
  - $3.4 million over four years (and $0.7 million per year ongoing) to legislate a fair, objective test to determine when an employee is classified as a casual employee and to support dispute resolution.
  - $1.0 million over four years (and $0.3 million per year ongoing) to address unintended consequences in how the small business redundancy exemption operates in insolvency. This will preserve redundancy pay entitlements where an employer has progressively downsized in the context of insolvency from a larger business into a small business employer exempt from redundancy pay obligations.
    - These costs will be partially offset from expected non-tax revenue of $0.1 million over two years from 2025-26 (and $41,000 per year ongoing).

Closing Loopholes – Impact Analysis

It is difficult to estimate the economic impacts of workplace relations reform in isolation

- Specific outcomes will depend on the approach that independent parties – such as employers, unions and the Fair Work Commission– take in response to proposed measures.
- It can be difficult to isolate the impact of individual measures from other external factors, such as changes in the economic climate.
    - In the Opposition's Explanatory Memorandum (p. xxxii) for the *Securing Australian Jobs and Economic Recovery Bill*, it noted that 'it is difficult to quantify the regulatory impact of each option as there is no precise information collected on the employees and businesses directly affected'.
- The data used in the department's Impact Analysis Equivalent processes were the best available, from authoritative data sources such as the Australian Bureau of Statistics.
- The Office of Impact Analysis (OIA) sets guidance on the information they require to make an assessment, which the department closely followed. For example, where relevant data was not available and/or unreliable, the department has acknowledged these limitations. This is consistent with the requirements from the OIA.

The impact on consumers will depend on the Commission's orders and how businesses implement changes

- When setting minimum standards, the Fair Work Commission is required to make balanced decisions, having regard to factors such as the impact on parties that use or rely on platforms, and the need to avoid unreasonable adverse impacts on business viability and the national economy, which will help mitigate the impact on consumers.
- It will be up to businesses to decide how any increased costs, if they eventuate, are passed on to consumers.
- Where costs are passed on, these would be spread across multiple consumers, minimising the impact to each consumer.

Uber and DoorDash claim that minimum standards will raise prices by between 85% and 260%

Uber and DoorDash have not provided the underlying data upon which their modelling is based (e.g. current pay rate, time of day, vehicle type, distance travelled, etc), so it is difficult to assess their findings.

- However, both platforms' modelling assumes delivery workers will receive the same entitlements as employees. This is not consistent with how the provisions work.
- The Fair Work Commission cannot set standards that would change the form of engagement from independent contracting to employment. This includes things like rostering arrangements.
- Considering pay and conditions of comparable employees is just one factor the Fair Work Commission must balance under the minimum standards objective when considering an order. It must also consider the type of work, the need to tailor standards to worker preferences and avoid adverse impacts on business models.
- Since Uber and DoorDash released these estimates, the Government has further amended the Closing Loopholes No. 2 Bill to address key concerns raised by platforms. This includes amendments to:
    - Ensure the Fair Work Commission can only include standards relating to penalty rates, payments before and between accepting task-based work, and minimum periods of engagement where it is appropriate for the type of work performed.
    - Include additional factors the Fair Work Commission must consider when setting standards, including workers' ability to 'multi-app', the impact on parties that use or rely on platforms, and the need for standards to reflect the different form of engagement of workers as independent contractors rather than employees.

The reforms have been designed to not unnecessarily increase impacts on businesses

- The Closing Loopholes Bills aim to close loopholes in our workplace relations system that can undercut fairness and job security in the Australian labour market.
- Implementing changes to improve fairness for labour hire, casuals, and gig workers, as well as minimum standards to ensure the road transport industry is safe, sustainable and viable, will inevitably carry some regulatory burden for businesses.
- Some measures will require particular businesses to change their practices or behaviours where those practices are not resulting in fair outcomes for workers in the labour market.
- Legislative guardrails will help to minimise the impacts by ensuring they are targeted and balance appropriate factors.
- The Closing Loopholes Bills total package is estimated to cost up to **$920 million per year on average** plus some assorted regulatory costs, or less than 0.1 per cent of the total wage bill. This equates to up to **$9.2 billion over 10 years** plus some assorted regulatory costs.
- Of the $920 million per year, **$410 million** relates to the Closing Loopholes No. 2 Bill.

The vast majority of the costs in both Bills will be paid to workers who benefit from these proposals.

- Under the potential scenarios costed, it is assumed not all measures will have wage increases each year, so the impact in any given year may be higher or lower than the average annual cost. As is standard practice, our impact analysis costings were presented as an average annual cost over 10 years.

Higher wages for workers

- We estimate that the Closing Loopholes Bills will give back up to $920 million per year to underpaid workers and workers in less secure jobs - less than 0.1 per cent of the total wage bill. This is comprised of:
    - Up to $510.6 million per year in increased wages for up to 66,000 **labour hire employees** who become covered by a Fair Work Commission order, where they are currently receiving lower wages than host employees as a result of the labour hire loophole.
    - For Closing Loopholes No. 2 Bill:
        - $403.8 million per year on average in increased wages for around 150,000 **food delivery and rideshare gig workers** and around 16,000 **gig workers in the care sector**, to bring their pay up to award minimum rates.
        - $3.8 million per year on average in increased wages for around 2,900 **road transport workers**, to bring contractors pay up to minimum award rates.
- These reforms are not expected to be inflationary. Inflation peaked at the end of 2022 and is expected to continue to moderate. 2023-24 MYEFO forecasts inflation will fall to 3¾ per cent in 2023-24.

Treating workers fairly is not mutually exclusive with innovation and productivity gains

- Reforms in the Closing Loopholes Bills will encourage businesses to compete healthily through better innovation and investment in their workforce rather than through decreasing wages and conditions of workers, many of whom are in less secure forms of work.
- Participation and worker productivity are more likely when jobs afford fair wages, conditions and security.
- We expect there will be a positive impact on job security and conditions which may increase participation.
    - The Employment White Paper outlined the strong connection that exists between job insecurity and poor physical or mental health, and therefore job performance and firm productivity (p. 60). It also noted that employers can find turnover and workforce productivity suffers when workers are employed through insecure arrangements.
- By removing loopholes that allow businesses to undercut the wages and conditions of their workers, businesses will have the opportunity to compete on a more level playing field.

- Minimum conditions for employee-like and road transport workers will also allow them to operate on a more level playing field, without the pressure to undertake work faster and cheaper.

Table 1: Estimated average annual costs of Closing Loopholes – by proposal

Policy	*Wage bill cost*	*Regulatory costs*	*Total cost*
Fair Work Legislation Amendment (Closing Loopholes) Act 2023			
Closing the labour hire loophole	Up to $510.6 million (0.05 per cent of the total wage bill) (economy-wide)	$0.2 million (one-off economy-wide cost for businesses)	Up to $510.8 million (economy-wide cost for businesses)
Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023			
Minimum standards and increased access to dispute resolution for independent contractors*	$407.7 million (0.04 per cent of the total wage bill) (economy-wide)	$235.58 per business affected only by the new meaning of employment, *or* up to $10,080.70 per affected business for digital platforms, *or* up to $6,125.00 per affected business + $258.80 per worker for road transport businesses	$407.7 million per year (economy-wide), *plus* $235.58 per business affected only by the new meaning of employment, *or* up to $10,080.70 per affected business for digital platforms, *or* up to $6,125.00 per affected business + $258.80 per worker for road transport
Standing up for casual employees	Nil	Total annual costs: $1.4 million (economy-wide), comprised of: All businesses: $1.1 million ($730,000 larger businesses, $370,000 small businesses) Employees: $0.3 million (economy-wide)	$1.4 million annually

*Refers to costs of Option 4 (Empower the Fair Work Commission to set minimum standards for digital platform workers and road transport workers, with an interpretive principle). Option 3 does not include the interpretive principle, Option 2 does not include the interpretive principle and road transport workers, Option 1 is the status quo.

Table 2: Estimated average annual costs of Closing Loopholes package – Total

Policy	*Wage bill cost*	*Regulatory costs*	*Total cost*
TOTAL PACKAGE	*Up to $918.2 million (economy-wide)* *(0.09 per cent of the total wage bill)*	*Businesses:* *$1.1 million (economy-wide) plus* *$235.58 per business affected by the new meaning of employment, or* *up to $10,080.70 per affected business for digital platforms, or* *up to $6,125.00 per affected business + $258.80 per worker for road transport businesses plus* *$0.2 million in the first year only (economy-wide)* *Individuals:* *$0.3 million (economy-wide)*	*Businesses:* *up to $919.3 million (economy-wide) plus* *$235.58 per business affected by the new meaning of employment, or* *up to $10,080.70 per affected business for digital platforms, or* *up to $6,125.00 per affected business + $258.80 per worker for road transport businesses plus* *$0.2 million in the first year only (economy-wide)* *Individuals:* *$0.3 million (economy-wide)*

Appendix A: *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* - Closing the Labour Hire Loophole

Why hasn't the department been able to estimate all of the costs to business from this proposal?

- The administrative and compliance impacts from the Closing the Labour Hire Loophole are difficult to estimate because:
  - There is no reliable data on the number of businesses that use labour hire.
  - There is no reliable data on the complexity of enterprise agreements in place in businesses that use labour hire.
  - There is no available data on the number of applications that may be made to the Fair Work Commission.
  - There is no available data on the volume or complexity of issues – including corporate arrangements – that parties may wish to raise in the Fair Work Commission, which impacts the volume of evidence and other materials that may need to be considered.

How many labour hire employees will be affected by the proposal?

- The department estimates that around 66,000 labour hire employees will be eligible to be covered by this proposal.
  - At the time of the costing, ABS data indicated there were around 319,000 labour hire workers in Australia.
  - Some of those workers are paid more than directly engaged employees. Some are engaged for less than three months. Some work in hosts without an enterprise agreement.
  - When taking into account these factors, the department estimates approximately 66,000 workers will be affected.

How many businesses will be affected by the proposal?

- There are around 6,000 employing labour hire businesses in Australia – these businesses could be impacted if they become covered by an order of the Fair Work Commission.
- The department cannot estimate the number of host businesses that may be affected by this proposal.
  - There is no reliable data on the number of businesses that use labour hire.
  - The number of hosts impacted by this measure will also depend on the number of applications made to the Fair Work Commission, which cannot be accurately predicted.

How is the increase in wage costs calculated?

- The department estimates the proposal will potentially increase total aggregate labour hire employee wages by up to $510.6 million per year.
- This estimate uses ABS data and is based on:
  - Around 66,000 labour hire employees estimated as being eligible to be covered by a Fair Work Commission order.
  - Those approximately 66,000 labour hire employees earning approximately an additional $4.79 per hour to match directly engaged employees.

What are the regulatory (non-wage) costs of this proposal?

- The department estimates total aggregate regulatory costs of approximately $248,000 will be incurred by labour hire employers across the economy, in relation to reviewing guidance material on engaging in a Fair Work Commission application – once that guidance is prepared.
  - There are around 6,000 labour hire employers.
  - It is assumed they will each take half an hour to review guidance material about Fair Work Commission applications, costing $39.82 per business (30 minutes using the Office of Impact Analysis hourly rates for 'work related labour rates' of $79.63).

- Limited available data has meant the department is unable to estimate a number of non-wage costs relating to this proposal.
- The administrative and compliance cost for individual businesses will be informed by a range of factors, including:
    - The number of applications made to the Fair Work Commission
    - The nature and complexity of enterprise agreements
    - The number of labour hire employees working for a host, and the type of work they perform.
- Costs will also be incurred by parties (including employees and unions) who apply to the Fair Work Commission for an order.
    - Application fees are usually $83.30.
    - The extent of this cost will be informed by the number of applications made.

Appendix B: Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 - Minimum standards and increased access to dispute resolution for independent contractors

How many businesses will be affected by this proposal?

- Data on the gig economy is sparse. While there have been various attempts to collect data on the number and characteristics of gig workers, there is currently no robust data on the number of businesses that operate in the industry and the employment relationships of these businesses.
- The ABS does not collect or publish data on the number of businesses that engage independent contractors in the road transport industry.

What data can be used to estimate the number of gig workers?

- The department used the results from the 2019 Victorian National Survey (909,500 workers) as the basis for the scenarios used in the impact analysis, with adjustments made to ensure the estimate was fit-for-purpose and as robust as possible.
- At the time of preparing the impact analysis, there was no ABS data on the number of workers in the digital platform economy, noting since then the release of ABS data has been experimental in nature.
- A number of groups made their own estimates of the size of the digital platform economy, however most were made before the onset of COVID-19 and many are self-reported by businesses.
- These estimates ranged from 0.8 per cent of the workforce, or approximately 100,000 workers, to 7.1 per cent of the workforce, or approximately 909,500 workers.
- Since the publication of the impact analysis, the ABS has released **experimental data** on digital platform workers (on 13 November 2023).
    - The ABS estimated that in 2022-23, 0.96 per cent of the employed population reported undertaking digital platform work in the last 4 weeks. This equates to around 135,000 digital platform workers as at June 2023.
- Relative to earlier estimates:
    - the ABS used a reference period of the previous **4 weeks**, whereas the Victorian National Survey asked respondents if they are working through a digital platform or have done so within the last **12 months.**
    - the ABS estimate excludes temporary visa holders who intend on being in Australia for less than 12 months (the ABS estimated this was around 5,000-10,000 additional workers).

Why hasn't the Government been able to estimate the costs that will be passed on to consumers?

- The department has estimated the cost of introducing minimum standards for businesses.
- However, the extent to which businesses may pass any increase in costs onto consumers is a decision for individual businesses.

How is the increase in wage costs calculated?

- The reform is estimated to cost around **$407.7 million on average per year**, or **$4.1 billion across 10 years** plus regulatory costs. This amounts to 0.04 per cent of the economy-wide total wages bill.
- As is standard practice, the department's impact analysis costings were presented as an average annual cost over 10 years. The impact in any given year may be higher or lower than the average annual cost subject to any wage increases, with no costs applying until relevant Fair Work Commission orders are made.

What are the regulatory (non-wage) costs of the proposal?

- Impacted businesses will have some regulatory costs associated with implementing and complying with the new minimum standards (see table 1 page 2).

Appendix C: Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 - Standing up for Casual Workers

How many casuals are likely to be affected by this proposal?

- Using ABS data, the department estimated that around 852,100 employees may be eligible for conversion under the new employee choice pathway.
- Noting most eligible employees will choose to remain casual, the costing assumes an initial 10 per cent conversion rate that decreases to 5 per cent for years 6-10.
- This change from 10 to 5 per cent reflects the assumption that the incidence of employees being classified as casual but working in a manner akin to a permanent employee will reduce as understanding and application of the new definition increases.

What are the regulatory costs of this proposal?

- The proposal is estimated to lead to a total aggregate average regulatory cost of $1.4 million annually.
- The total costs to impacted businesses is $1.1 million and impacted individuals is around $290,000 per year.
    - Of the $1.1 million, the cost to small businesses across the economy is around $374,000 per year on average.
- This is an economy-wide cost, not an individual business or employee cost.
- These costs were calculated using methodology and assumptions consistent with those used in costing the regulatory impact in the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021 (Cth).

Is 15 minutes sufficient time to assess whether a casual employee can change to permanent?

- 15 minutes is a reasonable estimate of the average time it takes a business to consider a notification from an employee.
- The estimate used for the regulatory impact statement for the current laws was 10 minutes. It was a narrower conversion pathway centred around a regular pattern of work.
- The 15 minute estimate recognises this pathway is a holistic assessment of the employment relationship. It is credible because employers already have experience with a point-in-time assessment under the existing statutory conversion process that has been in place since 2021.
- Employers know what is going on in their own workplace and the core test – about whether or not there is a firm advance commitment to continuing and indefinite work – simply requires employers to look at the practical reality of the relationship in their workplace.

Factsheet—Fair Work Legislation Amendment (Closing Loopholes) Act 2023

Overview

- **14 December 2023** - Royal Assent granted to the **Fair Work Legislation Amendment (Closing Loopholes) Act 2023** (Closing Loopholes Act).
- The Closing Loopholes Act is a **subset of the larger Fair Work Legislation Amendment (Closing Loopholes) Bill 2023** (Closing Loopholes Bill) that was introduced into the House of Representatives on 4 September 2023.
- The Senate agreed to a series of Government amendments **on 7 December 2023** and **the Closing Loopholes Bill was divided**. The House agreed with the amendments on the same day.
- The Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 was read a third time in the Senate on 8 February 2024. On 12 February 2024, the House of Representatives considered and agreed to all Senate amendments, and the No. 2 Bill passed both Houses (refer to SB24-000003).
- The Closing Loopholes Act builds on the Government's workplace relations reforms by addressing loopholes in the workplace relations system that can undermine principles of fairness, secure jobs, and better pay.

Commencement

- The bulk of the amendments **commenced on 15 December 2023**.
- Two sets of amendments will commence on **14 June 2024**:
  - Items 223 and 224 of Part 14 of Schedule 1 (**Wage Theft**), providing for the Fair Work Ombudsman's compliance and enforcement policy.
  - Part 2 of Schedule 3, providing for **rehabilitation assessments and examinations** under the *Safety, Rehabilitation and Compensation Act 1988*.
- One set of amendments will commence on **1 July 2024**. These are the **industrial manslaughter** amendments to the *Work Health and Safety Act 2011*.
- The final set of amendments that **may** commence from **1 January 2025** are all of the **Wage Theft** provisions other than those relating to the Fair Work Ombudsman's compliance and enforcement policy.
  - The Wage Theft provisions **will not commence** unless and until the Minister has declared a **Voluntary Small Business Wage Compliance Code**.

Provisions of the Closing Loopholes Act

- The Closing Loopholes Act has four Schedules:
  - Schedule 1—Main Amendments, covering amendments primarily to the *Fair Work Act 2009* and minor amendments to the *Federal Court of Australia Act 1976*
  - Schedule 2—Amendment of the *Asbestos Safety and Eradication Agency Act 2013*
  - Schedule 3—Amendment of the *Safety, Rehabilitation and Compensation Act 1988*
  - Schedule 4—Amendment of the *Work Health and Safety Act 2011*
- A summary of all measures is set out in **Attachment A**.

Key amendments made in the Senate

In addition to the division of the Closing Loopholes Bill, other key amendments made by the Senate included:

- Inserting a new Part 16A of Schedule 1 providing for right of entry to assist Health and Safety Representatives, as well as a new section 4A requiring a review of these provisions
- In relation to post-traumatic stress disorder and the presumptive liability for specified classes of employees.

Stakeholders consulted

- The Minister for Employment and Workplace Relations convened two tripartite meetings of the National Workplace Relations Consultative Council with business and unions in 2023 to discuss the measures in the Closing Loopholes Bill.
- Confidential meetings with business representatives and unions were also convened to seek their feedback and views on detailed policy proposals.
- The Department of Employment and Workplace Relations has led two written submission processes in response to short summaries and more detailed consultation papers, with more than 160 organisations making over 220 submissions.
- The department also conducted more than 75 consultation meetings with a range of stakeholders including, business and industry representatives, employers, academics, community groups and Commonwealth and state and territory governments.
- A meeting of the Committee on Industrial Legislation (COIL) was held on 16 and 17 August 2023, and a meeting with State and Territory officials was held on 18 August 2023.

Recent media on this policy

- See **Attachment B**

Related Questions received on notice

- See **Attachment C**.

Expenditure/Budget (if relevant)

- See **Attachment D** for information from Budget Paper No. 2 and MYEFO 23-24.

Budget 2023-24, Budget Paper No. 2

Extract pages 104, 106.

Note: Schedule 2 to the Closing Loopholes Act extends the functions of the Asbestos Safety and Eradication Agency to address silica-related diseases. The extract below from Budget Paper No. 2 outlines the $4.2 million allocated for this measure. The funding for this measure will be obtained from reprioritising the funds associated with the programs listed on Page 2.

Employment and Workplace Relations

Addressing Silicosis and Silica-Related Diseases

Payments ($m)

	2022-23	2023-24	2024-25	2025-26	2026-27
Department of Employment and Workplace Relations	-	2.3	2.0	0.8	0.8
Asbestos Safety and Eradication Agency	-	0.9	1.1	1.1	1.1
Total – Payments	-	3.2	3.1	1.9	1.9

The Government will provide **$10.0 million over 4 years** from 2023–24 (and $1.9 million per year ongoing) **to address the rise of silicosis in workers** and develop a national strategy for the prevention of silicosis and silica-related diseases. Funding includes:

- **$4.7 million** over 4 years from 2023–24 (and $0.8 million per year ongoing) **to establish a dedicated occupational lung diseases team** to oversee implementation and investigate long-term reforms for an improved national framework for occupational lung diseases

- **$4.2 million** over 4 years from 2023–24 (and $1.1 million per year ongoing) **to extend the Asbestos Safety and Eradication Agency's remit to include the prevention of silicosis** and other silica related occupational diseases and broaden the functions of the Asbestos Safety and Eradication Council

- **$1.2 million** over two years from 2023–24 **to Safe Work Australia's social partners** to increase awareness and support better work practices relating to managing silica dust in the workplace.

The cost of this measure will be met from savings identified in the 2023–24 Budget measure titled *Employment and Workplace Relations – reprioritisation.*

Employment and Workplace Relations – reprioritisation

Payments ($m)

	2022-23	2023-24	2024-25	2025-26	2026-27
Office of the Fair Work Ombudsman	-	-4.1	-3.9	-3.9	-3.9
Department of Employment and Workplace Relations	-16.9	-36.4	-47.6	-48.3	-47.9
Total – Payments	-16.9	-40.5	-51.5	-52.2	-51.9

The Government will achieve savings of $212.9 million over 5 years from 2022–23 (and $41.4 million per year ongoing) across the Employment and Workplace Relations portfolio which will be redirected to fund other portfolio policy priorities. Savings include:

- $111.6 million over 4 years from 2023–24 by reducing place allocations for the *Self-Employment Assistance Small Business Coaching* program to more accurately reflect utilisation of places
- $27.5 million over 4 years from 2023–24 by temporarily reducing uncommitted *Industry Workforce Training* program funding
- $22.8 million over 4 years from 2023–24 by ceasing the *Entrepreneurship Facilitators Program* from 1 July 2023
- $20.0 million over 4 years from 2023–24 by temporarily reducing uncommitted funding to support Job and Skills Councils
- $15.8 million over 4 years from 2023–24 by reducing the departmental operating funding of the Office of the Fair Work Ombudsman by 2.5 per cent
- $10.4 million over two years from 2022–23 by not proceeding with the *Accelerating Australian Apprenticeships Pilot* program
- $3.9 million over two years from 2022–23 by rescoping the *Skills Assessments Pilots* to align with current demand trends
- $1.1 million in 2023–24 by ceasing the *Career Revive* program on 30 June 2023.

The savings from this measure will be redirected to fund other Government policy priorities in the Employment and Workplace Relations portfolio.

Factsheet—Fair Work Legislation Amendment (Closing Loopholes) Act 2023: Attachment A

Summary of measures – statutory reviews

- Section 4 requires that a review of the measures in the Closing Loopholes Act must commence no later than 13 December 2025.
- Section 4A requires that a review of the measures in Part 16A, providing for right of entry to assist Health and Safety Representatives, must commence no later than 16 September 2024.

Schedule 1—Main amendments

Part 2—Small business redundancy exemption

- This measure preserves the redundancy entitlements of employees whose employer has downsized due to insolvency from a larger business into a small business employer (that would ordinarily be exempt from redundancy pay obligations).
- These amendments ensure that these **employees receive the same redundancy entitlements** as their colleagues who were terminated earlier in the downsizing process.
- These amendments will **only be enlivened** where an employer has entered liquidation or bankruptcy, ensuring that solvent businesses, including those which have successfully restructured, are unaffected.

Part 6—Closing the labour hire loophole

- This measure **protects bargained rates in enterprise agreements** from being undercut by the use of labour hire.
- When labour hire is used by a host business, workers, unions and hosts will be able to apply to the Fair Work Commission for an order that **labour hire workers must be paid no less** than the total full rate of pay that they would be paid under the host's enterprise agreement, or equivalent public sector instrument.
- The framework does not apply to arrangements where the performance of work is for the provision of a service to the host business, rather than the supply of labour.
- To minimise the impact on small businesses, the provisions do not apply where a host business is a small business employer within the meaning of the FW Act.
- The provisions are supported by an anti-avoidance framework to prevent businesses from adopting certain practices with the intention of avoiding obligations under new Part 2-7A.

Part 7—Workplace delegates' rights (Division 1)

- The measure **introduces specific rights and protections for workplace delegates** in the Fair Work Act.
- Workplace delegates are provided the right to represent members and potential members in industrial issues.
- To support this, delegates will have reasonable access to:
    - **communicate** with members and potential members about matters of industrial concern
    - **workplace facilities**, and
    - **paid time** to undertake workplace delegate related training (for businesses other than a small business employer).

Part 8—Strengthening protections against discrimination

- This measure **prohibits** national system employers taking **unlawful adverse action** against employees (including prospective employees) **because the employees are being or have been subjected to family and domestic violence**.

Part 14—Wage theft

- This measure **introduces criminal sanctions** where a national system employer **intentionally engages in conduct** that results in the **failure to pay a required amount** to an employee.
- The required amount includes superannuation for national system employees that come within the Commonwealth's Constitutional reach.
- **New entitlements would not be created** for workers or **obligations for employers** as it is **already unlawful** to underpay workers [s. 323 and Table item 10 of the table in ss. 539(2).]
- The offence will **not apply to inadvertent mistakes or miscalculations**.
- This measure also introduces new non-punitive pathways to encourage self-disclosure and rectification of underpayments:
    - If the Fair Work Ombudsman is satisfied that a **small business employer** has complied with a **new voluntary code** in relation to an underpayment, the Fair Work Ombudsman will provide written notice to the employer that they **won't be referred for criminal prosecution**.
    - **Cooperation agreements** will also be available, under which the Fair Work Ombudsman can agree not to refer persons that self-report potential wage theft for criminal prosecution.

Part 14A—Amendments relating to mediation and conciliation conference orders made under section 448A of the Fair Work Act 2009

- Part 14A of Schedule 1 addresses concerns that a bargaining representative's non-compliance with a FWC order to attend a conference pursuant to section 448A of the FW Act could render subsequent employee claim action unprotected – for both those represented by the non-complying bargaining representative, and for others participating in the action.

Part 16A—Right of entry—assisting health and safety representatives

- Part 16A of Schedule 1 provides that the entry of union officials to a relevant workplace to assist a Health and Safety Representative do not need to hold an entry permit under the Fair Work Act, subject to certain safeguards.

Part 18—Application and transitional provisions

- Part 18 amends the Fair Work Act to provide consequential, application and transitional clauses arising from the amendments made by the Act.

Schedule 2—Amendment of the Asbestos Safety and Eradication Agency Act 2013

- These measures would extend the functions of the Asbestos Safety and Eradication Agency to address silica related diseases.

Schedule 3—Amendment of the Safety, Rehabilitation and Compensation Act 1988

- These measures introduce a presumption according to which first responders covered by the *Safety, Rehabilitation and Compensation Act 1988* who sustain post-traumatic stress disorder (PTSD) will not have to prove their employment significantly contributed to their PTSD for the purpose of their workers' compensation claim.
- The employee is required to be diagnosed with PTSD by a legally qualified medical practitioner or psychologist.
- The amendments also expand the scope of first responders to include the Australian Border Force Commissioner and Australian Public Service employees in the Australian Border force.

Schedule 4—Amendment of the Work Health and Safety Act 2011

- These measures would introduce a new offence of industrial manslaughter in the *Work Health and Safety Act 2011*, reflecting recommendations 23b of the *Review of the Model Work Health and Safety Laws – Final Report* (Boland Review) and 13 of the *They Never Came Home Report* (Senate Inquiry), and significantly increasing the penalties for the existing Category 1 offence.
- The measures also provide for the establishment of the Family and Injured Workers Advisory Committee.

Question on notice no. 1

Portfolio question number: SQ23-001191

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator David Pocock: asked the Department of Employment and Workplace Relations on 25 October 2023—

Senator DAVID POCOCK: So Comcare get to decide who can diagnose PTSD?
Mr Jurd: Comcare will decide whether or not the claimant has PTSD, taking into account all the information that's provided to it, which can include a diagnosis.
Senator DAVID POCOCK: Are there any guardrails about getting second, third or fourth opinions if they don't like the diagnosis?
Mr Jurd: There is a limitation on the number of-there are guardrails within the act. I'll have to double-check exactly what they are. There is provision under the act to allow independent medical examinations, but that's limited by an instrument, which I have to double-check.

Answer —

Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001191

Senator David Pocock on 25 October 2023, Proof Hansard page 16

Limitation on guardrails

Question

Senator DAVID POCOCK: So Comcare get to decide who can diagnose PTSD?
Mr Jurd: Comcare will decide whether or not the claimant has PTSD, taking into account all the information that's provided to it, which can include a diagnosis.
Senator DAVID POCOCK: Are there any guardrails about getting second, third or fourth opinions if they don't like the diagnosis?
Mr Jurd: There is a limitation on the number of—there are guardrails within the act. I'll have to double-check exactly what they are. There is provision under the act to allow independent medical examinations, but that's limited by an instrument, which I have to double-check.

Answer

Yes, there are a number of guardrails that operate to limit Comcare's ability to obtain multiple medical opinions under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

Firstly, subsection 57(1) of the SRC Act provides that where a notice has been given to a relevant authority under section 53 of that Act, or where an employee has made a claim for compensation under section 54, the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority.

The Administrative Appeals Tribunal has generally interpreted the reference to 'one legally qualified medical practitioner' within subsection 57(1) to mean that a relevant authority is prevented from using a panel of two or more legally qualified medical practitioners, rather than imposing a limit on the number of appointments which an employee could be required to attend under section 57.

This is consistent with subsection 57(6) of the SRC Act, which provides that an employee shall not be required to undergo an examination under section 57 at more frequent intervals than are specified by the Minister by legislative instrument.

Pursuant to subsection 57(6) of the SRC Act, the *Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019* specifies that an employee shall not be required to undergo an examination by the same legally qualified medical practitioner nominated by the relevant authority more frequently than at one-month intervals. These guardrails will only apply if the employee undergoes the examination.

Secondly, the administrative Scheme Guidance document 'Engaging a legally qualified medical practitioner to undertake an independent medical examination under the SRC Act' prepared by Comcare recommends that decision makers under the SRC Act only utilise independent medical examinations (IME) in certain circumstances, such as to determine an employee's capability to undertake a rehabilitation program, or to obtain additional medical evidence in relation to an employee's claimed condition where every attempt has been made to obtain current medical evidence from the employee's treating practitioners but requires further information to effectively manage the claim. In this regard Comcare suggests that IMEs should be considered to obtain a greater understanding of an employee's condition, including a diagnosis, prognosis, any likely contributing factors, cause of injury and suitability of treatment.

Finally, under the *Legal Services Directions 2017*, Comcare has an obligation to act as a model litigant in handling claims and litigation. This includes an obligation to deal with claims promptly, to avoid causing any unnecessary delay in the handling of claims and litigation and to pay legitimate claims without litigation.

Under the SRC Act, there are also currently self-insured licensees authorised to determine the workers' compensation claims of their employees under the Commonwealth Act (including the Australian Capital Territory). These self-insured licensees are also subject to the guardrails prescribed by the *Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019* and are expected to manage claims in accordance with Comcare's administrative Scheme Guidance. However, the *Legal Services Directions 2017* do not apply to the self-insured licensees.

Question on notice no. 2

Portfolio question number: SQ23-001572

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator David Pocock: asked the Department of Employment and Workplace Relations on 25 October 2023—

Senator DAVID POCOCK: So it does or it doesn't include Border Force?
Ms Godden: Currently, as drafted in the closing-loopholes bill, the presumptive provision would not apply to Border Force employees.
Senator DAVID POCOCK: What about people in the call centre for the ambos?
Ms Godden: Call centre operators-I'm just trying to think of the specific definition that we used in consultation-would be covered.
Mr Jurd: To the extent that they fall within the emergency services communications operators category, they'd be captured by the bill.
Senator DAVID POCOCK: On notice, just clarity whether they do or don't as currently drafted.
Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001572

Senator David Pocock on 25 October 2023, Proof Hansard page 16-17

Closing-loopholes bill: Emergency services communications operators category

Question

Senator DAVID POCOCK: So it does or it doesn't include Border Force?
Ms Godden: Currently, as drafted in the closing-loopholes bill, the presumptive provision would not apply to Border Force employees.
Senator DAVID POCOCK: What about people in the call centre for the ambos?
Ms Godden: Call centre operators—I'm just trying to think of the specific definition that we used in consultation—would be covered.
Mr Jurd: To the extent that they fall within the emergency services communications operators category, they'd be captured by the bill.
Senator DAVID POCOCK: On notice, just clarity whether they do or don't as currently drafted.

Answer

Schedule 3 of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the Bill) amends section 7 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to introduce presumptive liability provisions for first responders in the Comcare scheme who suffer from post-traumatic stress disorder (PTSD).

The Bill provides that an employee will be a first responder for the purposes of the presumptive provision if the person was:

- an AFP employee (including the Commissioner and Deputy Commissioner of the AFP);
- employed as a firefighter; or
- employed as an ambulance officer (including as a paramedic); or
- employed as an emergency services communications operator; or
- a member of an emergency service (within the meaning of the *Emergencies Act 2004* (ACT)).

The term ‘emergency services communications operators’ is not defined by the Act, but instead provides a general description of the role. The wording was developed in consultation with the ACT Government and is intended to cover persons responsible for receiving emergency calls, dispatching resources and assisting incident management processes from a communications or control centre for ambulance and other emergency services.

Question on notice no. 348

Portfolio question number: SQ23-001521

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

The Bill's explanatory information devotes two sentences out of 521 pages to deal with the impact of the measure on indigenous Australians, stating: "the National Indigenous Australians Agency have also advised they anticipate the policy will have positive impacts for Indigenous Australians. This is because Indigenous Australians engaged as labour hire employees, who currently receive less pay than what they would if they were paid under a host's enterprise agreement, will benefit from the proposal".

(p. 24 of Closing Labour Hire Loophole (OBPR22-02409))
1.What assessment criteria was used by the department in determining impacts, positive or negative, to Aboriginal and Torres Strait Islander businesses?
2.What were the risks identified during the consultation process with Aboriginal and Torres Strait Islander businesses?
3.Can the department clarify any Aboriginal or Torres Strait Islander people or organisations who were directly consulted in the development of the legislation?
4.If no direct consultation - with regards to the advice from NIAA (as stated on p. 24 of the Bill's explanatory information) how did the department receive this advice? And what was the scope provided by the department to NIAA?
5.Did the NIAA advice include a list of organisations and people who were consulted?
6.Did the NIAA advice detail how many Aboriginal and Torres Strait Islander people are engaged as labour hire employees?
a.And by what sectors?
b.And if they were employed by an Indigenous business or non-Indigenous business?
7.Please table the advice which the NIAA provided to the department?
8.The NIAA advice appears narrow towards labour hire, what assessment has been done on non-labour hire roles for Aboriginal and Torres Strait Islander people? Has a breakdown by sector been conducted?
9.How many Aboriginal or Torres Strait Islander people are in the department [actual headcount not percentage]?
a.How many of those people are considered labour hire?
b.How many Aboriginal and Torres Strait Islander people across the Australian public service are under a labour hire agreement?
10.Did the department investigate the possibility that the measure will disproportionately affect Indigenous businesses that provide employment opportunities to disadvantaged indigenous people?

Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001521

Senator Michaelia Cash provided in writing.

Indigenous Australians consultation on Closing Loopholes Bill

Question

The Bill's explanatory information devotes two sentences out of 521 pages to deal with the impact of the measure on indigenous Australians, stating: "the National Indigenous Australians Agency have also advised they anticipate the policy will have positive impacts for Indigenous Australians. This is because Indigenous Australians engaged as labour hire employees, who currently receive less pay than what they would if they were paid under a host's enterprise agreement, will benefit from the proposal". (p. 24 of Closing Labour Hire Loophole (OBPR22-02409))

1. What assessment criteria was used by the department in determining impacts, positive or negative, to Aboriginal and Torres Strait Islander businesses?
2. What were the risks identified during the consultation process with Aboriginal and Torres Strait Islander businesses?
3. Can the department clarify any Aboriginal or Torres Strait Islander people or organisations who were directly consulted in the development of the legislation?
4. If no direct consultation – with regards to the advice from NIAA (as stated on p. 24 of the Bill's explanatory information) how did the department receive this advice? And what was the scope provided by the department to NIAA?
5. Did the NIAA advice include a list of organisations and people who were consulted?
6. Did the NIAA advice detail how many Aboriginal and Torres Strait Islander people are engaged as labour hire employees?
   a. And by what sectors?
   b. And if they were employed by an Indigenous business or non-Indigenous business?
7. Please table the advice which the NIAA provided to the department?
8. The NIAA advice appears narrow towards labour hire, what assessment has been done on non-labour hire roles for Aboriginal and Torres Strait Islander people? Has a breakdown by sector been conducted?
9. How many Aboriginal or Torres Strait Islander people are in the department [actual headcount not percentage]?
   a. How many of those people are considered labour hire?
   b. How many Aboriginal and Torres Strait Islander people across the Australian public service are under a labour hire agreement?
10. Did the department investigate the possibility that the measure will disproportionately affect Indigenous businesses that provide employment opportunities to disadvantaged indigenous people?

Answer

1. Impacts of the Closing the labour hire loopholes measure on businesses are outlined in the Impact Analysis equivalent document attached to the Explanatory Memorandum to the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the Bill).

The Office of Impact Analysis makes available on its website a Distributional Impacts guidance note, which advises that:

> "When a policy proposal is judged to have disproportionate impacts on a particular population segment, such as small businesses or women, indigenous populations, or people living in regional and remote areas this should be considered in Impact Analysis".

The department's consultation process for the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* included the release of discussion papers, a written submission process and an extensive number of consultation sessions. The department wrote to more than 70 stakeholders announcing the consultations and inviting them to provide a written submission and attend consultation sessions with the department. The department sought the views of stakeholders on the cost and other impacts of the closing the labour hire loophole measure, including through the relevant consultation paper.

The department notes there are significant data limitations in relation to labour hire in Australia. The ABS Labour Force Survey (from which the ABS Characteristics of Employment estimates are derived) and the ABS Labour Account (the source of the overall ABS Labour Hire estimate) both do not collect information on indigenous status – so the department was not able to disaggregate the labour hire data to the level of indigenous and non-indigenous Australians.

As is noted in the Impact Analysis, the National Indigenous Australians Agency advised the department that they anticipated the policy will have positive impacts for Indigenous Australians. This was on the basis that Indigenous Australians engaged as labour hire employees, who currently receive less pay than what they would if they were paid under a host's enterprise agreement, will benefit from the proposal.

If concerns had been raised about a disproportionate impact on indigenous Australians, this would have been considered by the department. Without evidence to the contrary, the department did not consider the measure would have a disproportionate impact on Aboriginal or Torres Strait Islander populations.

2. No specific risks to Aboriginal or Torres Strait Islander businesses were identified during the consultation process.

3. As noted above, the department undertook an extensive public consultation process on the measures contained in the Closing Loopholes Bill. Stakeholders consulted included organisations representing the interests of Indigenous Australians, including the National Indigenous Australians Agency and the Australian Council of Trade Unions. The consultations were undertaken in-confidence.

4. The department consulted with the NIAA through the usual processes of Government, including on any potential impacts this policy may have on Indigenous Australians, as noted above.

5. No.

6. No, as noted above there are significant data limitations in relation labour hire in Australia.

7. The NIAA provided verbal feedback to the department, which is reflected in the Impact Analysis.

8. The department did not assess non-labour hire roles in relation to the closing the labour hire loophole measure.

9. The headcount of Aboriginal and Torres Strait Islander APS employees by employment type is available in the Department of Employment and Workplace Relations 2022-23 Annual Report, Appendix B Workforce Statistics.

   At the time of the Annual Report, the department had 74 employees who identified as Indigenous.

   a. The department does not collect data as to whether its labour hire workers are Aboriginal or Torres Strait Islander Australians.
   b. The department contacted the Australian Public Service Commission due its responsibility for Australian public service workforce data and was advised that it does not hold this information.

10. As noted in response to question 1, if concerns had been raised about a disproportionate impact on Indigenous Australians, this would have been considered by the department. The department did receive evidence that the measure would have a disproportionate impact on Aboriginal or Torres Strait Islander populations.

Factsheet—Attachment B: Recent Media

Recent Media

Business 'forced to pay for next union leaders'

(Joe Kelly, *The Australian*, 13 December 2023)

The Business Council of Australia is warning that the government's new workplace laws could force businesses to pay for the next generation of union officials, cost some employers millions and allow union delegates greater access to worksites.

The peak business body warned the passage of industrial relations laws last week could require employers to give uncapped paid leave to staff to attend union training courses at the request of union delegates. It said this would harm productivity.

The BCA also said the new laws did not require employees to provide proof of attendance at the training courses or the content of the training. "These extraordinary union powers will take a sledgehammer to business productivity," BCA chief executive Bran Black said. "Business should be focused on being competitive not paying union delegates for union training. These changes will have a chilling effect on business confidence and they fly in the face of the government's competitive agenda."

Under the new laws, a workplace's union delegate is now entitled to "reasonable access" to the workplace during normal working hours "for the purposes of related training."

A union delegate will also be entitled to reasonable communication with other union members or "persons eligible to be such members" at the workplace.

The legislation also says an employer must not "unreasonably fail or refuse to deal with the workplace delegate" or "knowingly make a false or misleading representation" to the delegate.

The burden of proving the conduct of the employer is not unreasonable lies on the employer - an issue of deep concern to the BCA. The intervention sparked a fierce response from Workplace Relations Minister Tony Burke, who said the changes were about "improving standards and ending underpayments".

This rush job won't work for many

(Luke Achterstraat, Illawarra Mercury, 11 December 2023)

Most businesses are feeling the pinch. Complex employment changes will not help those scraping by.

SIGNIFICANT changes affecting Australian workplaces were passed into law on the final sitting day of Parliament last week, despite a Senate inquiry still having weeks to run.

The Closing Loopholes Bill is the most significant rewrite of industrial relations policy in recent memory with changes for casuals, contractors, truckers, labour hire, union delegates, tradies and self-employed Australians, just to name a few.

To this end, the Senate crossbench was wise to demand the government split the bill and allow for an inquiry. The government should have gone further and split the package into bite-sized chunks given its complex components.

Employers feel betrayed that significant changes have been made law before the Senate inquiry had even concluded. The inquiry received almost 200 submissions, and a thorough questioning of the employment department was expected in the new year.

Whilst common ground existed on issues such as first responders, PTSD and silicosis, an eleventh-hour secret deal also bundled through radical changes to the contentious issues of labour hire and union access.

Industrial relations is complex at the best of times, let alone when a government is trying to ram through an 800-page package that impacts the whole labour market.

For example, the labour hire provisions passed last week will capture many more business than just the frequently cited examples of Qantas and BHP.

The Fair Work Commission will be empowered to enter commercial arrangements between businesses (with the exemption for small businesses capped at a headcount of 15 employees).

For example, a hospitality business with 17 employees might win a contract to provide catering services for a major event and therefore require the use of labour hire to engage additional workers on a oneoff basis.

Under the change, these externally engaged workers must be provided the same bonuses, loadings, allowances and overtime as comparable in-house staff who have potentially been with the host company for over a decade.

The prospect of needing to ensure many non-monetary award obligations plus the "full" rate of pay that the "host" pays is itself a complex exercise for a small firm.

Moving beyond labour hire it is particularly disappointing that repeated calls for a thorough impact statement on the small business consequences of the bill have not heeded. The deal struck last week even included new amendments that had not been sighted by employers, let alone consulted on.

Following the rush job, some union leaders told businesses they should suck it up as they "don't feel the hardships many Australians are feeling right now."

On the contrary, 98 per cent of all businesses are small and feel hardships every day.

Small businesses are typically self-funded by someone with a mortgage and are feeling the pinch against the backdrop of rising energy, rent, borrowing and insurance costs. Most small business owners are still paying themselves below the average wage to keep the lights on for their workers and customers.

There is major concern that the IR changes still up for consideration - now known as Closing Loopholes 2 - will only create more complexity at a time when small businesses can least withstand it.

Data from the small business ombudsman indicates that 43 per cent of small businesses are not breaking even: that is more than 1 million small firms in Australia hanging in the balance.

Radical changes remain on foot including throwing out the window existing definitions that apply to over 3.5 million Australian casuals and contractors and altering the very definition of employment itself. Small businesses do not typically have specialist HR support and yet the new definition of casuals is three-pages long, contains over a dozen tests and requires an ongoing assessment.

Many employees including students and carers will face the prospect of losing casual work and its attractive 25 per cent loading.

Meanwhile, over 1.1 million self-employed Australians such as builders, tilers, scaffolders, gardeners but also freelance web designers face losing their right to be their own boss.

The IR changes and their flawed process are running roughshod over the government's election commitment to make life easier for small business.

Small businesses are now openly querying whether the government understands or even cares about pushing additional complexity onto them in a cost-of-living crisis.

And in terms of process, the next time the government agrees to a Senate inquiry should this be taken seriously or with a footnote indicating it might be guillotined?

Whilst dealmaking is a part of politics, there needs to be greater consultation with those impacted and fulfilment of democratic procedures such as inquiries, particularly when the jobs of the future are at stake.

After all it is private enterprise that employs the overwhelming majority of Australians, not politicians in Canberra.

Our IR system is now more complex than ever.

Small businesses do not demand the world from government but at least expect honesty about how they will be impacted.

They seek a clear and workable rule book that promotes compliance, productivity and reward for their staff.

Moving forward we must do better than eleventh-hour, behind-closed-doors deals that evoke political drama TV in their disregard for procedure and scrutiny.

Small businesses will be watching closely.

"Small businesses are now openly querying whether the government cares about pushing additional complexity onto them in a cost-of-living crisis."

Fair go: Labor's win for workers

(Peter Hartcher, *The Sydney Morning Herald*, 9 December 2023)

Many politicians do outrage, but none do it as Jacqui Lambie does. This week she said she'd tried to take a cool look at proposed changes to workplace laws. Maybe so, but she didn't stay cool for long while speaking about them.

She set out to explain on Thursday why she was voting for government proposals to improve workers' conditions. The big miners' lobby, the Minerals Council, described these changes as a ‘‘declaration of war" against business.

‘‘We give you a little bit, and you take the whole kit and caboodle," said Lambie as she told big business why firms are now to be banned from using labour hire companies to cut costs. ‘‘This labour hire crap, I will tell you now, is way off the radar."

‘‘Sometimes," she said, ‘‘labour hire works. But you big corporations are abusing it . . . and you're cutting corners to beef up your profits. Quite frankly, you should be ashamed of yourselves."

Lambie cited Qantas as an example, then moved on to the minerals sector: ‘‘Seriously, with the amount of profits that you people make - big mining, big gas - you do not pay your people properly. You have brought this on yourselves.

‘‘I'm sick and tired of hearing of miners who are doing the same job getting paid $30,000 less than their mates or of having their mates coming to me and saying, ‘It's so unfair that I get an extra 30,000 bucks because I'm not working for a labour hire company'."

Labour hire workers will now need to be paid at least as much as direct employees when doing the same work.

‘‘So you're going to lose a little bit more of your profit," Lambie mockempathised with BHP and Rio. ‘‘I tell you what - it wouldn't even be a sneeze in a hanky. You won't even notice it."

BHP claims the change will increase its costs by $1.3 billion a year. The company's profits last financial year were up by 16 per cent to $US40.6 billion ($61.5 billion) at a record profit margin of 65 per cent. Memo Mike Henry: Don't ask Jacqui Lambie for a hanky to cry into. Or enter a popularity contest against her.

And that was over just one of the Albanese government's workplace law reforms that passed the parliament this week - with the support of Lambie and her colleague Tammy Tyrrell, fellow

independents David Pocock and Lidia Thorpe, and the Greens. It was opposed by the Coalition.

Some of the other measures? Wage theft is now a criminal offence. So is industrial manslaughter. A second set of the government's workplace reforms is due to go before the parliament next year.

Lambie's outrage is effective for two reasons. First, it's genuine. She's a pretty reliable fairness compass.

And it works for her electorally: ‘‘Other than the Northern Territory, Tasmania probably is the most economically disadvantaged jurisdiction in the country and it saw the least benefits from the mining boom," says Emma Dawson, executive director of the think tank Per Capita.

This defeat is embarrassing for the Minerals Council. It committed $24 million to an advertising campaign against the government's reforms to labour hire. The council's head, Tania Constable, stung by the loss, called the change ‘‘economic vandalism" and vowed to campaign for the law's repeal.

The Workplace Relations Minister, Tony Burke, has some advice for her and her members: Instead of spending your money campaigning against the government, pay your workers properly.

The bigger picture is that Australia is grappling with entrenched unfairness. ‘‘For the last few decades we've experienced the dominance of an economic system that rewards people already doing well and makes it harder for people to build a life from their own hard work and effort," Dawson says.

It's no wonder, then, that Australians are losing confidence that their work will be rewarded fairly. The annual Scanlon Institute report on Australia's social cohesion, taken in July, found that only 12 per cent of the 7500 respondents agree strongly that hard work is rewarded.

‘‘The whole Western world has done this - building aggregate growth in the economy while taking the eye off the distribution part," Dawson tells me. ‘‘I'm not a communist but if we don't effectively regulate and people despair, then we'll end up with Trump."

Hyperbole? The US is an extreme case, but it is, indeed, a case study in the results of the corrosion of faith in a socioeconomic system. Trump represents people who feel left behind, overlooked and disdained, an underclass of hopelessness. Trump supporters vote for him not because they genuinely believe he'll fix a broken system but because they think he's standing with them in protesting against it. To the point of wrecking it.

Australia is far from America but it's been trending in the same direction. Systemic change is needed. Housing is a pressing example. A Per Capita research paper due next week makes this striking measurement of government housing support: ‘‘In 2023-24, federal government tax breaks for property investors will be worth more than 11 times the amount spent by the federal government on all social housing and homelessness services."

‘‘So it's a clear comparison between what we give to people to allow them to acquire more assets at the expense of what we give to people to keep a rented roof over their heads," concludes Dawson.

The Albanese government has a suite of policies designed to correct some of the glaring inequity in Australia's system.

Next week's mid-year update from Treasurer Jim Chalmers will show that housing has been allocated multibillions in new support, just in the past seven months, for social and affordable housing.

Dawson gives the government credit for ‘‘smart, welltargetted measures to reduce the cost of living". Its wages and workplaces policies, including those passed by parliament this week, are making a difference. Real wages, long in decline, have started to head up in the last two quarters as a result.

Chalmers says ‘‘we see in the wages data that our bottom-up approach to wages growth is working, and our cost of living measures are helping too. Long way to go but it's pleasing to see the progress we are making in getting inflation down and wages up and that's how we make it easier for people doing it tough".

How does all of this affect the big picture? On the biggest measure of how income is divided in Australia, the share going to workers peaked in the 1970s and has been sliding pretty much ever since.

This metric, the so-called labour share of GDP, stood at 55 per cent in the late '70s. Last year it was under half - 49.8 per cent.

While the profit share went up, doubling from 16 per cent in the 1970s to last year's 32 per cent. This represents a vast, long-term reallocation of national income from people to corporations.

But this year, there has been a rare revivial of the labour share of the national earnings, back over 50 per cent to 52 per cent. While the profit share eased back to 30.6.

‘‘A good story for Jim Chalmers," says Dawson.

The Albanese government can take credit; the pendulum may have started to move back towards fairness and away from American hopelessness. But, as Chalmers acknowledges, there is a very long way to go as real household disposable incomes continue to slump.

And Emma Dawson points to the huge intergenerational transfer of wealth that is about to occur as the Boomer generation bequeaths its housing wealth to its kids, potentially entrenching a stark divide of haves and have-nots.

‘‘Generationally, things are really dire," says Dawson, ‘‘but it's not irreversible - we are at a tipping point. The government's been tinkering with a broken system."

It's a task for an Atlas, but Archimedes showed that even a mortal can move the world if he or she has a lever long enough and a place to stand.

In the meantime, Jacqui Lambie has a year-end cheerio for the government: ‘‘If they gave a shit they'd fix the ACCC [to impose tougher competition laws] - and that's just for our groceries."

And she has one for big businesses, which has been dining out on the profit share of national income in recent times at the expense of workers: ‘‘Quite frankly, you should be ashamed of yourselves. Merry Christmas to you!"

Appendix A: Policy decisions taken since the 2023–24 Budget

MYEFO 23-24 extract pages 237-239

Employment and Workplace Relations

Closing Loopholes

Payments ($m)

	2022-23	2023-24	2024-25	2025-26	2026-27
Office of the Fair Work Ombudsman	-	-	-	-	-
Fair Work Commission	-	-	-	-	-
Department of Employment and Workplace Relations	-	-	-	-	-
Office of the Director of Public Prosecutions	-	-	-	-	-
Total – Payments	-	-	-	-	-
Related receipts ($m)					
Office of the Fair Work Ombudsman	-	-	-	-	-
Department of Employment and Workplace Relations	-	-	-	-	-
Total – Receipts	-	-	-	-	-

The Government will provide $94.6 million over four years from 2023–24 (and $22.7 million per year ongoing) **to close loopholes** that prevent workers in Australia from achieving secure, safe, and well-paid jobs free from discrimination and exploitation. This will further safeguard the wages and conditions of workers and provide clarity and a more level playing field for businesses and workers. These changes are also expected to **increase non-tax revenue by $85.8 million** over four years from 2023–24 (and $28.7 million per year ongoing). Funding includes:

- **$63.1 million** in non-tax revenue over four years from 2023–24 (and $20.7 million per year ongoing) by **increasing the maximum penalties** for breaches of underpayment related civil remedy provisions in the *Fair Work Act 2009* and increasing penalties for non-compliance with a compliance notice

- **$55.0 million** over four years from 2023–24 (and $12.5 million per year ongoing) to **introduce a criminal offence for employers who intentionally underpay their workers**

and for matters of non-compliance to be investigated by the Fair Work Ombudsman and referred to the Commonwealth Director of Public Prosecutions where appropriate. **These costs will be partially offset from expected non-tax revenue of $22.6 million** over three years from 2024–25 (and $8.0 million per year ongoing) recovered from anticipated **penalties against those convicted of wage theft** offences

- **$18.1 million** over four years from 2023–24 (and $5.2 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission** to make orders setting **minimum standards and provide deactivation protections for employee-like workers** engaged in digital platform work

- **$6.8 million** over four years from 2023–24 (and $1.9 million per year ongoing) to **implement the 'Closing the labour hire loophole' measure**, which will enable applications to the Fair Work Commission for an order to provide that labour hire employees are paid the full rate of pay they would receive under the host's enterprise agreement

- **$5.4 million** over four years from 2023–24 (and $1.0 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission to handle disputes between independent contractors and principals about unfair contractual terms**

- **$4.9 million** over four years from 2023–24 (and $1.1 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission to make orders setting minimum standards** to ensure the **road transport industry is safe**, sustainable, and viable, and **provide unfair termination of contract protections for road transport workers**

- **$3.4 million** over four years from 2023–24 (and $0.7 million per year ongoing) to **legislate a fair, objective test to determine when an employee is classified as a casual** employee and to **support dispute resolution processes**

- **$1.0 million** over four years from 2023–24 (and $0.3 million per year ongoing) to address unintended consequences in how the **small business redundancy exemption operates in insolvency**. This will preserve redundancy pay entitlements where an employer has progressively downsized in the context of insolvency from a larger business into a small business employer exempt from redundancy pay obligations. These costs will be partially offset from expected non-tax revenue of $0.1 million over two years from 2025–26 (and $41,000 per year ongoing).

Funding for this measure has already been provided for by the Government.

This measure builds on the 2022–23 October Budget measure titled *Secure Australian Jobs.*

Closing Loopholes No. 2 Bill

Overview

- 4 September 2023—t**he Fair Work Legislation Amendment (Closing Loopholes) Bill 2023** (Closing Loopholes Bill) introduced into the House of Representatives.
- 7 December 2023—Senate agreed to a series of Government amendments and **divided the Closing Loopholes Bill into two bills**.
- Certain provisions were incorporated into the separate **Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 ('No. 2 Bill')**.
- 14 December 2023—the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* received Royal Assent.
- 8 February 2024—Senate passed the No. 2 Bill with Government and cross-bench amendments.
- 12 February 2024—House of Representatives passed the No. 2 Bill with Senate amendments.

Commencement

- Schedule 1 to the No. 2 Bill has 15 non-sequential Parts with different commencement provisions (see Summary of Provisions at **Attachment A**).
- Schedule 5 to the No. 2 Bill (there is no Schedule 2, 3 or 4) commences on the day after Royal Assent (noting that the withdrawal of the Mining and Energy Division from the Construction, Forestry, Maritime, Mining and Energy Union took effect from 1 December 2023).

Key Provisions of the Closing Loopholes No. 2 Bill

- The Closing Loopholes No. 2 Bill has two Schedules:
    - Schedule 1—Main Amendments, covering primarily the *Fair Work Act 2009* and minor amendments to the *Fair Work (Registered Organisations) Act 2009,* the *Independent Contractors Act 2006* and the *National Workplace Relations Consultative Council Act 2022*.
    - Schedule 5—Minor amendment of the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.
- A summary of each measure is at **Attachment A**. A summary of amendments made in the Senate that support business is at **Attachment B**.
- Debate has generally focussed on the casuals measure and provisions relating to regulated workers:

Schedule 1, Part 1—Casual employment (see **Attachment C** for more detail)

- Providing for a fair, objective test to determine when an employee can be classified as casual.

Schedule 1, Part 16—Provisions relating to regulated workers (See **Attachment D** for more detail about reforms for employee-like workers, **Attachment E** for road transport workers and **Attachment F** for road transport contractual chains).

- Enabling the FWC to set fair minimum standards for:
    - 'employee-like' workers performing digital platform work
    - the road transport industry to ensure it is safe, sustainable and viable.
- Allowing the Fair Work Commission to deal with disputes about unfair terms in services contracts to which an independent contractor is a party (provided their earnings do not exceed the contractor high income threshold).
- Empowering the Fair Work Commission to deal with disputes over an employee-like worker's unfair deactivation from a digital labour platform, or the unfair termination of a road transport contractor's services contract by a road transport business.
- Enabling digital labour platform operators and road transport businesses to make consent-based collective agreements with registered organisations representing regulated workers.

Senate amendments

The Government made and supported a number of amendments in the Senate to respond to recommendations from the Senate Committee Inquiry report on measures contained in the Bill, including to legislate a right to disconnect (**Attachment I**).

Stakeholders consulted

- The Minister for Employment and Workplace Relations convened two tripartite meetings of the National Workplace Relations Consultative Council with business and unions in 2023 to discuss the measures in the Closing Loopholes Bill.
- Confidential meetings with business representatives and unions were also convened to seek feedback and views on detailed policy proposals.
- The Department of Employment and Workplace Relations has led two written submission processes in response to short summaries and more detailed consultation papers, with more than 160 organisations making over 220 submissions.
- The department also conducted more than 75 consultation meetings with a range of stakeholders including, business and industry representatives, employers, academics, community groups and Commonwealth and state and territory governments.
- A meeting of the Committee on Industrial Legislation (COIL) was held on 16 and 17 August 2023, and a meeting with State and Territory officials was held on 18 August 2023.

Recent media on this policy

- **Attachment J**

Expenditure/Budget

- See **Attachment G**

Related Questions received on notice

- See **Attachment H**

Last Cleared By	s. 22(1)(a)(ii)
Date Last Cleared	13 February 2024

Attachment B

Senate amendments to Closing Loopholes No. 2 Bill that supported business

The Government made and supported amendments in the Senate that will provide clarity and simplify obligations for businesses, while maintaining the policy intent of the provisions.

Casuals

- Remove the existing obligation on employers to offer conversion to after 12 months to eligible employees, providing for **a single legislated** employee choice pathway for conversion to permanency.
- Clarify in the definition the contract of employment is to be considered 'in addition to' mutual understandings and expectations when assessing status of an employee.
- Allow employers to refuse an employee conversion on "**fair and reasonable operational grounds".**
    - e.g. requires substantial changes to organisation of work; significant impact on operations; requires substantial change to be consistent with an industrial instrument (e.g. rules for part time).
- Clarify the factors for determining whether an employee is a casual, to reflect that no single factor will dictate if an employee is casual
- Allow casuals to be engaged on **fixed term contracts**, except for academics in universities covered by specified awards. Casuals will also now be covered by the fixed term contract limitations.
- Streamline the information employers must provide to employees when responding to an employee choice notification.

Regulated workers

- Introduce grandfathering arrangements giving eligible high income independent contractors whose status may change to employee due to the new interpretive principle the ability to opt out of the principle.
- Clarify that employee-like minimum standards orders would prevail over equivalent state and territory laws and instruments that cover the same workers.

- Prevent multiple actions in relation to unfair deactivation or unfair termination applications in relation to a services contract, unless the applicant discontinued the other proceeding or it failed on jurisdictional grounds.
- Ensure that workers cannot be employees if they are covered by a minimum standards order.
- Provide that minimum standards orders must be expressed to cover a specified class or classes of regulated businesses (as opposed to specifying businesses only by name).
- Provide that a Minimum Standards Order may only contain a term to the extent that it is necessary to achieve the minimum standards objective.
- Require that a person must satisfy two or more 'employee-like' characteristics in order to be considered an employee-like worker.
- Allow business peaks in the list of parties that can apply to the Fair Work Commission to vary or revoke a Minimum Standards Order.
- Introduce a failsafe mechanism to enable the Minister or Fair Work Commission upon application to defer or suspend all or part of a minimum standards order, including road transport orders, while the Fair Work Commission conducts a review to consider whether to vary or revoke its terms.

Changes to civil penalties

- Cross-bench amendments exclude individuals and small business employers from increased penalties for contraventions of wage related civil penalty provisions.
    - For all persons, the penalty for non-compliance with a Fair Work Ombudsman compliance notice will be brought in line with other Fair Work Act civil penalties.

Attachment A

Summary of measures

Clause 4—Review of operation of amendments

- New Clause 4 will require a review of the operation of the amendments made by the No. 2 Bill once it is given Royal Assent.
- The review must commence no later than two years after the day the Act receives Royal Assent.

Schedule 1—Main amendments

Part 1—Casual employment

- This measure would repeal and substitute a new definition of **casual employee** in section 15A of the Fair Work Act.
- The new definition keeps the core concept that a casual employee is someone who **does not have a firm advance commitment to continuing and indefinite work**, but also ensures this concept is understood by reference to the **practical reality** of the employment relationship.
- A new employee choice pathway would be the way for an employee to initiate a change from casual to permanent employment, and the existing processes will be repealed.
- If workers **want to remain casual employees**, they can't be forced to change.
- Part 1 would commence on 6 months after Royal Assent.

Part 3—Enabling multiple franchisees to access the single-enterprise stream

- This measure would provide **franchisees and their workers access to the single enterprise bargaining stream**.
- This means employees of franchisees can vote as a single cohort to approve a single enterprise agreement.
- This Part would commence the day after Royal Assent.

Part 4—Transitioning from multi-enterprise agreements

- This measure would amend the Fair Work Act so that **employers covered by a single-interest or supported bargaining agreement** can **bargain** with their employees **at any time** for a replacement **single-enterprise agreement**.
- This Part would commence the day after Royal Assent.

Part 5—Model terms

- This measure would amend the Fair Work Act to provide that it is the **Fair Work Commission that determines model terms** for flexibility, consultation, and dispute resolution in enterprise agreements.
- Currently the terms are prescribed by regulations.
- This Part would commence on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

Part 5A—Intractable bargaining

- This measure would ensure that terms included in an intractable bargaining determination made by the FWC, if not previously agreed by the bargaining representatives, must be not less favourable to employees or employee organisations than corresponding terms in existing enterprise agreements.
- The not less favourable test does not apply to wage increase terms.
- The measure also provides additional points at which terms may be agreed by the parties.
- This Part would commence the day after Royal Assent.

Part 7—Workplace delegates' rights (Division 2)

- The Closing Loopholes Act provides **specific rights and protections for workplace delegates** in the Fair Work Act.
- Workplace delegates are provided the right to represent members and potential members in industrial issues.
- To support this, delegates would have reasonable access to:
    - **communicate** with members and potential members about matters of industrial concern
    - **workplace facilities**, and
    - **paid time** to undertake workplace delegate related training (for businesses other than small businesses).
- This amendment would extend those rights to delegates who are not employees.
- Division 2 of Part 7 would commence either 6 months after Royal Assent or earlier by Proclamation.

- Division 1 of Part 7 is in the Closing Loopholes Act 2023.

Part 8—Right to disconnect

- New Part 8 will provide employees with the right to refuse contact from their employer outside an employee's working hours.
- The Fair Work Commission may deal with disputes between an employer and employee about the right to disconnect.
- The amendments would commence six months and a day after Royal Assent. For an employer that is a small business employer on the day of commencement, or an employee of the employer, the amendments will not apply for a further period of 12 months (i.e. 18 months).

Part 9—Sham arrangements

- This measure would require courts to assess employers' state of mind when defending allegations of sham contracting against the **new benchmark of reasonable belief**, rather than the current test of **knowledge or recklessness**.
- This Part would commence the day after Royal Assent.

Part 10—Exemption certificates for suspected underpayment

- This measure would amend the right of entry provisions of the Fair Work Act to **enhance the ability of permit holders** to enter a workplace **to investigate suspected wage underpayments**.
- Registered organisations would be able to apply to the Fair Work Commission for an **exemption certificate** which would **waive the usual minimum 24-hours' notice requirement** for entry to workplaces.
- The Commission will be required to issue the exemption certificate if satisfied that a suspected contravention involves the **underpayment of wages affecting a member** of that registered organisation.
- This Part would commence on 1 July 2024.

Part 11—Penalties for civil remedy provisions

- This measure would **increase the maximum civil pecuniary penalties** for **wage exploitation** related civil remedy provisions in the Fair Work Act and introduce a new method of calculating maximum civil penalties based on the amount of the underpayment, if ascertainable.
- This measure would also **amend the threshold for what constitutes a serious civil contravention** from one that is done knowingly and systematically to one that is done **either knowingly or recklessly**.
- **Division 1 of Part 11 would commence** the later of:
    a) the day after this Act receives the Royal Assent; and
    b) 1 January 2024.

Division 2 of Part 11 would commence the later of:

a) the same time as the civil remedy provisions; and
b) immediately after the commencement of Division 2 of Part 28 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.
    - However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

- **Division 3 of Part 11 would commence** the later of:

a) the same time as the civil remedy provisions ; and
b) the commencement of items 213 to 222 of Schedule 1 to the Fair Work Legislation Amendment (Closing Loopholes) Act 2023.
    - However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

Part 12—Compliance notice measures

- This is a **technical amendment** to clarify the existing practice with respect to the use of Fair Work Ombudsman's compliance notices.
- The measure would make clear on the face of the Fair Work Act that the Ombudsman can **require an employer to calculate the amount of an underpayment** that is owed to an employee, and that a court can order the recipient of the notice comply with it terms.
- This Part would commence the day after Royal Assent.

Part 13—Withdrawal from amalgamations

- This measure would **repeal amendments made in 2020** to the *Fair Work (Registered Organisations) Act 2009* by the previous Government (except for some minor technical amendments).
- Primarily, this would **restore the requirement for de-merger applications** from amalgamated organisations **to be made two to five years after** the amalgamation occurred.
- This Part would commence the day after Royal Assent.

Part 15—Definition of employment

- This measure would insert an interpretive principle into the Fair Work Act that applies when determining the ordinary meaning of 'employee' and 'employer', for the purposes of that Act.
- **A worker's status** will be determined by the '**real substance, practical reality and true nature**' of the relationship, by considering the **'totality' of the relationship**.
- This Part would commence either 6 months after Royal Assent or earlier by proclamation.

Part 15A—Opting out of definition of employment

- New Part 15A would provide a mechanism for an individual to opt out of the definition of employment provisions at new section 15AA.

- This amendment would commence the day after Royal Assent.

Part 16—Provisions relating to regulated workers

Road transport

- This measure would provide the Fair Work Commission with a new function of making **road transport minimum standards orders**, focused on road transport contractors and the businesses that hire them.

Part 16A—Road Transport Contractual Chains

- New Part 16A provides new amendments relating to road transport contractual chains.
- This amendment would commence immediately after table item 22, which commences by Proclamation or six months after Royal Assent.

Road transport (cont)

- Comprehensive guardrails would ensure **minimum standards are fit for purpose** and guided by genuine engagement with the industry, including:
    - **A new road transport objective**, requiring the Fair Work Commission to balance sustainable standards with business viability, competition and compliance costs
    - **A notice of intent process** requiring the Fair Work Commission to publish a notice and draft order for 24 months before making a final order
    - **Mandatory consultation** with a new road transport advisory group
    - Establishment of a **Fair Work Commission Expert Panel** for the road transport industry.
- The amendments would also give road transport contractors a **new protection from unfair termination of their contract**.

Employee-like workers

- This measure would empower the Fair Work Commission to set **minimum standards** for 'employee-like' workers in the gig economy (ie, those that perform **digital labour platform work**).
- Minimum standards would **not be able to convert an employee-like worker into an employee**. Clauses like overtime and rostering cannot be included in a minimum standard.
- Comprehensive guardrails would ensure **minimum standards are fit for purpose** and guided by genuine engagement with the industry, including a **notice of intent process** requiring the Fair Work Commission to publish a notice and draft order and undertake a reasonable period of consultation before making a final order.

- The amendments would also give employee-like workers **a new protection from unfair deactivation from digital labour platforms**.

Unfair contracts

- This measure would amend the Fair Work Act to empower the Fair Work Commission to deal with disputes about **unfair contract terms in services contracts**.
- This would provide **low-cost and accessible dispute resolution** for independent contractors whose incomes are below a contractor high income threshold, rather than needing to apply to a court.
- The amendments seek to address challenges with the existing unfair contracts jurisdiction in the Independent Contractors Act – which is prohibitively expensive for most contractors and has not been well used.
- If it finds a **term to be unfair**, the Fair Work Commission would be **able to vary or set aside part or all of the contract**.
- The Fair Work Commission would **not be able to order compensation**, but may, for example, vary the terms of the contract that deal with payment.

Collective agreements

- This measure would enable digital labour platform operators and road transport businesses to make **consent-based collective agreements** with organisations entitled to represent the industrial interests of employee-like workers or road transport contractors.
- Part 16 would commence either 6 months after Royal Assent or earlier by Proclamation.

Part 17—Technical amendment

- This measure would repeal a clause that no longer has any effect regarding applications to vary modern awards if already being dealt with in a four yearly review.
- This Part would commence the day after Royal Assent.

Part 18—Application and transitional provisions

- Part 18 would amend the Fair Work Act to provide consequential, application and transitional clauses arising from the amendments made by the Bill.
- This Part would commence the day after Royal Assent.

Schedule 5—Amendment of the Coal Mining Industry (Long Service Leave) Administration Act 1992

- Schedule 5 would amend the *Coal Mining Industry (Long Service Leave Administration) Act 1992* to transfer the existing two positions on the Board of Directors for the Mining and Energy Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) to the standalone new Mining and Energy Union.
- This withdrawal occurred on 1 December 2023.
- Schedule 5 would commence the day after Royal Assent.

Attachment C

Standing up for casual workers

Currently there are employees who remain a casual when they are working just like permanent employees, which means they do not receive the entitlements and job security of permanent workers.

The Government has an election commitment to legislate a fair, objective definition of casual employment, so people have a clearer pathway to permanent work

- The Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 replaces the definition in s15A of the Fair Work Act with one that considers the practical reality of the employment relationship, not only the terms of the initial contract.
- The new employee choice pathway will be the single pathway for conversion to a permanent position and replace the former employer obligation conversion process.
- If passed, the reforms would commence 6 months after Royal Assent.

Status is fixed and only changes through employee decision to ensure certainty for businesses

- Under the new employee choice pathway, an employee's status can only change from casual to permanent through conscious action and agreement by the employee. If an employee does not want to change status, they remain casual and keep their casual loading.
- This provides certainty of status to employers and employees at all times.
- An employee lawfully engaged as a casual will remain a casual employee unless the employee wants to change. Change in status has prospective effect which is the same as the current framework.

Misclassification

- Amendments to the Bill passed by the House have removed the prohibition against misrepresenting employment as casual employment. Protections against the intentional misuse of casual employment have been retained.
- As is the case under current laws, if an employee was misclassified on commencement they could seek backpay through a court.
- The statutory offset in s 545A will remain. This means a court must reduce (but not below nil) any amount payable by the employer to the person for the relevant entitlements by an amount equal to the casual loading amount paid.
- This is how the current framework operates. Employers' exposure to backpay liabilities will remain the same as under the existing framework.

- A court will only impose a penalty for misclassification if it considers it appropriate to do so. In some cases, no penalties are ordered at all.
- A court may take into account, for example, whether the employer knowingly misclassified employment as casual employment, is well-resourced to obtain advice on proposed employment arrangements, or has a history of contravening the Fair Work Act.

Regularity is one of several indicators – it is not determinative of whether an employee is a casual

- The headline test is whether or not there is firm advance commitment to continuing and indefinite work.
- Indicators such as regularity are to help employers consider whether a firm advance commitment exists. No single indicator is determinative. Amendments to the Bill clarified these intentions.
    - In addition to whether there is a regular patten of work, the factors also include whether it is reasonably likely that there will be future availability of continuing work of the kind performed by the employee.
- Employers may engage someone as casual and give regular pattern of work from commencement if there is not continuing and indefinite work.

Casuals can have a fixed term contract but amendments address misuse in higher education

- Amendments to the Bill narrow the limitation on engaging casual employees on fixed term contracts to apply to academics in universities covered by specific awards. Amendments also provide that that the existing fixed term contract limitations apply to casuals employed on a fixed term contract. .

Period of service requirements before status change can occur

- A casual employee who has worked for 6 months, or 12 months in a small business, will be able to notify their employer where they believe they no longer meet the definition. This allows time for the employment relationship to develop post commencement.

Fair and reasonable operational grounds to not covert

- Amendments to the Bill more clearly recognise the role of the practical reality of the workplace's operations in an employer's consideration of whether an employee can become permanent.
- An employer can not accept an employee's notification to change to permanent employment where there are fair and reasonable operational grounds to do so. This includes:
    - Substantial changes would be required to the way in which work in the employer's enterprise is organised.
    - Significant impact on the operation of the enterprise.

- Substantial changes would be required to the employee's terms and conditions would be reasonably necessary to ensure employer doesn't contravene a term of a fair work instrument.

The Fair Work Commission will be given enhanced powers to resolve disputes under either the new employee choice pathway or the existing employer offer pathway

- Most dispute will be resolved at the workplace level. Where this does not happen, the Fair Work Commission can assist – including making a binding decision by arbitration as a last resort.
- In resolving disputes, the Fair Work Commission will be able to make orders it considers fair and reasonable.
- The volume of applications to the Fair Work Commission is expected to be low.
- Enhanced access to dispute resolution is supported by the findings of the *Independent Review of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*.

The Fair Work Ombudsman will support people to understand rights and obligations associated with this amendment

- The Fair Work Ombudsman will update the Casual Employment Information Statement.
- In addition to providing the statement to employees when they start work, there will be a new obligation for employers to provide the statement to employees when their rights to become permanent employees may arise. This will help alert employees about their rights. Employers will be required to provide the Casual Employment Information Statement to employees again:
    - for small businesses – after 12 months of employment
    - for medium and large businesses – after 6 months of employment, and then after 12 months of employment, and then after every 12 months of employment.

Attachment D

Minimum standards for employee-like workers

- Employee-like workers performing digital platform work (commonly referred to as 'gig workers') are often engaged as independent contractors, which means they do not currently receive most of the rights and entitlements under the Fair Work Act.
- The employee-like worker reforms will provide these workers with minimum standards for the first time.

The Government has an election commitment to provide minimum standards for employee-like workers in the gig economy

- The Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023:
    - Empowers the Fair Work Commission to set minimum standards for employee-like workers performing digital platform work. Standards may be mandatory (and enforceable), or for guidance only.
    - Creates a new unfair deactivation jurisdiction in the Fair Work Commission.
    - Provides for a new consent based collective agreement-making framework for digital labour platform operators and employee-like workers.
- The reforms will commence 6 months after Royal Assent, or earlier by proclamation.

Minimum standards can only be set for 'employee-like' workers

- The Fair Work Commission can only set minimum standards for independent contractors who:
    - perform digital platform work (also known as work in the 'gig economy'); and
    - have two or more employee-like characteristics, which are:
        - low bargaining power,
        - low authority over their work,
        - receiving remuneration at or below the rate of comparable employees; or
        - other characteristics that may be prescribed in regulations.
- This means independent contractors who are not 'employee-like' and/or do not perform work for a digital labour platform are not affected by these changes.

Whether a particular platform is in scope for standards will depend on whether those workers are 'employee-like'

- The definitions of 'digital platform work' and 'digital labour platform' in the Bill make it clear that the measure only covers work performed via a digital labour platform involving a services contract.
- 'Marketplace' based platforms such as Mable and Airtasker would likely be considered digital labour platforms under the new legislation, but the Fair Work Commission will only be able to set minimum standards for workers who perform work through these platforms if it is satisfied, they are 'employee-like' workers (that is, they have at least two of the following characteristics: low pay, low authority or low bargaining power).
- Ultimately, whether workers on Mable or Airtasker are 'employee-like' will be a matter for the independent Fair Work Commission to determine.

Content rules ensure that minimum standards will not disturb worker flexibility or platform operating models

- The Government agreed to cross-bench amendments in the Senate which provide that a minimum standards order can only include a term to the extent necessary to achieve the minimum standards objective.
- The Bill provides a non-exhaustive list of content that minimum standards orders can cover, including payment terms, deductions, insurance and cost recovery. Orders must include a coverage and dispute resolution term.
- The Fair Work Commission must not make standards in relation to:
    - rostering and overtime arrangements
    - matters that are primarily of a commercial nature that do not affect the terms and conditions of workers
    - matters that would change the form of engagement or status of workers
    - matters relating to work, health and safety that are dealt with comprehensively under another law of the Commonwealth or a state or territory.
- The Government made amendments in the House of Representatives to further ensure the Fair Work Commission sets minimum standards in a way that is fit for purpose for the unique nature of digital platform work.
- The amendments limit standards relating to penalty rates, payments before and between accepting engagements, and minimum periods of engagement to where it is appropriate for the type of work performed. The Fair Work Commission must also take into account that workers may work on more than one platform at a time (multi-apping) and consider the impacts standards would have on users of platform services and on business costs.

Consent-based collective agreements allow platforms and workers to agree on terms that suit that enterprise

- A new consent based collective agreement-making framework will facilitate registered organisations representing employee-like workers to make collective agreements with individual digital labour platform operators.
- The agreements must be limited to the terms and conditions of road transport contractors directly engaged by the road transport business, and how the agreement is to operate. A term of a collective agreement will have no effect to the extent that it deals with other matters, including purely commercial matters that do not affect the workers' terms and conditions.
- Negotiating parties have obligations to consult and explain the terms of the proposed agreements to the workers covered by the agreement.
- Before registering a collective agreement, the Fair Work Commission must be satisfied that it is not contrary to the public interest.

Protections from unfair deactivation will stop platforms from taking away platform access without recourse

- Employee-like workers will have new protections from unfair deactivation if they have been working via a digital labour platform on a regular basis for six months.
- Eligible employee-like workers may apply to the Fair Work Commission to seek a remedy if they consider their deactivation was unfair. The Fair Work Commission can order reinstatement, but not compensation.
- In considering whether a deactivation is unfair, the Fair Work Commission must take into account whether it was for a valid reason and whether the process was consistent with the Digital Labour Platform Deactivation Code, to be made by the Minister.

Attachment E

Minimum standards for the road transport industry

- The Closing Loopholes No. 2 Bill provides the Fair Work Commission with the power to set minimum standards for the road transport industry to ensure it is safe, sustainable and viable.
- This follows findings from the Senate inquiry report 'Without trucks Australia Stops' that unsustainable business practices and increasing commercial pressures are negatively impacting the road transport industry.
- The Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023:
    - Empowers the Fair Work Commission to set minimum standards for the road transport industry. Standards may be mandatory (and enforceable, with civil penalties) or for guidance only
    - Creates a new unfair termination jurisdiction in the Fair Work Commission, and
    - Provides for a consent based collective agreement-making framework.
- The reforms will commence 6 months after Royal Assent, or earlier by proclamation.

Standards can apply to regulated road transport contractors and businesses in a contractual chain

- The Fair Work Commission will be able to make:
    - Road transport minimum standards orders applying to regulated road transport contractors and the road transport business that engages them
    - Road transport contractual chain orders applying to persons in a road transport contractual chain.
- A regulated road transport contractor would be a person who performs work in the road transport industry as an independent contractor under a contract for services.
- A road transport business receives services under a contract for services, which provides for the performance of work in the road transport industry.
- A road transport contractual chain includes the person or business that requires the delivery of freight by road, the contractor who makes the delivery, and sub-contracting or other arrangements that sit between them.

The Fair Work Commission has discretion to set fit for purpose standards

- The Bill provides a non-exhaustive list of content that minimum standards orders can cover, including payment terms, deductions, insurance and cost recovery. Orders must include a coverage and a dispute resolution term.
- The Fair Work Commission must not make minimum standards for road transport workers in relation to:

- rostering or overtime arrangements
- matters that are primarily of a commercial nature that do not affect the terms and conditions of workers
- matters that would change the nature of engagement or status of workers
- matters relating to work health and safety already comprehensively dealt with by a Commonwealth or state or territory law
- matters relating to road transport already comprehensively dealt by the Heavy Vehicle National Law or another Commonwealth or state or territory law.

- The content rules for road transport contractual chain orders are similar, with the following differences reflecting the nature of contractual chains:
  - Orders must include terms setting out the work in the road transport industry and the persons in the contractual chain covered by the order.
  - The non-exhaustive list includes different terms that may be included, such as fuel levies and rate reviews.
  - There is no requirement that orders do not include matters that are primarily of a commercial nature that do not affect the terms and conditions of workers.

Comprehensive guard rails ensure the Bill improves on, and is distinct to, the former Road Safety Remuneration Tribunal

- Once the Fair Work Commission has received an application for a minimum standards or contractual chain order, guardrails and procedural requirements built into the standard setting process would provide for a gradual, consultative and evidence-based approach to setting standards, with industry views taken into account at each stage. These guardrails include:
  - Timeframes and procedural requirements to ensure full consideration of draft standards:
    - Following an application for a minimum standards or contractual chain order, the Fair Work Commission would consult affected persons and bodies through its usual processes (eg hearings, submissions) to decide whether to make an order. If it decides to make an order, the Fair Work Commission must then publish a notice of intent and the draft order.
    - The Fair Work Commission must consult on the draft order and cannot make an order less than 12 months after the notice of intent was published. It must ensure that affected persons have a reasonable opportunity to make written submissions on the draft order and publish these submissions.
    - If it decides to vary the draft order during this consultation process, the Fair Work Commission must publish another notice of intent and publish the new draft order. The period of consultation on the revised draft order must be no shorter than 12 months starting when the subsequent notice of intent are revised draft were published.

- Inbuilt industry expertise and consultation:
  - A new road transport expert panel will be established within the Fair Work Commission, to ensure it has the access to the appropriate expertise.
  - A new Road Transport Advisory Group (RTAG) will also be established to be a key source of advice to the Fair Work Commission in performing its functions in the road transport industry. The RTAG will be able to form subcommittees, with members drawn from outside the RTAG, to enable it draw on a broader range of expertise and experience where useful to do so in performing its functions.
    - The RTAG must form a subcommittee consisting of a majority of members that are owner drivers or representatives of owner drivers each time it considers orders that affect owner drivers.
- Legislative requirements to ensure orders are balanced and fit for purpose
  - A new minimum standards objective and a road transport objective setting out the need to avoid unreasonable adverse impacts on sustainable competition, business viability, innovation and productivity and administrative and compliance costs in the road transport industry.
  - Additional requirements on the Fair Work Commission when making an order, to:
    - Ensure there has been genuine engagement with the parties to be covered by an order
    - Have regard to the commercial realities of the road transport industry, and

- Be satisfied the order will not unduly affect the viability and competitiveness of owner drivers. Further guardrails only applying to contractual chain orders require the Fair Work Commission to:
  - as part of the road transport objective, take into account the need to avoid adverse impacts on the sustainability, performance and competitiveness of supply chains and the national economy
  - take into account any current or proposed minimum standards orders or road transport contractual chain orders, with a view to avoiding overlap
  - take into account commercial practices in relation to part loads, mixed loads, no loads, multi-leg and return trips; and
  - be satisfied any order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers and other similar persons.

Failsafe mechanism

- The Bill establishes a 'failsafe' mechanism. It allows for an order to temporarily cease to have effect while the Commission considers whether to vary or revoke the order without requiring parties to go through lengthy federal court processes.
- There are two broad 'streams' under the failsafe:
    - Under the first stream, the Minister for Employment and Workplace Relations may, by notifiable instrument, make a declaration:
        - deferring the commencement of a minimum standards order
        - suspending the operation of a minimum standards order within its first 12 months of operation.
- The second stream only applies to road transport minimum standards orders or contractual chain orders. Eligible parties can apply to the Fair Work Commission to make a determination to defer or suspend these orders.
- Once deferred or suspended, the Fair Work Commission must, as soon as possible, decide if the order should be left as is, varied or revoked.

Consent-based collective agreements allow road transport businesses and registered organisations to agree on terms that suit them

- A new consent based collective agreement-making framework will facilitate individual road transport businesses to make collective agreements with registered organisations representing regulated road transport contractors.
- The agreements must be limited to the terms and conditions of road transport contractors directly engaged by the road transport business, and how the agreement is to operate. A term of a collective agreement will have no effect to the extent that it deals with purely commercial matters that do not affect the workers' terms and conditions.
- Negotiating parties have obligations to consult and explain the terms of the proposed agreement to the workers covered by the agreement.
- Before registering a collective agreement, the Fair Work Commission must be satisfied that it is not contrary to the public interest.

Unfair termination protections ensure fair treatment of road transport contractors

- Regulated road transport workers will have new protections from unfair termination if they have performed work under a services contract (or series of contracts) for a road transport business for at least 6 months.
- Eligible road transport workers can apply to the Fair Work Commission to seek a remedy if they consider their termination was unfair. The Fair Work Commission can order reinstatement or compensation if reinstatement is not appropriate.
- In considering whether a termination is unfair, the Fair Work Commission must take into account whether it was for a valid reason and whether the process was consistent with the Road Transport Industry Termination Code, to be made by the Minister.

Attachment F

Standards for road transport contractual chains

- The Closing Loopholes No. 2 Bill gives the Fair Work Commission the power to set standards for:
    - regulated road transport contractors and the road transport business that engage them; and
    - persons in road transport contractual chains.

What is a road transport contractual chain and how is it different to a supply chain?

- A contractual chain refers to the series of contracts or arrangements between the persons or businesses who require the delivery of a good (referred to as 'primary parties' in the Bill) and the driver that performs the delivery. Logistics operators will generally not be part of a contractual chain.
- A supply chain refers to the passage of a good from its origin to its destination, including via logistics facilities such as ports and warehouses.
- A road transport contractual chain order cannot apply to:
    - a person who requires delivery of a good for private or domestic purposes.
    - A driver who is an employee (the relevant modern award or enterprise agreement will continue to apply).

Why have these provisions been included?

- During the Senate Inquiry into the Bill, stakeholders representing businesses and workers in the road transport industry put forward the view that road transport contractual chain orders were an important element of the Government's reforms and should be set out on the face of the legislation.
- Stakeholders calling for the amendment include:
    - The Australian Trucking Association
    - The National Road Transport Association (NatRoads)
    - The National Road Freighters Association
    - The Australian Road Transport Industrial Association
    - The Transport Workers' Union

What guardrails apply to the making of a contractual chain order?

- Extensive guardrails, content rules and consultation requirements apply to the Fair Work Commission in making road transport contractual chain orders:
    - existing guardrails applying to road transport minimum standards orders such as:
        - the need to consider and balance the competing factors in the minimum standards objective and the road transport objective
        - requiring genuine engagement with the parties to be covered
        - requiring consultation with the Road Transport Advisory Group
        - undertaking a mandatory consultation process with affected entities via a notice of intent and publish a draft order for 12 months

- additional guardrails applying specifically when making a road transport contractual chain order:
  - take into account the need to avoid adverse impacts on the sustainability, performance and competitiveness of supply chains and the national economy
  - take into account any current or proposed road transport minimum standards orders or road transport contractual chain orders, with a view to avoiding overlap
  - take into account commercial practices in relation to part loads, mixed loads, no loads, multi-leg and return trips
  - be satisfied any order will not unduly affect the viability and competitiveness of road transport businesses (in addition to owner drivers and similar persons)

What can be included in a contractual chains order?

- Contractual chain orders must include terms relating to coverage and dispute resolution. A non-exhaustive list specifies matters that may be included in an order: payment times, fuel levies, rate reviews, termination (including one-way termination for convenience), cost recovery.
- An order must not include terms relating to overtime, rostering arrangements, terms that change the nature of the engagement, and matters that are comprehensively dealt with by WHS laws, heavy vehicle laws, or other Commonwealth, state or territory laws.

Illustrative example (extracted from Supplementary EM, para. 103, p. 25)

The FWC makes an order applying to persons in a contractual chain where the work to be performed is the transport by road of goods between supermarket distribution centres and stores in Victoria. The order requires contracts between parties covered by the order to provide for payment within 30 calendar days of a trip being completed.

Supermellon contracts Hugo's Haulage to deliver goods from its distribution centre to stores in regional Victoria. Hugo's Haulage then subcontracts to transport company Geoffrey Transport, which further subcontracts certain deliveries to independent contractor Kelly. Kelly uses her own truck to collect goods from the distribution centre and deliver them to stores in the eastern part of regional Victoria.

In this scenario, Supermellon, Hugo's Haulage, Geoffrey Transport and Kelly are persons in a contractual chain for the transport of goods between supermarket distribution centres and stores. The **primary parties** to the first contract for the road transport work **are Supermellon** and **Hugo's Haulage**. The **secondary party is Geoffrey Transport**. The **driver who performs the work is Kelly**.

The coverage of the order is the transport of goods between supermarket distribution centres and stores in Victoria – in this case transporting goods from Supermellon's distribution centres to Supermellon stores in Victoria falls within this coverage.

The order requires Supermellon, Hugo's Haulage and Geoffrey Transport to include a clause in their contracts with each other and the driver providing for payment within 30 days of delivery. This order will require the driver at the end of the chain, Kelly, to get paid promptly (within 30 days) for her work.

On the return leg of a trip to deliver goods for a supermarket, Kelly transports a part load of machine parts for a manufacturing business back to Melbourne. Kelly's contract with the manufacturing business is not captured by the supermarket order because it is not part of a contractual chain for the transport of goods from a supermarket distribution centre to a store. There is no requirement for Kelly's contract with the manufacturer to include the 30-day payment clause.

Appendix A: Policy decisions taken since the 2023–24 Budget

MYEFO 23-24 extract pages 237-239

Employment and Workplace Relations

Closing Loopholes

Payments ($m)

	2022-23	2023-24	2024-25	2025-26	2026-27
Office of the Fair Work Ombudsman	-	-	-	-	-
Fair Work Commission	-	-	-	-	-
Department of Employment and Workplace Relations	-	-	-	-	-
Office of the Director of Public Prosecutions	-	-	-	-	-
Total – Payments	-	-	-	-	-
Related receipts ($m)					
Office of the Fair Work Ombudsman	-	-	-	-	-
Department of Employment and Workplace Relations	-	-	-	-	-
Total – Receipts	-	-	-	-	-

The Government will provide $94.6 million over four years from 2023–24 (and $22.7 million per year ongoing) **to close loopholes** that prevent workers in Australia from achieving secure, safe, and well-paid jobs free from discrimination and exploitation. This will further safeguard the wages and conditions of workers and provide clarity and a more level playing field for businesses and workers. These changes are also expected to **increase non-tax revenue by $85.8 million** over four years from 2023–24 (and $28.7 million per year ongoing). Funding includes:

- **$63.1 million** in non-tax revenue over four years from 2023–24 (and $20.7 million per year ongoing) by **increasing the maximum penalties** for breaches of underpayment related civil remedy provisions in the *Fair Work Act 2009* and increasing penalties for non-compliance with a compliance notice

- **$55.0 million** over four years from 2023–24 (and $12.5 million per year ongoing) to **introduce a criminal offence for employers who intentionally underpay their workers**

and for matters of non-compliance to be investigated by the Fair Work Ombudsman and referred to the Commonwealth Director of Public Prosecutions where appropriate. **These costs will be partially offset from expected non-tax revenue of $22.6 million** over three years from 2024–25 (and $8.0 million per year ongoing) recovered from anticipated **penalties against those convicted of wage theft** offences

- **$18.1 million** over four years from 2023–24 (and $5.2 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission** to make orders setting **minimum standards and provide deactivation protections for employee-like workers** engaged in digital platform work

- **$6.8 million** over four years from 2023–24 (and $1.9 million per year ongoing) to **implement the 'Closing the labour hire loophole' measure**, which will enable applications to the Fair Work Commission for an order to provide that labour hire employees are paid the full rate of pay they would receive under the host's enterprise agreement

- **$5.4 million** over four years from 2023–24 (and $1.0 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission to handle disputes between independent contractors and principals about unfair contractual terms**

- **$4.9 million** over four years from 2023–24 (and $1.1 million per year ongoing) to establish a **new jurisdiction in the Fair Work Commission to make orders setting minimum standards** to ensure the **road transport industry is safe**, sustainable, and viable, and **provide unfair termination of contract protections for road transport workers**

- **$3.4 million** over four years from 2023–24 (and $0.7 million per year ongoing) to **legislate a fair, objective test to determine when an employee is classified as a casual** employee and to **support dispute resolution processes**

- **$1.0 million** over four years from 2023–24 (and $0.3 million per year ongoing) to address unintended consequences in how the **small business redundancy exemption operates in insolvency**. This will preserve redundancy pay entitlements where an employer has progressively downsized in the context of insolvency from a larger business into a small business employer exempt from redundancy pay obligations. These costs will be partially offset from expected non-tax revenue of $0.1 million over two years from 2025–26 (and $41,000 per year ongoing).

Funding for this measure has already been provided for by the Government.

This measure builds on the 2022–23 October Budget measure titled *Secure Australian Jobs.*

Question on notice no. 349

Portfolio question number: SQ23-001522

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

(1.Will the Road Transport Advisory Group be constituted by unions representing road transport workers and representatives from businesses and contractors, or nominated by them, and it is up to the Minister to determine its membership within these bounds? (Clause 40F)
2.Will these positions be advertised, or expressions of interest called?
3.Could the Advisory Group conceivably be constituted by just a representative of the TWU and one from a body like the Australian Road Transport Industrial Organisation?
4. Will these positions be full-time positions? Will members be permitted to work in other roles at the same time as they hold a position with the Advisory Group?
5.If so, how will conflicts of interest be managed?
6.Is it correct that the function of the Advisory Group is to advise the Fair Work Commission on matters relating to the road transport industry?

(Clause 40E

(2))
7.Are there any other contexts in which a union is given authority to advise a Tribunal on its exercise of power?
8.What does it mean in practice that the President of the FWC "must... have regard to" the views of the Road Transport Advisory Group?

(Clause 40E

(4))
9. What happens if the Advisory Group believes the President of the Fair Work Commission has not 'had regard to' its views in reaching a decision?
10.How does the legislation prevent or manage the inherent conflict of interest in the TWU appearing before the Commission in road transport matters if it is also advising the Commission on those matters, e.g. the scope of a Minimum Standards Order or the application of an award?
Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001522

Senator Michaelia Cash provided in writing.

Road Transport Advisory Group and Expert Panel of Fair Work Commission

Question

1. Will the Road Transport Advisory Group be constituted by unions representing road transport workers and representatives from businesses and contractors, or nominated by them, and it is up to the Minister to determine its membership within these bounds? (Clause 40F)
2. Will these positions be advertised, or expressions of interest called?
3. Could the Advisory Group conceivably be constituted by just a representative of the TWU and one from a body like the Australian Road Transport Industrial Organisation?
4. Will these positions be full-time positions? Will members be permitted to work in other roles at the same time as they hold a position with the Advisory Group?
5. If so, how will conflicts of interest be managed?
6. Is it correct that the function of the Advisory Group is to advise the Fair Work Commission on matters relating to the road transport industry? (Clause 40E(2))
7. Are there any other contexts in which a union is given authority to advise a Tribunal on its exercise of power?
8. What does it mean in practice that the President of the FWC "must… have regard to" the views of the Road Transport Advisory Group? (Clause 40E(4))
9. What happens if the Advisory Group believes the President of the Fair Work Commission has not 'had regard to' its views in reaching a decision?
10. How does the legislation prevent or manage the inherent conflict of interest in the TWU appearing before the Commission in road transport matters if it is also advising the Commission on those matters, e.g. the scope of a Minimum Standards Order or the application of an award?

Answer

1. Subsection 40F(1) would provide that the Road Transport Advisory Group (RTAG) consists of such members as the Minister appoints. Subsection (2) would require the Minister to ensure that members of the RTAG are members of, or nominated by, an organisation entitled to represent the industrial interests of one or more regulated road transport contractors or road transport businesses. Organisation means an organisation registered under the *Fair Work (Registered Organisations) Act 2009*. The Minister has discretion to determine the membership of the RTAG in accordance with s 40F.

2. Decisions in relation to appointments arrangements have not yet been considered.

3. The legislation does not provide a minimum or maximum number of members that the RTAG must have at any given time. This will be at the discretion of the Minister.

4. It is not envisaged that membership of the RTAG would be a full-time position, nor that members would be entitled to any remuneration or allowances for their participation. Members would be permitted to work in other roles at the same time as they hold a position with RTAG.

5. The RTAG will be a consultation and advisory body and will not have any decision-making functions. The representatives will be appointed to express their views on behalf of their organisations, to support the FWC in carrying out certain functions in relation to the road transport industry, primarily through the provision of specialist information and advice drawn from members' experience representing participants in the road transport industry.

6. Yes. Subsection 40E(2) would provide that the function of the RTAG is to advise the Fair Work Commission (FWC) in relation to matters about the road transport industry, including but not limited to: the making and varying of modern awards relating to the road transport industry; the making and varying of road transport minimum standard orders and road transport guidelines; the prioritisation by the FWC of matters relating to the road transport industry; and such other matters as are prescribed by the regulations.

7. The legislation provides for the RTAG to be comprised of members nominated by an organisation entitled to represent the industrial interests of one or more regulated road transport contractors; or an organisation that is entitled to represent the industrial interests of one or more road transport businesses. The function of the RTAG would be to provide advice to the FWC on matters about the road transport industry, primarily through the provision of specialist information and advice drawn from members' experience representing participants in the road transport industry.

8. Subsection 40E(4) would require the President to consult, and have regard to the views of, the RTAG in deciding the priorities for the work of the FWC regarding matters affecting the road transport industry.

9. The President would be required to consult, and have regard to the views of, the RTAG in determining priorities. It is anticipated that this would include providing the RTAG with a reasonable opportunity to share its views, and having genuine regard to those views, noting the advisory role of the RTAG.

10. The legislation would give the President of the FWC the power to make directions as to the way in which the RTAG is to carry out its functions. This may include matters relating to managing conflicts of interest, noting all members of RTAG must be members of, or nominated by, an organisation entitled to represent the industrial interests of one or more regulated road transport contractors or road transport businesses.

Question on notice no. 350

Portfolio question number: SQ23-001523

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

(1.The Government has said that the RTAG will not reimplement the mistakes of the RSRT. Please outline the key differences between the two bodies.
2.The RSRT determined the work program for road transport industry inquiries, is that correct?
3.The RTAG would set the priorities of the FWC for the road transport industry, is that correct?
4.What is the key procedural difference there?
5.The RSRT's President was a Deputy President of the FWC, is that correct?
6.The RSRT also had 2 to 4 other Members from the FWC, is that correct?
7.The RTAG would sit within the FWC, is that correct?
8.What's the major structural difference there?
9.The RSRT made orders on its own initiative, didn't it?
10.The FWC with the advice of the RTAG would be able to make orders on its own initiative, is that correct?
11.What's the substantial process change there?
12.The RSRT could make orders about rates of remuneration, working conditions, waiting times, working hours, payment methods and payment periods. Is that correct?
13.The RTAG and the FWC would be able to make MSOs about but not limited to payment terms, deductions, working time, record keeping, insurance, consultation, representation, delegates rights and cost recovery. Is that correct?
14.With regard to standard setting, therefore, the new laws go even further than the previous RSRT. Is that correct?
Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001523

Senator Michaelia Cash provided in writing.

RSRT V RTAG

Question

1. The Government has said that the RTAG will not reimplement the mistakes of the RSRT. Please outline the key differences between the two bodies.
2. The RSRT determined the work program for road transport industry inquiries, is that correct?
3. The RTAG would set the priorities of the FWC for the road transport industry, is that correct?
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13. The RTAG and the FWC would be able to make MSOs about but not limited to payment terms, deductions, working time, record keeping, insurance, consultation, representation, delegates rights and cost recovery. Is that correct?
14. With regard to standard setting, therefore, the new laws go even further than the previous RSRT. Is that correct?

Answer

1. The Road Safety Remuneration Tribunal (RSRT) was established under the RSR Act as a tribunal with a range of functions (s 80) and powers (s 86), including to make road safety remuneration orders (s 19), approve road transport collective agreements (s 32A), and deal with disputes about remuneration and related conditions (s 40).

   The new Road Transport Advisory Group (RTAG) would be a purely advisory body, with no power to make decisions or orders, established to provide the Fair Work Commission (FWC) with access to broad knowledge and experience of the road transport industry.

   The RTAG would advise the FWC about matters that relate to the road transport industry, including but not limited to: the making and varying of modern awards relating to the road transport industry; the making and varying of road transport minimum standard orders and road transport guidelines; the prioritisation by the FWC of matters relating to the road transport industry; and such other matters as are prescribed by the regulations (s 40E).

The framework in the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Bill) would implement a minimum standard-setting framework for the road transport industry that is very different to the previous approach under the *Road Safety Remuneration Act 2012* (RSR Act).

The Bill provides for a gradual, consultative, and evidence-based approach to standard setting, with industry views taken into account at each stage of the process. Procedural requirements and guardrails, such as the requirement to take into account commercial realities of the industry and avoid unduly affecting the viability and competitiveness of owner drivers, will directly address concerns about impacts on owner drivers under the former system.

2. The RSR Act required the RSRT to prepare a work program each year which would identify the matters it would inquire into in the next year of its operation (s 18).

3. No. It is the role of the President of the FWC to set the priorities of the FWC in relation to the road transport industry, not the RTAG.

   One of the RTAG's functions would be to provide advice to the FWC on the prioritisation of matters relating to the road transport industry (s 40E(c)). The President would be required to consult, and have regard to the views of, the RTAG in determining the FWC's priorities in relation to matters affecting the road transport industry (s 40E(4)).

4. The Bill would establish the RTAG to perform an advisory role, including to provide advice to the FWC on the prioritisation by the FWC of matters relating to the road transport industry (s 40E(c)). By contrast, the RSRT was a tribunal with the power and requirement to prepare a work program each year to guide the next year of its operation.

5. The person appointed as President was required by the RSR Act to be a Vice President or Deputy President of the FWC (s 97(2)).

6. There were four FWC members appointed to the RSRT, commencing on 28 June 2012:
   - Then Senior Deputy President Jennifer Acton was appointed President of the RSRT.
   - Then Commissioner Ingrid Asbury was appointed as a member of the RSRT.
   - Then Senior Deputy President Lea Drake was appointed as a member of the RSRT.
   - Then Commissioner Peter Hampton was appointed as a member of the RSRT.

   Other appointees (not FWC members), commencing on 28 June 2012, were:
   - Mr Stephen Hutchins.
   - Mr Paul Ryan.
   - Mr Tim Squires.
   - Professor Ann Williamson.

7. The RTAG would be established under the Bill to advise FWC in relation to matters that relate to the road transport industry. The FWC President would be able to issue directions to the RTAG as to the way it carries out its functions (s40F(5)) and appoint a member of the expert panel for road transport to chair the RTAG (s 40F(6)) if required. It is envisaged the FWC would provide administrative support to the RTAG.

8. The RTAG would be established under the Bill with the function of advising the FWC about matters that relate to the road transport industry. Members of the RTAG would be members of and/or nominated by an organisation entitled to represent the industrial interests of one or more regulated road transport contractors; or an organisation that is entitled to represent the industrial interests of one or more road transport businesses and would be appointed by the Minister.

The RSRT was an independent tribunal established under its own legislation, the RSR Act, to perform functions and exercise powers in relation to the road transport industry. Appointments to the RSRT were made by the Governor General and in some instances, members were dual appointees who were also members of the FWC. There was no equivalent advisory body to the RTAG under the RSR Act.

9. Under section 19(2) of the RSR Act, the RSRT could make a road safety remuneration order on its own initiative if the order was in relation to a matter identified in its work program.

10. The Bill would enable the FWC to make a minimum standards order (which includes a road transport minimum standards order) on its own initiative (s 536JY(4)(a)) or on application (s 536JY(4)(b)), provided that the guardrails and procedural requirements in relation to the making of an order are met.

    One of these requirements is that the FWC must not make a road transport minimum standards order unless the RTAG has been consulted (s 536KA(2)(b)). Other requirements include:
    - publishing a 'notice of intent' and draft order for consultation (s 536KB), which must be in place for the requisite period before a road transport minimum standards order can commence (s 536JF(3))
    - ensuring that affected persons have a reasonable opportunity to comment on the draft (s 536KC)
    - if the FWC decides to make significant changes to the draft, following consultation, publishing another notice of intent and draft order, which again must be in place for the required period (s 536KE)
    - having regard to the minimum standards objective (s 536JX) and road transport objective (s 40D); and
    - ensuring the other requirements for the making of a road transport minimum standards order at s 536KA are met, including:
        - genuine engagement with the parties to be covered
        - having regard to the commercial realities of the road transport industry; and
        - being satisfied that making the road transport minimum standards order will not unduly affect the viability and competitiveness of owner drivers.

11. The guardrails and procedural requirements outlined under question 10 differ significantly to those that applied under the RSR Act for the RSRT to make an order. Meeting these requirements will require the FWC to follow a substantially different process in making an order (including on its own initiative) compared to the RSRT.

    Further, the making of own motion orders by the RSRT was linked to its annual work program, which it was required to make for each year of its operation (see answer to question. 4). The FWC would not be required to make an annual work program.

12. Section 27 of the RSR Act provided that the RSRT could make an order with any provision it considered appropriate in relation to remuneration and related conditions for road transport drivers to whom the order applied, including (but not limited to):
    - conditions about minimum remuneration and other entitlements for road transport drivers who are employees, additional to those set out in any modern award relevant to the road transport industry
    - conditions about minimum rates of remuneration and conditions of engagement for contractor drivers
    - conditions for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods; and
    - ways of reducing or removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.

13. Section 536KL of the Bill would provide for the FWC to make a minimum standards order including (but not limited to):
    - payment terms
    - deductions
    - working time
    - record-keeping
    - insurance
    - consultation
    - representation
    - delegates' rights; and
    - cost recovery.

    At the time of preparing this response the Minister for Employment and Workplace Relations had indicated his intention to introduce amendments to further ensure the FWC sets minimum standards that are fit for purpose, including in relation to the content of minimum standards orders. The Department of Employment and Workplace Relations' supplementary submission to the Senate Education and Employment Committee inquiry into the Bill provides information on these amendments at pp. 17-18.

    The Bill also includes requirements about matters that may not be included in minimum standards orders (s 536KM) and road transport minimum standards orders (s 536KN) respectively. Of particular relevance, in comparing to road safety remuneration orders, the Bill would provide that minimum standards orders may not include terms:
    - that are primarily of a commercial nature that do not affect the terms and conditions of engagement of regulated workers covered by the minimum standards order (s 536KM(1)(c));
    - relating to work health and safety that is otherwise comprehensively dealt with by a law of the Commonwealth, a State or a Territory (s 536KM(1)(e)); and
    - relating to road transport that is otherwise comprehensively dealt with by the Heavy Vehicle National Law or another law of the Commonwealth, a State or Territory (s 536KN(1)(a)).

    The RTAG would not have the power to make a minimum standards order.

14. No. The Bill includes a range of guardrails and procedural requirements that must be complied with before a minimum standards order (including a road transport minimum standards order) could be made, which did not apply to the RSRT's standard setting processes.

    Guardrails, such as the requirement to take into account commercial realities of the industry and avoid unduly affecting the viability and competitiveness of owner drivers, respond directly to concerns about impacts on owner drivers under the former system, while procedural requirements such as the requirement to consult with the RTAG and notice of intent process will ensure all parts of the industry have time to understand and adapt to the requirements of minimum standards before they take effect.

    More detail on these guardrails and procedural requirements is set out in response to questions 1 to 13 above.

    In addition, the Bill does not provide the FWC an explicit power to make orders in relation to a contractual chain. Regulations would need to be made to enable contractual chain orders. The RSRT had the power to make orders in relation to the road transport supply chain.

Question on notice no. 354

Portfolio question number: SQ23-001527

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

(1.Did the Minister or the Minister's office request that the Department meet with members of the TWU to discuss the potential scope of the Bill?
2.Was the TWU given the opportunity to review draft legislation outside of the formal Department-led consultation process available to all interested parties? If so, what opportunity or opportunities were provided to them?

Question on notice no. 355

Portfolio question number: SQ23-001528

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

(1.Did the Minister or the Minister's office request that the Department meet with members of the Australian Trucking Association to discuss the potential scope of the Bill?
2.Was the ATA given the opportunity to review draft legislation outside of the formal Department-led consultation process available to all interested parties? If so, what opportunity or opportunities were provided to them?
3.The ATA submission states that they were given the opportunity to meet with the Minister in relation to the Bill 3 times. Is this correct? On what dates and where did these meetings occur? Who attended these meetings?
4.Is this consistent with the number of meetings offered to all other third parties in relation to the Bill?

Question on notice no. 357

Portfolio question number: SQ23-001531

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Department of Employment and Workplace Relations on 8 November 2023—

(1.Given the Government's intention is for the Employee-Like reforms to capture the care economy, what consultation has taken place with the recipients of care - that is older persons and people with disabilities?
2.Has the Department met with any of the following concerning the implications of the Employee Like reforms to the care economy - and if not, why not?
Older Persons Advocacy Network (OPAN)
Council of the Ageing (COTA)
Combined Pensioners & Superannuants Association (CPSA)
National Seniors
People with Disability Australia (PWDA)
Children and Young People with Disability Australia
Australian Federation of Disability Organisations
Autism Aspergers Advocacy Australia
Autism Awareness Australia
Blind Citizens Australia
Brain Injury Australia
Cerebral Palsy Alliance (CPA)
Deaf Australia
Deafblind Australia
Deafness Forum of Australia
Disability Advocacy Network Australia
Down Syndrome Australia
The National Mental Health Consumer and Carer Forum
Physical Disability Australia
First Peoples Disability Network Australia
Inclusion Australia
National Ethnic Disability Alliance
Women with Disabilities Australia
3.Is it the Department's view that in the care economy the Social and Community Services (SACS) component of the Social, Community, Home Care and Disability Services Industry Award (SCHADS) Award will inform the minimum standards for any NDIS funded care? If so, what action will the Government take to prevent anti-competitive behaviour by platforms using a casual employment model which pay their employees under Home Care (Disability) component of SCHADS?
4.In the view of the Department, could the deliberate misclassification of employees - such as classifying NDIS funded workers as Home Care (Disability) instead of Social

and Community Services (SACS) - constitute a claim for 'wage theft' under the Government's Closing the Loopholes Bill?
5.Under the Employee Like Provisions, if a platform successfully negotiates a Collective Agreement with a union, is there anything to stop a second union seeking to undermine that agreement with a Minimum Standards Order?
6.How will the three possible forms of minimum standard - minimum standards orders, minimum standards guidelines and consent agreements - interact? How will one supersede the others? If not, how can platforms possible comply with potentially multiple sets of minimum standards?
7.If the Fair Work Commission issues an Order to Restore Lost Pay because of a successful claim of Unfair Deactivation, who will own the liability for such an order, a digital platform operator in the care economy or the recipient of care?
8.Are there any circumstances under which the Fair Work Commission could make an order against a recipient of care's Home Care Package or NDIS Package?
9.Will the Minister commit to consult with all parties in the drafting of the Digital Labour Platform Deactivation Code, including peak bodies and effected platforms, as well as unions?
10.Why is there no requirement in the Employee Like reforms for the Fair Work Commission to consider the needs of clients in the care economy, that is older persons and people with disabilities in either the setting of minimum standards or in claims of deactivation?
11.Why has the Minister granted himself the ability to determine definitions such as the definition of a "Digital Labour Platform" or an "Employee Like Worker" by regulation?
Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001531

Senator Michaelia Cash provided in writing.

Employee Like

Question

1. Given the Government's intention is for the Employee-Like reforms to capture the care economy, what consultation has taken place with the recipients of care – that is older persons and people with disabilities?
2. Has the Department met with any of the following concerning the implications of the Employee Like reforms to the care economy – and if not, why not?
   - Older Persons Advocacy Network (OPAN)
   - Council of the Ageing (COTA)
   - Combined Pensioners & Superannuants Association (CPSA)
   - National Seniors
   - People with Disability Australia (PWDA)
   - Children and Young People with Disability Australia
   - Australian Federation of Disability Organisations
   - Autism Aspergers Advocacy Australia
   - Autism Awareness Australia
   - Blind Citizens Australia
   - Brain Injury Australia
   - Cerebral Palsy Alliance (CPA)
   - Deaf Australia
   - Deafblind Australia
   - Deafness Forum of Australia
   - Disability Advocacy Network Australia
   - Down Syndrome Australia
   - The National Mental Health Consumer and Carer Forum
   - Physical Disability Australia
   - First Peoples Disability Network Australia
   - Inclusion Australia
   - National Ethnic Disability Alliance
   - Women with Disabilities Australia
3. Is it the Department's view that in the care economy the Social and Community Services (SACS) component of the Social, Community, Home Care and Disability Services Industry Award (SCHADS) Award will inform the minimum standards for any NDIS funded care? If so, what action will the Government take to prevent anti-competitive behaviour by platforms using a casual employment model which pay their employees under Home Care (Disability) component of SCHADS?
4. In the view of the Department, could the deliberate misclassification of employees – such as classifying NDIS funded workers as Home Care (Disability) instead of Social and Community Services (SACS) – constitute a claim for 'wage theft' under the Government's Closing the Loopholes Bill?
5. Under the Employee Like Provisions, if a platform successfully negotiates a Collective Agreement with a union, is there anything to stop a second union seeking to undermine that agreement with a Minimum Standards Order?

6. How will the three possible forms of minimum standard – minimum standards orders, minimum standards guidelines and consent agreements – interact? How will one supersede the others? If not, how can platforms possible comply with potentially multiple sets of minimum standards?
7. If the Fair Work Commission issues an Order to Restore Lost Pay because of a successful claim of Unfair Deactivation, who will own the liability for such an order, a digital platform operator in the care economy or the recipient of care?
8. Are there any circumstances under which the Fair Work Commission could make an order against a recipient of care's Home Care Package or NDIS Package?
9. Will the Minister commit to consult with all parties in the drafting of the Digital Labour Platform Deactivation Code, including peak bodies and effected platforms, as well as unions?
10. Why is there no requirement in the Employee Like reforms for the Fair Work Commission to consider the needs of clients in the care economy, that is older persons and people with disabilities in either the setting of minimum standards or in claims of deactivation?
11. Why has the Minister granted himself the ability to determine definitions such as the definition of a "Digital Labour Platform" or an "Employee Like Worker" by regulation?

Answer

1. The intention of the employee-like reforms is to provide the Fair Work Commission with a new power to set minimum standards for 'employee-like workers' who are workers performing work via a digital labour platform and have one or more of the following employee-like characteristics: low bargaining power, low authority over their work, or low pay when compared to an employee performing similar work. While ultimately a decision for the independent Fair Work Commission, workers performing care work via a digital labour platform may be considered 'employee-like'.

   The Department has undertaken significant consultation on the development of the reforms in the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the Bill) to provide minimum standards to employee-like workers. The Department undertook an initial phase of consultation on the parameters of the measure from late 2022 to early 2023 with a broad range of stakeholders. In April 2023, the Department published the *'Employee-like' forms of work and stronger protections for independent contractors consultation paper* (the consultation paper) for public comment. The Department also met with stakeholders during this time.

   Over the course of the last year, the Department has heard from a diverse range of stakeholders across the care sector, including organisations representing recipients of care. Many of the reviews that the Government certified in its Impact Analysis Equivalent to introduce minimum standards and increased access to dispute resolution for independent contractors (attached to the Explanatory Memorandum to the Bill) also involved consultation with consumers of services delivered by digital labour platforms, including care recipients.

2. As described in Question, 1, since late 2022, the Department has consulted extensively on the employee-like reforms, including through the public release of the consultation paper *'Employee-like' forms of work and stronger protections for independent contractors consultation paper* in April 2023.

   Of the list provided, the Department has attended meetings organised with, or accepted confidential submissions in response to its publicly released discussion papers, from the following:

   - Council of the Ageing (COTA)
   - People with Disability Australia (PWDA)
   - Children and Young People with Disability Australia
   - Australian Federation of Disability Organisations
   - Autism Aspergers Advocacy Australia
   - Blind Citizens Australia

- Brain Injury Australia
- Deaf Australia
- Deafblind Australia
- Deafness Forum of Australia
- Disability Advocacy Network Australia
- Down Syndrome Australia
- The National Mental Health Consumer and Carer Forum
- Physical Disability Australia
- First Peoples Disability Network Australia
- Inclusion Australia
- National Ethnic Disability Alliance
- Women with Disabilities Australia.

3. The Bill provides a framework to empower the Fair Work Commission, as Australia's independent workplace relations tribunal, to set minimum standards for employee-like workers performing digital platform work. The Bill provides discretion to the Fair Work Commission to make orders for classes of employee-like workers, limited by 'guardrails' in the Bill. Consistent with its existing functions, the Fair Work Commission would determine the scope and content of an order (e.g. a minimum standards order), after hearing the evidence put forward by relevant entities and following the requirements set out in the Bill.

   When setting minimum standards, the Fair Work Commission would be required to consider and balance the range of factors in the minimum standards objective (s 536JX of the Bill). These include considering pay and conditions of comparable employees, which would include considering relevant award. These factors also include, among other things:

   - the need for minimum standards that are tailored to the type of work, nature of the industry and workers' preferences
   - the need for standards that do not change a workers' status to that of an employee or give preference to a certain business models, and
   - the need to avoid unreasonable adverse impacts on sustainable competition between industry participants.

   The Minister has indicated an intention to introduce amendments to the minimum standards objective to require the Fair Work Commission to explicitly consider impacts on parties that use or rely on services delivered by employee-like workers and platforms, as well the impact on business costs.

   The Minister has also indicated he intends to introduce amendments to place additional guardrails on the Fair Work Commission when setting minimum standards. These would include requiring that the Commission only include standards relating to penalty rates, payments before and between accepting task-based work, and minimum periods of engagement where it is appropriate for the type of work performed.

   Further information on these proposed amendments is provided in the Department's supplementary submission to the Senate Education and Employment Legislation Committee's inquiry into the Bill.

4. Employers are responsible for appropriately classifying their employees and paying them accordingly. The Fair Work Ombudsman monitors compliance with the *Fair Work Act 2009* (Fair Work Act) and industrial instruments, investigates and inquires about alleged breaches, and takes enforcement action when appropriate.

   It is already unlawful to fail to comply with workplace laws, and employers may be liable to pay a civil penalty if they have contravened the Fair Work Act.

The new wage theft offence would make it an offence if:

- an employer is required to pay an amount to, on behalf of, or for the benefit of an employee under the Fair Work Act, a Fair Work instrument or a transitional instrument, and
- the required amount falls within the scope of the offence, and
- the employer intentionally engages in conduct, and
- the employer intends that the conduct will result in a failure to pay the required amount in full when it is due under the relevant instrument.

An employer may be found to have committed the wage theft offence if the employer intentionally incorrectly classified a worker and processed their pay in accordance with the incorrect classification, intending that this misclassification would result in a failure to pay the correct rates under the correct award.

5. The Bill provides a framework for the Fair Work Commission to set minimum standards for classes of employee-like workers and any digital labour platform that engages them. Additionally, the Bill establishes a framework for digital labour platforms and registered organisations representing employee-like workers to make consent collective agreements, which would supplement, not override minimum standards.

   Where a consent collective agreement is made prior to a minimum standards order being made, the effect of section 536JN(4) of the Bill would be that the terms of the consent collective agreement in respect of a matter would continue to have effect unless a minimum standards order provides for terms that are more beneficial to the regulated worker. In this case, the terms of the minimum standards order would prevail, while other terms of the consent collective agreement could continue to have effect.

   This approach is broadly consistent with how the Fair Work Act sets entitlements for employees, in that minimum standards are set via the National Employment Standards and modern awards, with the capacity for an employer and their employees to make enterprise agreements which set terms above the safety net.

6. The Bill would provide for the possibility of types of minimum standards that are intended to interact where necessary.

   Minimum standards orders are mandatory minimum standards that would apply to classes of employee-like workers and one or more digital labour platforms. Minimum standards orders are intended to provide a safety net of standards for employee-like workers to whom the order applies.

   Minimum standards guidelines would provide guidance only and apply to classes of employee-like workers and one or more digital labour platforms (or class of platforms). Minimum standards guidelines are intended to provide guidance to parties where mandatory minimum standards may not be appropriate, for example, because they may deal with terms that require further testing before becoming mandatory, or represent best practice. They provide additional flexibility for the Fair Work Commission when considering minimum standards. The same ‘guardrails’ would apply to the Fair Work Commission when setting minimum standards orders and minimum standards guidelines. Section 536KV of the Bill would provide that the Fair Work Commission must not make minimum standards guidelines that cover the same regulated workers and the same regulated businesses in relation to the same matters as a minimum standards order that is in operation.

   Digital labour platforms would therefore not have to comply with both minimum standards orders and minimum standards guidelines in respect of the same class of workers for the same matters, as only one would apply.

Consent collective agreements would determine the terms and conditions of engagement of employee-like workers that are engaged by a particular digital labour platform, or that are engaged under services contracts which have been arranged or facilitated by a digital labour platform. Section 536JN(4) of the Bill would provide that a term of a collective agreement has no effect in relation to a regulated worker in respect of a matter to the extent that the term is detrimental to the regulated worker in any respect, when compared to a minimum standards order that applies to the regulated worker in relation to that matter. Where more than one applies to a worker, the more beneficial term in either a minimum standards order or collective agreement that covers a regulated worker would prevail.

7. Section 536LQ(3) of the Bill would provide that if the Fair Work Commission makes an order to reactivate an employee-like worker, and if it considers it appropriate to do so, the Commission may also make an order that the digital labour platform or the associated entity to pay to the employee-like worker an amount for remuneration lost, or likely to have been lost, by the person because of the deactivation. The digital labour platform holds this obligation, not a recipient of care delivered by the employee-like worker.

8. Section 536JD of the Bill would provide that minimum standards orders can only apply to employee-like workers and to digital labour platforms. Section 536JC of the Bill would provide that a minimum standards order does not impose obligations on a person, and a person does not contravene a term of a minimum standards order, unless the order applies to the person.

9. Section 536LJ(1) of the Bill would provide that the Minister must make a Digital Labour Platform Deactivation Code (the Deactivation Code) by legislative instrument, which will set out what constitutes a valid deactivation and the processes for a fair deactivation. In accordance with the requirement for rule-makers to consult before making legislative instruments set out in section 17 of the *Legislation Act 2003*, the Minister must be satisfied that any appropriate and reasonably practicable consultation has been undertaken before making the Deactivation Code. The Minister has also indicated that he will amend the Bill to include a requirement that the Minister publicly consult on the development of the Deactivation Code.

10. The minimum standards objective at section 536JX of the Bill would require the Fair Work Commission to consider and balance a wide range of competing factors before it sets minimum standards. This includes having regard to the type of work and nature of the industry, as well as avoiding adverse impacts on innovation, productivity, and the national economy.

    To further clarify the types of impacts the Fair Work Commission is required to consider, the Minister has indicated the Government will amend the Bill to specifically require the Fair Work Commission to consider the impacts on parties that use or rely on services delivered by employee-like workers and digital labour platforms. The Minister has also undertaken to amend the Bill to require the Fair Work Commission to follow a new consultation process prior to the making of an employee-like minimum standards order, which includes publishing a notice of intent in relation to the proposed order a draft of the order. The Commission will be required to ensure affected entities have a reasonable opportunity to make written submissions in relation to the draft order, having regard to the unique nature of digital platform work.

    Further information on these proposed amendments is provided in the Department's supplementary submission to the Senate Education and Employment Legislation Committee's inquiry into the Bill.

11. The definitions of digital platform work, digital labour platform and employee-like worker are not defined by regulation – they are clearly defined in the Bill in subsections 15N, 15L and 15P respectively. Where necessary, the definitions may be refined by regulation to enable the Fair Work Commission to take account of changes in business models, shifts to new markets, and future technological advancements when setting minimum standards covering classes of employee-like workers and digital labour platforms. This reflects the fact that new and evolving digital labour platforms can change their model far quicker than legislation can be drafted.

Question on notice no. 359

Portfolio question number: SQ23-001535

2023-24 Supplementary Budget estimates

Education and Employment Committee, Employment and Workplace Relations Portfolio

Senator the Hon. Michaelia Cash: asked the Fair Work Commission on 8 November 2023—

These questions relate to the current IR Bill before the Senate.
1. What do you believe is meant by the requirement in the Bill that the President "must have regard to the views of" the Road Transport Advisory Group? [Clause 40E

(4)]
2.How would he reflect this regard if he is of a different view to the Advisory Group?
3. What will happen if the Advisory Group believes the President of the Fair Work Commission has not 'had regard to' its views in reaching a decision?
4.How will the Commission manage the conflict of interest inherent in having the Advisory Group, which the TWU has stated it expects to sit on, and advise it on all road transport matters[Clause 40E.] while also appearing in some of those matters?
5. Will those who sit on the Advisory Group be permitted to hold other positions as well?
6.How will conflicts of interest be managed, given those who advise the Commission could be representatives from organisations who also appear before the Commission?
7. Are there any other contexts in which a body external to the Commission is given the legislative authority to advise it on its exercise of power?
8.Was the Commission consulted on this aspect of the legislation? If so, did they express a view?
9. You would be familiar with the requirement in the Fair Work Act that the Commission perform its functions and exercise its powers in a manner that is open and transparent (s 577) . How will you ensure that the proposed operation of the Road Transport Advisory Group and new Expert Panel is open and transparent? Will their advice and deliberations be published in some form?
10.What legal responsibility will the Advisory Group hold? Can complaints be made about its function, as they can about the Commission? Who would receive and consider these?
11.The Bill gives the Minister power to make regulations that add to the matters on which the Advisory Group can advise you. [Clause 40E

(2)

(d)] Do you have any idea what these matters might be or any concerns that they are not specified?

Answer —
Please see PDF attachment.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Agency: Fair Work Commission

Department of Employment and Workplace Relations Question No. SQ23-001535

Senator Michaelia Cash provided in writing.

FWC | IR Bill

Question

These questions relate to the current IR Bill before the Senate.

1. What do you believe is meant by the requirement in the Bill that the President "must have regard to the views of" the Road Transport Advisory Group? [Clause 40E(4)]
2. How would he reflect this regard if he is of a different view to the Advisory Group?
3. What will happen if the Advisory Group believes the President of the Fair Work Commission has not 'had regard to' its views in reaching a decision?
4. How will the Commission manage the conflict of interest inherent in having the Advisory Group, which the TWU has stated it expects to sit on, and advise it on all road transport matters [Clause 40E.] while also appearing in some of those matters?
5. Will those who sit on the Advisory Group be permitted to hold other positions as well?
6. How will conflicts of interest be managed, given those who advise the Commission could be representatives from organisations who also appear before the Commission?
7. Are there any other contexts in which a body external to the Commission is given the legislative authority to advise it on its exercise of power?
8. Was the Commission consulted on this aspect of the legislation? If so, did they express a view?
9. You would be familiar with the requirement in the Fair Work Act that the Commission perform its functions and exercise its powers in a manner that is open and transparent (s 577). How will you ensure that the proposed operation of the Road Transport Advisory Group and new Expert Panel is open and transparent? Will their advice and deliberations be published in some form?
10. What legal responsibility will the Advisory Group hold? Can complaints be made about its function, as they can about the Commission? Who would receive and consider these?
11. The Bill gives the Minister power to make regulations that add to the matters on which the Advisory Group can advise you. [Clause 40E(2)(d)] Do you have any idea what these matters might be or any concerns that they are not specified?

Answer

The Fair Work Commission has provided the following response.

1. Clause 40E(4) of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (the Bill) provides:

   '(4) The President must consult, and have regard to the views of, the Road Transport Advisory Group in determining priorities for the work of the FWC in relation to matters affecting the road transport industry.'

   The Commission's role is to perform its functions under the *Fair Work Act 2009* (the Act) in accordance with the Act. The Commission does not enter into the policy debate about proposed changes to the law and cannot speculate about how the Commission as constituted by its Members (the Tribunal) or the President might deal with particular issues if the law changes.

Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to the Department of Employment and Workplace Relations (DEWR), as the department with responsibility for workplace relations.

2. The Commission cannot speculate about how the President might deal with a hypothetical situation under proposed changes to the Act.

3. The Commission cannot speculate about a hypothetical situation under proposed changes to the Act.

   Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to DEWR.

4. The Commission cannot speculate about a hypothetical situation under proposed changes to the Act.

   Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to DEWR.

5. Under the Bill, the Minister for Employment and Workplace Relations is responsible for making appointments to the Road Transport Advisory Group (Bill clause 40F).

   Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to DEWR.

6. See response to question 4.

7. The Act does not currently provide for an external body to advise the Commission in relation to particular Commission functions in similar terms to Division 3 of Part 16 of the Bill.

   However, in broad terms there are a range of ways under the Act that a body external to the Commission can participate in a Commission matter or provide views to the Commission in relation to particular Commission functions (see, for example, sections 161, 193A(3), 218, 226(3) and 289 of the Act).

8. DEWR provided Commission staff with a draft of Part 16 of the Bill. Commission staff raised some technical or practical issues relating to the implementation of draft Part 16.

9. The Commission cannot speculate about how the Tribunal may deal with an issue under proposed changes to the Act.

   Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to DEWR.

10. The function of the Road Transport Advisory Group as set out in clause 40E(2) of the Bill is ‘to advise the FWC in relation to matters that relate to the road transport industry …’

    The Bill does not provide for a complaints process in relation to this function. Questions about legal policy and how particular clauses of the Bill may operate in practice should be directed to DEWR.

11. Commission staff do not recall being consulted by DEWR about any regulations that may be made for the purposes of clause 40E(2)(d) of the Bill.

    Questions about legal policy or possible regulations should be directed to DEWR.

Attachment I

Right to Disconnect

The employee right to disconnect will encourage employers and employees to talk about contact out of hours and set expectations that suit the workplace.

Overview: The Government has supported Australian Greens amendments to introduce a legislated right to disconnect

- The Australian Greens' amendments introduced a high-level right to disconnect for all employees in the national system into Part 2-9 of the *Fair Work Act 2009*.
- The right is about making sure employees know when they can switch off and what they have to do when they are not working (and not being paid).
- The right ensures that employees are not required to monitor, read, or respond to employer or work-related contact out of hours, unless refusing to do so is unreasonable.
- Modern awards will also include right to disconnect terms that can be tailored to align with industry standards and expectations.
- The Fair Work Commission must deal with disputes promptly. If a dispute cannot be resolved at the workplace, the Commission may issue stop orders.
- Employees' right to refuse employer or 'work related' contact (or attempted contact) is a workplace right, so the general protections apply.
- If passed, the right would commence 6 months after Royal Assent, but will not apply to small business employees until 18 months after Royal Assent.

The high-level right includes factors to help determine whether an employee's refusal to monitor or respond to contact is unreasonable

- These non-exhaustive factors include:
    - the reason for the contact or attempted contact
    - the method of contact and level of disruption it causes the employee
    - whether the employee is being compensated to remain available or perform additional work outside ordinary hours
    - the nature of the employee's role and the employee's level of responsibility, and
    - the employee's personal circumstances (including family or caring responsibilities).
- Other factors can be considered, like patterns of behaviour.

The Fair Work Commission will be able to deal with disputes promptly, including by issuing stop orders

- Parties must try to resolve a dispute between them at the workplace level.
- If they cannot, an employer or employee (or a person or industrial association representing them) can apply to the Commission to resolve the dispute.
- The Commission would be able to make an order, or deal with the dispute as it considers appropriate, to resolve the dispute (other than ordering the payment of a pecuniary amount).

  - This includes dispute resolution by mediation, conciliation, making a recommendation, or expressing an opinion.
  - If both parties agree, the Commission may arbitrate the dispute.
- The Commission can make orders to stop employees from unreasonably refusing contact or to stop employers taking certain actions (when an employee's refusal is not unreasonable).

The Government has committed to introducing amendments to ensure a person is not exposed to criminal penalties for contravening a Fair Work Commission order in relation to the right to disconnect

- The Australian Greens' amendments were finalised just prior to introduction to incorporate feedback from employer groups and other stakeholders.
- Switching off s 675 (which makes it a criminal offence to breach a FWC order) in relation to the right to disconnect was inadvertently omitted from the drafting of the amendment. As soon as this issue was identified, the Government took steps to address it by seeking to exclude breaches of right to disconnect orders from the offence, which is consistent with other similar orders, such as bullying and sexual harassment stop orders.
- Leave was not granted in the Senate to move the Government's proposed amendment as part of the Bill. As a result, the Government has stated publicly it will separately introduce amendments to deal with this issue.
- In any event, exposure to a criminal penalty under s 675 of the Fair Work Act regarding the right to disconnect could only arise if:
  - after the provisions commence (18 months after Royal Assent for small business and their employees, and 6 months after Royal Assent for others) – a dispute arose about the right to disconnect; and
  - that dispute could not be resolved at the workplace level; and
  - a dispute resolution application was made to the Fair Work Commission; and
  - that dispute was not resolved in the Commission informally (such as through mediation or conciliation); and
  - the Commission issued an order imposing obligations on a person (such as an employer) regarding the employee right to disconnect; and
  - the person then contravened that Commission order; and
  - the contravention was then litigated in a court, with a court being satisfied that the person's conduct met a criminal standard of liability and ordered that a penalty be imposed.
- The department is not aware of any court proceedings involving the enforcement of s 675 of the Fair Work Act since its commencement in 2009.

Further guidance will support people to understand the new right

- The Fair Work Commission will issue guidelines and the Fair Work Ombudsman will provide tailored support. This will particularly assist small businesses.

Attachment J

Recent Media

Treasurer’s surprise loophole move

(Angus Thompson, *The Age*, 19 January 2024)

Victorian Treasurer Tim Pallas is planning to directly petition key federal Senate crossbencher David Pocock about scaling back the Albanese government's proposed workplace laws as the prime minister downplayed the senior state Labor figure's intervention.

His push came as Workplace Relations Minister Tony Burke refused to get involved in stevedore giant DP World's pay dispute with wharfies, saying Australians are ‘‘sick to death" of profitable firms using wages as a scapegoat for soaring prices.

While unions and the Greens said workers should not lose hard-won protections, the Coalition and business groups warned that the federal government's IR agenda had gone too far on a day that Pallas wrote to Pocock.

Burke, meanwhile, turned on DP World, accusing it of being more invested in seeking a political solution than negotiating with its workforce and saying he had trouble believing it had consumers' best interests at heart.

Burke separately met with both the Maritime Union of Australia and DP World yesterday as their longrunning dispute over pay and conditions threatens stock shortages and future price rises.

Pallas, who is also the state's industrial relations minister, argues a proposed amendment to intractable bargaining laws, which ensure workers in Fair Work arbitration end up on terms no less favourable that they are already on, could reduce unions' motivation to properly negotiate.

The office of Pocock, who has played a key role in helping pass the government's industrial reforms in the past two years, confirmed Pallas sought a meeting with the senator.

Yesterday, Pallas said he supported the government's broader Closing Loopholes legislation and it should be passed as a priority.

‘‘[But] we have some concerns about some amendments on intractable bargaining introduced by the Greens late last year - and believe the same intention could be achieved by taking a holistic view of agreements," he said.

The Victorian government is facing industrial action from paramedics over pay negotiations, while the United Firefighters Union has made an intractable bargaining application to the Fair Work Commission to resolve a wage dispute with the state.

Pallas' office said neither contributed to his legislative stance.

Burke said yesterday it was not unusual for state and federal counterparts to have different views.

He said the proposed legislation the result of a deal with the Greens to support the government's broader industrial reforms that include greater rights for casuals and gig workers - fixed a loophole allowing employers to ‘‘game the system" by dragging negotiations into arbitration.

At an earlier press conference in Frankston, in Melbourne's southeast, Prime Minister Anthony Albanese said there was nothing unusual about a state minister expressing their views and that earlier fears Labor's 2022 bargaining reforms would lead to widespread strikes had not come to pass.

But opposition workplace relations spokesperson Michaelia Cash said it was ‘‘virtually unheard of" for a state Labor treasurer to publicly say the federal government's workplace laws had gone too far.

‘‘Even their own side . . . think their radical industrial relations laws are fatally flawed," she said.

Senators warn ALP on next IR changes

(Ewin Hannan, *The Australian*, 28 December 2023)

Two key Senate crossbenchers have declared casual employment and gig economy changes must not add more red tape for small business, as employers prepare to seek new amendments to Labor's industrial relations bill.

Key Senate crossbenchers have declared the government's changes to casual employment and the gig economy must not add more red tape for small business, as employers prepare to seek new amendments to Labor's industrial relations bill.

Ahead of the government seeking to pass the second part of its Closing Loopholes Bill from February, Senator Jacqui Lambie said she would spend most of early January going over the workplace law changes “with a fine-tooth comb”.

“My worry with the more complex parts of the legislation is that our economy is fragile, and changes to casualisation and the ‘gig' economy need to be carefully considered,” Senator Lambie said.

“We have to be cautious we aren't adding more red tape for small business. I don't want to make it harder for them. Lots of them are doing it tough, and some are still struggling to get back on their feet after Covid.

“I will be working hard to see if we can reduce red tape for small business and make sure that casual workers are protected.”

ACT independent senator David Pocock said he was “very mindful of the additional impost on small business from added complexity and red tape”.

“We need to make it easier, not harder, to run a small business in Australia,” Senator Pocock said.

“This has been front of mind in my consultations on the legislation. Casual employment clearly has an important place in the industrial landscape. I've heard from employees who value the flexibility and higher pay rates, and employers who want to be able to continue to offer this form of employment.

“Equally, though, I've heard examples of employees wanting the benefits of permanency but being unable to access it. The parliament's task is to strike the right balance.”

Workplace Relations Minister Tony Burke struck a surprise deal with senators Lambie and Pocock to split the IR bill, and legislate labour hire changes, new rights for union delegates and the criminalisation of wage theft on parliament's final sitting day.

The rest of the bill, including casual employment and gig economy changes, will be dealt with from February after a Senate inquiry reports.

Australian Industry Group chief executive Innes Willox said while employers remained deeply concerned about the changes, “we are maintaining clear lines of communication with the government”.

“Elements of what is currently in the bill before parliament should be abandoned, especially given much of it extends well beyond any changes proposed before the last election,” he said. “There are a raft of sensible and workable amendments that need to be made to avoid unnecessary adverse consequences.”

Mr Willox said employers recognised the government had aspirations “but they need to work with industry, not work against it, if they want to make sure they don't inadvertently blow up parts of the economy in the meantime”.

ACTU acting secretary Liam O'Brien said casual and gig workers deserved basic rights just like other workers.

“We can't be the land of the fair go while allowing big business to screw over casual and gig workers by denying them minimum rights,” Mr O'Brien said “Over the years we've seen big business take away the job security of ordinary people by exploiting loopholes in our workplace laws, all while being egged on by the Liberal Party. We now have an opportunity to start fixing the crisis of insecure work and get wages moving by passing the rest of the Closing Loopholes Bill.”

Senator Lambie said the gig economy was less than 20 years old and worth billions of dollars to the national economy.

“For some workers, the gig economy offers flexibility, and that's a good thing, but we also need to protect these workers and make sure they are paid fairly,” she said. “My concern is that changes to regulation don't end up capturing businesses the laws weren't designed for.”

Senator Lambie hit back at a small-business lobby group that criticised the deal between the crossbench and the government, claiming it was struck without consulting employers. In a letter to senators, the Council of Small Business Organisations Australia said passage of the changes had been disappointing and “an insult to small businesses”.

Senator Lambie said: “When it came to the impact of part one of Closing Loopholes, we worked closely with COSBOA and got important exemptions for small business, including an assurance the punitive measures of wage theft won't start until the small business code is complete.

“We also got extra money for the small business ombudsman so small businesses will have lots of help getting up to speed with the new rules on wage theft. I have been surprised and very disappointed the work and care me and my office put in has effectively been thrown back in our face.”

Newly revealed death of a 29-year-old food delivery rider fuels push for gig worker rights

(SBS News, 21 December 2023)

Renewed calls have been made for urgent minimum standards for gig workers after police data revealed a 15th food delivery driver death that previously went unreported.

A 29-year-old food delivery driver was killed on the job in November 2022 after he was struck by a van while riding his electric bicycle across an arterial road in Preston in Melbourne's northeast at night.

He had crossed at a pedestrian crossing light while the light was still red and failed to give way to the van.

The man, who held an international licence, died at the scene.

His death went unreported at the time.

Worksafe Victoria was not notified of the worker's death as gig workers aren't classed as employees of the food delivery services.

Jump in worker deaths coincides with food delivery services' rise

More than 900 motorbike and bicycle workers have been injured on Victorian roads since 2016, according to police data.

This coincides with the rise of food delivery services such as UberEats, Deliveroo, Menulog and Foodora.

In 2022, about 143 motorbike and bicycle riders were injured on the job, a jump from 92 in 2016.

There were thousands more bike injuries recorded over the same period but it is not known whether these riders were working at the time of their injuries.

Five Victorians have died on the job while riding a motorbike or bicycle since 2016.

Two were food delivery drivers while the remaining were logistics drivers.

Transport Workers Union demands reform

The Transport Workers Union is demanding the Senate pass urgent reforms to enshrine rights and entitlements such as a minimum wage and rules against unfair contract terminations.

Current conditions put deadly pressure on workers to rush and take risks on the road to earn enough money and retain their jobs, the union said.

It said the legislation has received broad support across the industry, including from gig companies Uber, DoorDash, and Menulog.

The "horrific but not surprising" data shows the lethal race against time many riders face to avoid their accounts being deactivated, TWU National Secretary Michael Kaine said.

"While unreported deaths and injuries of transport gig workers are beginning to come to light across more states, deadly pressures to make a living persist in an unregulated industry," he said.

"We've got a gig economy that has come into Australia over the last 10 years. And it has quite deliberately pushed workers outside of the protections that we've built up over decades, he said, referring to protections such as the minimum wage, sick leave and injury pay.

Victoria Police road policing assistant commissioner Glenn Weir said delivery riders are considered vulnerable road users as the gig and delivery economies continue to grow.

More than half of food delivery riders felt pressured to rush while a quarter had experienced their accounts being deactivated, a 2023 study of over 1,100 transport gig workers revealed.

This rush job won’t work for many

(Luke Achterstraat, Illawarra Mercury, 11 December 2023)

Most businesses are feeling the pinch. Complex employment changes will not help those scraping by.

SIGNIFICANT changes affecting Australian workplaces were passed into law on the final sitting day of Parliament last week, despite a Senate inquiry still having weeks to run.

The Closing Loopholes Bill is the most significant rewrite of industrial relations policy in recent memory with changes for casuals, contractors, truckers, labour hire, union delegates, tradies and self-employed Australians, just to name a few.

To this end, the Senate crossbench was wise to demand the government split the bill and allow for an inquiry. The government should have gone further and split the package into bite-sized chunks given its complex components.

Employers feel betrayed that significant changes have been made law before the Senate inquiry had even concluded. The inquiry received almost 200 submissions, and a thorough questioning of the employment department was expected in the new year.

Whilst common ground existed on issues such as first responders, PTSD and silicosis, an eleventh-hour secret deal also bundled through radical changes to the contentious issues of labour hire and union access.

Industrial relations is complex at the best of times, let alone when a government is trying to ram through an 800-page package that impacts the whole labour market.

For example, the labour hire provisions passed last week will capture many more business than just the frequently cited examples of Qantas and BHP.

The Fair Work Commission will be empowered to enter commercial arrangements between businesses (with the exemption for small businesses capped at a headcount of 15 employees).

For example, a hospitality business with 17 employees might win a contract to provide catering services for a major event and therefore require the use of labour hire to engage additional workers on a oneoff basis.

Under the change, these externally engaged workers must be provided the same bonuses, loadings, allowances and overtime as comparable in-house staff who have potentially been with the host company for over a decade.

The prospect of needing to ensure many non-monetary award obligations plus the "full" rate of pay that the "host" pays is itself a complex exercise for a small firm.

Moving beyond labour hire it is particularly disappointing that repeated calls for a thorough impact statement on the small business consequences of the bill have not heeded. The deal struck last week even included new amendments that had not been sighted by employers, let alone consulted on.

Following the rush job, some union leaders told businesses they should suck it up as they "don't feel the hardships many Australians are feeling right now."

On the contrary, 98 per cent of all businesses are small and feel hardships every day.

Small businesses are typically self-funded by someone with a mortgage and are feeling the pinch against the backdrop of rising energy, rent, borrowing and insurance costs. Most small business owners are still paying themselves below the average wage to keep the lights on for their workers and customers.

There is major concern that the IR changes still up for consideration - now known as Closing Loopholes 2 - will only create more complexity at a time when small businesses can least withstand it.

Data from the small business ombudsman indicates that 43 per cent of small businesses are not breaking even: that is more than 1 million small firms in Australia hanging in the balance.

Radical changes remain on foot including throwing out the window existing definitions that apply to over 3.5 million Australian casuals and contractors and altering the very definition of employment itself. Small businesses do not typically have specialist HR support and yet the new definition of casuals is three-pages long, contains over a dozen tests and requires an ongoing assessment.

Many employees including students and carers will face the prospect of losing casual work and its attractive 25 per cent loading.

Meanwhile, over 1.1 million self-employed Australians such as builders, tilers, scaffolders, gardeners but also freelance web designers face losing their right to be their own boss.

The IR changes and their flawed process are running roughshod over the government's election commitment to make life easier for small business.

Small businesses are now openly querying whether the government understands or even cares about pushing additional complexity onto them in a cost-of-living crisis.

And in terms of process, the next time the government agrees to a Senate inquiry should this be taken seriously or with a footnote indicating it might be guillotined?

Whilst dealmaking is a part of politics, there needs to be greater consultation with those impacted and fulfilment of democratic procedures such as inquiries, particularly when the jobs of the future are at stake.

After all it is private enterprise that employs the overwhelming majority of Australians, not politicians in Canberra.

Our IR system is now more complex than ever.

Small businesses do not demand the world from government but at least expect honesty about how they will be impacted.

They seek a clear and workable rule book that promotes compliance, productivity and reward for their staff.

Moving forward we must do better than eleventh-hour, behind-closed-doors deals that evoke political drama TV in their disregard for procedure and scrutiny.

Small businesses will be watching closely.

"Small businesses are now openly querying whether the government cares about pushing additional complexity onto them in a cost-of-living crisis."

National Construction Industry Forum

What has been announced

- The National Construction Industry Forum was established from 1 July 2023 under the *Fair Work Act 2009* by amendments made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.
- The Function of the Forum is to provide advice to Government in relation to work in the building and construction industry, including on matters relating to workplace relations, skills and training, safety, productivity, diversity and gender equity, and industry culture.
- In the 2023-24 Budget, the Government committed $4.4 million over 4 years from 2023-24, and $1.1 million per year ongoing from 2027-28, to fund the Forum.
- Forum members include the Minister for Employment and Workplace Relations (Minister) as Chair, the infrastructure minister and the Industry Minister, and other members appointed by the Minister.
- Consistent with the membership requirements under section 789GZE of the Fair Work Act, **12 employer and employee representatives** have been appointed to the Forum:
    - **6 members** with experience in representing employers in the building and construction industry, including contractors and small to medium businesses in the residential building sector, and
    - **6 members** with experience representing employees in the industry.
- Members of the Forum are listed at Attachment A.

Key Government statements

Media Release 'Appointments to National Construction Industry Forum'

The Minister announced the appointment of 12 representatives and noted that the Forum would, as a priority, "look at issues around gender equity, particularly the recruitment and retainment of women workers".

The Hon Tony Burke MP	*23 July 2023*

Current status of the policy

- At the first meeting of the Forum on 20 October 2023, members worked together to determine the Forum's governance arrangements, including endorsing Terms of Reference and identifying issues to be included in the Forum's forward work plan.

- Members agreed to establish subcommittees on the priority work issues of gender equity and financial viability (security of payment) to inform the advice the Forum will provide to Government.
    - The Gender Equity Subcommittee members are Naomi Brooks (co-chair), Alison Mirams (co-chair), Melissa Adler, Deborah Coakley, Stacey Schinnerl, and Michael Wright.
    - The Financial Viability Subcommittee members are Irma Beganovic (co-chair), Jon Davies (co-chair), Zach Smith (co-chair), Melissa Adler, Tony Callinan, Brent Crockford, Steven Murphy, and Michael Wright.
- Given the tripartite nature of the Forum, representatives of Government departments will also be members of the subcommittees.
- Both subcommittees met for the first time in December 2023.
    - At their first meetings, each subcommittee considered governance arrangements including their Terms of Reference and key focus areas.

Stakeholders consulted

- Prior to the first Forum meeting in October 2023, the department consulted with Forum members, on the Minister's behalf, about potential agenda items.
- The department engages with Treasury, the Department of Industry, Science and Resources, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, and the Office for Women (among other agencies) on the Forum.

Recent media on this policy

Recent media coverage (Attachment B) has focussed on Forum appointments:

- 'Opposition questions CFMEU's Zach Smith's suitability on construction forum', The Canberra Times, 25 October 2023

Due diligence checks

- As noted in SQ23-001207 and SQ23-001577, the due diligence process undertaken by the department did not return any information suggesting Mr Zach Smith was under investigation by the ACT Integrity Commission.
- A subsequent search indicates that while not the subject of the investigation, on 7 September 2023 Mr Smith attended as a witness at public examinations held as part of the ACT Integrity Commission's Operation Kingfisher investigation.
- See Attachment D for details of the department's due diligence processes and due diligence results for Mr Smith.

Next steps, including consideration by Government where expected

- The Forum will next meet on 23 February 2024.
- The Gender Equity and Financial Viability subcommittees will support the Forum to engage broadly with the industry and build on the relationships, expertise, and work of relevant bodies regarding these topics.
    - The Gender Equity Subcommittee will focus on solutions to improve gender equity in the construction industry, including the recruitment and retention of women workers.
    - The Financial Viability Subcommittee will focus on areas of broader financial viability, security of payment, productivity, supply chains and sovereign manufacturing capability.
- The Gender Equity and Financial Viability subcommittees will next meet in early 2024 to finalise their governance arrangements.

Budget

Table 1: Forum funding over 4 years from 2023-24, and $1.1 million per year ongoing from 2027-28

	2023-24	2024-25	2025-26	2026-27	Total
Establish and fund the Forum	+ 1.1	+ 1.1	+ 1.1	+ 1.1	+ 4.4
Total	+ 1.1	+ 1.1	+ 1.1	+ 1.1	+ 4.4

Budget 2023-24, Budget Paper No.2, Part 2: Payment Measures, Safe and Fair Workplaces

Related Questions received on notice

PDR Link	Submitted By	Subject	Answer Summary
SQ23-001577	*Brockman, Slade*	*ACT Integrity Commission*	*The due diligence process undertaken by the department did not return any information suggesting that Mr Zach Smith was under investigation by the ACT Integrity Commission.*
SQ23-001207	*Brockman, Slade*	*Due diligence report into Zach Smith*	*The department searches AustLII as part of the due diligence process to ensure that a nominee's declarations are correct.*
SQ23-001206	*Brockman, Slade*	*Due diligence procedure for appointments*	*The department did not provide any names to the Minister for consideration for appointment to the Forum and no potential member was not appointed due to the due diligence process.*

PDR Link	Submitted By	Subject	Answer Summary
SQ23-001205	*Brockman, Slade*	*Agreement of appointments*	*Approval for the current appointments to the Forum was given by the Prime Minister.*
SQ23-001181	*Cash, Michaelia*	*Draft Terms of Reference provided to Minister's Office*	*The draft Terms of Reference were provided to the MO on 31 March 2023.*
SQ23-000672	*Cash, Michaelia*	*Matters for appointment for Minister*	*Outlines considerations for appointments, including the functions of the Forum and due diligence checks.*
SQ23-000662	*Cash, Michaelia*	*Direct appointments to Minister's office*	*No formal expressions of interest process for appointments to the Forum.*
SQ23-000661	*Cash, Michaelia*	*Stakeholders approached for the Forum*	*The Minister announced the appointment of 12 representatives to the Forum on 23 July 2023.*
SQ23-000656	*Cash, Michaelia*	*Meetings with the Minister's office on the National Construction Industry Forum*	*The department has had a range of conversations with the MO on the Forum.*
SQ23-000654	*Cash, Michaelia*	*Budget breakdown on Secure Jobs, Better Pay*	*The Forum's funding will be used for secretariat support, research, meetings and travel allowances.*
SQ23-000653	*Cash, Michaelia*	*National Construction Industry Forum*	*Work is underway to establish the Forum, which will meet in the second half of 2023.*
SQ22-001194	*Cash, Michaelia*	*National Construction Industry Forum*	*Outlined membership and meeting requirements and matters to be considered by the Forum.*
SQ22-001291	*Cash, Michaelia*	*National Construction Industry Forum - CFMEU*	*Outlined membership requirements of the Forum.*
SQ22-001075	*O'Sullivan, Matt*	*National Construction Industry Forum*	*Discussions with Minister and MO have not involved other parties besides departmental officials and MO.*
SQ22-001074	*O'Sullivan, Matt*	*National Construction Industry Forum*	*A range of discussions with the MO regarding the Forum have occurred.*

Last Cleared By	s. 22(1)(a)(ii)
Date Last Cleared	29 January 2024

THE AUSTRALIAN

Union boss lays down the law

By **EWIN HANNAN, WORKPLACE EDITOR**

4 March 2023, 1587 words, English, 21

New **CFMEU** chief **Zach Smith** has big plans for **the** militant arm's future

As **the** new leader of **the** most militant division of **the** country's most militant union, **Zach Smith** subscribes to **the** view that "sometimes bad laws need to be broken".

"I think we are **the** toughest industrial union in this country. I think we are militant," **the** incoming national secretary of **the** **CFMEU**'s construction division tells Inquirer. "I think it's something we are proud of and I think **the** results speak for themselves: our members enjoy some of **the** best wages and conditions, and protection at work, of any workers in this country." **Smith**, 35, who is succeeding union veteran Dave Noonan, insists **CFMEU** officials do not seek to "break laws wantonly" but will act where **the** safety of members, or **the** security of their conditions, are on **the** line.

"I think if you have a look at a lot of social change, and improvements to safety that have been made in this country by unions, it's often, if not in nearly all cases, involved some sort of breach of **the** **law**," he says.

"**The** green bans which are celebrated now widely as being an important moment where trade unions stood alongside **the** community in stopping heritage sites in Sydney being destroyed, that wasn't 100 per cent lawful.

"That involved **the** breaking of certain laws but no one sits back there now and goes, well, **the** union was on **the** wrong side of history for doing that. Unions banned asbestos-containing materials on site before governments acted. You have got to look at these things from a much bigger lens than just saying is it right or wrong to break **the** laws. It's what is in **the** best interests of **the** people that we're here to serve and represent. And if their safety and their conditions of employment are on **the** line then, absolutely, it's justified in those circumstances." **Smith** knows about **the** **law**. Unsurprisingly for a **CFMEU** official, he has been subject to adverse court judgments after legal action taken by **the** Coalition's Australian Building and Construction Commission, now abolished by **the** Albanese government. But what might surprise, especially given how **CFMEU** officials are caricatured by their opponents, is that **Smith** studied **law** at Deakin University's Burwood campus in Melbourne before he worked for **the** union.

Born in **the** provincial centre of Bairnsdale, 285km east of Melbourne, **Smith** was exposed to politics early courtesy of his grandmother, Alice, and his mother, Robyn, who were active in **the** Australian Nursing Federation and admirers of its then Victorian secretary, Irene Bolger. Former ACTU president Cliff Dolan was his mum's great-uncle.

Smith recalls being just seven or eight years old when he was taken to ALP meetings. It was **the** 1990s, **the** years of **the** Kennett government in Victoria, and there was plenty to protest about.

He completed year 12 and, at **the** age of 18, nominated to be **the** ALP candidate for **the** seat of Gippsland East at **the** 2006 Victorian state election. “A bit of an unusual gap year,” he jokes.

A formerly safe National Party seat, it had been won in 1999 by Craig Ingram, one of three independent candidates responsible for killing off Liberal premier Jeff Kennett’s political career and delivering power to Labor’s Steve Bracks. In 2006, Ingram retained **the** seat. **Smith**, who had turned 19, secured 4047 votes, or 11.65 per cent of **the** vote. “**The** fact they were running someone who was 19 on election day probably reflected what **the** Labor Party thought of their chances of winning **the** seat,” he says.

Gippsland East was a timber seat and **Smith** found himself on **the** radar of **the** union’s furnishing and forest products division, which employed him as an assistant industrial officer. He moved to Melbourne to study **law** and kept working for **the** union as an organiser before relocating to **the** union’s ACT branch in Canberra.

He was seconded to **the** construction division and moved through **the** ranks to become branch secretary. **Smith** says he felt so engaged being an organiser that he didn’t finish his degree. He says he hasn’t regretted **the** decision. “**The** union movement was always where I wanted to be. I sought out a job in **the** union movement,” he says.

Smith’s first **boss** was Michael O’Connor, **the** union’s former national secretary who these days, as head of **the** manufacturing division, is involved in a civil war with **Smith**’s construction division. “Michael was **the** one who gave me my first job in **the** movement, and it brings me no joy where we’re all at,” **Smith** says.

Asked about his vision for **the** construction division, he says: “I think our union is **the** toughest in this country industrially but there is definitely room for improvement in terms of our political voice and social reach. People should expect **the** union, under my leadership, to be more at **the** forefront of **the** public debate, arguing a stronger case for not just our members but also working people at large on issues not just confined to industrial relations and safety. I want our union to be really at **the** forefront of **the** public debate on housing, cost of living, **the** economic systems that we operate under, climate change and what that means for workers.” **Smith** says **the** electorate needs to have a serious discussion “about this idea that **the** only way we curb inflation, **the** only way we curb cost of living, is by hitting working people with interest rate increases”.

“And there needs to be a serious conversation in this country about profit restraint, price restraints and even taxes that target excessive corporate profits. There are other mechanisms to control inflation other than just going after workers through either interest rates or saying that you have to show restraint on wages,” he says. **Smith** says there has been a “real lack of voices on **the** left calling out this economic orthodoxy and challenging **the** economic orthodoxy”.

He says super-profits taxes should be up for discussion. “Windfall taxes, that’s got to be on **the** table. How can we discount that and rule it out? That’s got to be on **the** table for certain.

“It’s not an unusual place for **the** **CFMEU** to sit, prosecuting more progressive policies than **the** ALP and trying to bring **the** ALP along on **the** journey.” **Smith** has been elevated following **the** support of **the** union’s key state divisions, including Victoria, led by John Setka. **Smith** says he supports Setka “but most importantly his members support him”. “Whatever else anyone wants to say about John Setka, he has been an effective industrial leader and secured some of **the** best wages and conditions in this country for his members here in Victoria. And no one can take that away from him,” he says.

Back in 2019, ACTU secretary Sally McManus and a host of union leaders called for Setka to resign. “It’s not **the** role of **the** ACTU to say who should lead our union. Our members decide that,” **Smith** says. “**The** thing about **the** union movement is this isn’t some hierarchical corporate structure. It’s not as though national offices or peak bodies dictate to **the** unions who their leaders should be … so it’s not their place.

“We’re an affiliate of **the** ACTU still. I have a good working relationship with many of their officers, similar to **the** ALP. I will work with them to get policy outcomes. There’s no great schism there at that operational level.” **The** brawling between **the** union’s rival divisions persists. O’Connor is backed by **the** mining and energy union, led by Tony Maher, which will split from **the** union. **Smith** claims **the** financial position of **the** manufacturing division is “parlous”. “If this was a corporate situation, you’d have shareholders screaming,” he says.

He says **the** only way things can be fixed is if O’Connor, **the** man who gave him his first job in **the** union, goes. “I don’t think it can be fixed without a leadership change at their end,” he says.

Smith has a partner, Claire, and two young children, and he was reluctant to take on **the** national secretary’s position. Having accepted **the** job, he has big plans.

With **the** Coalition out of power federally, **the** ABCC and restrictive construction code gone, **the** union can spend less time on **the** defensive. “I have respect for Noonan and his leadership over **the** past 15 years which I’d argue was **the** most challenging for any union in **the** country given **the** politicised attacks, royal commission, unjustified prosecution of officials,” **Smith** says.

He will pursue an industrial agenda including significant wage rises, **the** reinstatement of conditions banned by **the** code, **the** promotion of women in construction, training and security of payment. But he will also push a broader agenda: housing, taxation, cost of living and climate change. “There was not a union in this country who has had a tougher 15 years in terms of ongoing attacks,” he says. “There was not much room for articulating policy agendas. I want to seize this opportunity to put **the** union on a different trajectory, and that trajectory is about being a leading voice for working people on those key issues.”

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Attachment A

Membership of the National Construction Industry Forum

Government

Position	Name	Background
Chair	The Hon Tony Burke MP	Minister for Employment and Workplace Relations
Member	The Hon Ed Husic MP	Minister for Industry and Science
Member	The Hon Catherine King MP	Minister for Infrastructure, Transport, Regional Development and Local Government

Employers

Position	Name	Background
Member	Alison Mirams	Roberts Co
Member	Deborah Coakley	Dexus Funds Management and the Property Council of Australia
Member	Brent Crockford	Australian Owned Contractors
Member	Irma Beganovic	National Electrical and Communications Association
Member	Jon Davies	Australian Constructors Association
Member	Melissa Adler	Housing Industry Association

Employees

Position	Name	Background
Member	Michael Wright	Electrical Trades Union
Member	Naomi Brooks	Construction, Forestry, Maritime, Mining and Energy Union
Member	Stacey Schinnerl	Australian Workers' Union
Member	Steve Murphy	Australian Manufacturing Workers' Union
Member	Tony Callinan	Australian Workers' Union
Member	Zach Smith	Construction, Forestry, Maritime, Mining and Energy Union

TONY BURKE MP

MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
MINISTER FOR THE ARTS
LEADER OF THE HOUSE

APPOINTMENTS TO NATIONAL CONSTRUCTION INDUSTRY FORUM

Today I announce the appointment of 12 representatives to the National Construction Industry Forum.

The Forum will constructively and cooperatively tackle issues facing the building and construction sector – with a focus on safety, productivity, skills and training, workplace relations, industry culture, diversity and gender equity.

The National Construction Industry Forum is a direct outcome of the Albanese Labor Government's Jobs and Skills Summit.

Last year we brought together business, unions and governments to talk about the shared challenges facing our economy – including workplaces in the building and construction industry.

We agreed to work together, taking a tripartite approach – a principle of equal and shared collaboration between governments, unions and industry – on matters that affect workers and businesses.

That's what the National Construction Industry Forum will do.

As a priority the Forum will look at issues around gender equity, particularly the recruitment and retainment of women workers.

I welcome the appointees to their new roles and know that their experience and insights will be invaluable as we work together to address key issues within the industry.

Appointments

The appointees are:

- Ms Melissa Adler – Housing Industry Association
- Ms Irma Beganovic – National Electrical and Communications Association
- Ms Deborah Coakley – Dexus Funds Management and the Property Council of Australia
- Mr Brent Crockford – Australian Owned Contractors

- Mr Jon Davies – Australian Constructors Association
- Mrs Alison Mirams – Roberts Co.
- Ms Naomi Brooks – Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)
- Mr Tony Callinan, – Australian Workers' Union (AWU)
- Mr Steve Murphy – Australian Manufacturing Workers' Union
- Ms Stacey Schinnerl – Australian Workers' Union (AWU)
- Mr Michael Wright – Electrical Trades Union
- Mr Zach Smith – Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)

ENDS

s. 22(1)(a)(ii)

MEDIA CONTACT:

Opposition questions CFMEU's Zach Smith's suitability on construction forum

By Karen Barlow
October 25 2023 - 6:19pm

CFMEU secretary Zach Smith exits the ACT Integrity Commission Hearing. Picture by Keegan Carroll

The federal opposition has questioned whether national and ACT union leader Zach Smith is suitable to be on an Albanese government construction industry forum.

It comes in light of his recent evidence to the ACT Integrity Commission over a controversial local public school project.

The CFMEU national and ACT branch secretary was appointed in July to the National Construction Industry Forum, and Liberal senator

Senator Brockman described Mr Smith, who gave evidence in September, as being "under investigation" by the ACT Integrity Commission. However, the commission's Operation Kingfisher is focusing on actions by public officials within the ACT Education Directorate.

It is looking into whether the officials failed to exercise their official functions "honestly and/or impartially" over the 2019-20 Campbell Primary School Modernisation Project.

Senator Brockman also put forward that Mr Smith was facing "numerous Fair Work Act breaches" in the Federal Court and he questioned the due diligence tests for positions down by the Department of Employment and Workplace Relations.

"Minister, would it be appropriate for someone who is found to have breached the Fair Work Act to provide advice on how to improve building and construction industry culture?" the West Australian senator asked.

"You would find a Federal Court judge describing Mr Smith's behaviour as acting in an improper manner as a holder of an entry permit by swearing and acting aggressively towards a site manager, which he goes on to say, which had no place on a building site."

READ MORE:

- Berry knew CFMEU 'unhappy' with Manteena, commission told
- Smith to take on major national CFMEU role
- Manteena had 'hostile approach' to CFMEU, commission told

← News Home

Burke, defended Mr Smith from the opposition's attack.

"I heard the officials take you through the due diligence tests are the tests that were undertaken. And I haven't heard anything yet that suggests that Mr Smith didn't pass those tests," he said.

"There was a bankruptcy check. There was a company directorship check. There was some checking to see whether someone was banned or disqualified particularly as a director, whether they've got criminal convictions.

"They were the tests, it would appear, of who is an appropriate person. And again, I haven't heard you suggest that Mr Smith or any of the other appointees haven't passed those tests."

Mr Smith has rejected Senator Brockman's assertion as "completely absurd and laughable".

"I haven't been accused of any wrongdoing. I was more than willing to give evidence when asked," he said in a statement to *The Canberra Times*.

"The idea that the construction union's national secretary shouldn't be on the national construction industry forum is as silly as saying no-name senators I disagree with shouldn't be at Senate estimates.

"We've got a cost-of-living crisis, workers dying because of engineered stone and the most serious housing shortage in living memory but this is the nonsense obscure Liberal senators are focusing on."

The ACT Integrity Commission has one more week of public hearings in December, before it moves to finalising its findings.

NATIONAL CONSTRUCTION INDUSTRY FORUM MEETING

8 November 2023

Communiqué

Members of the National Construction Industry Forum (Forum) met for the first time on Friday, 20 October 2023.

The Hon Tony Burke MP, Minister for Employment and Workplace Relations, was unavailable to chair the meeting and nominated the Hon Ed Husic MP, Minister for Industry and Science, to chair the meeting in his place.

As it was the inaugural meeting, the agenda focussed on governance arrangements and settling how members will work together, as well as identifying priority areas for initial focus of the Forum's work.

Members valued the tripartite spirit of the meeting, which brought together key representatives of Government, business and workers, and had a productive discussion on a range of issues and priorities facing the building and construction industry.

Governance and Forward Work Plan

Members endorsed Terms of Reference for the Forum.

Members identified issues to be included in the draft Forward Work Plan, which is to be circulated and finalised out of session.

Members agreed to establish subcommittees on priority work issues to inform the advice the Forum will provide to Government. Subcommittees will support the Forum to engage broadly with the industry and build on the relationships, expertise, and work of relevant bodies. Members will endeavor to have the subcommittees meet this year noting the importance of the topics raised at the Forum.

Gender Equity

Ms Gabrielle Trainor AO, Chair of the Construction Industry Culture Taskforce (the Taskforce) and her colleague, Ms Diana Burgess, provided a presentation on their work on gender equity and women's participation in the construction industry, as part of the Taskforce's Culture Standard.

Members discussed action the Forum could take to advise Government about solutions to improve gender equity in the industry, including the recruitment and retention of women workers. Members acknowledged the project touches on a range of issues and agreed to establish a subcommittee to progress this work.

Financial viability (Security of Payment)

Members acknowledged the financial challenges within the building and construction industry, including concerns about security of payment, productivity, supply chains and sovereign manufacturing capability. Members noted that financial viability is one of the most important issues currently facing the industry.

Members shared their views on how the Forum should approach these issues going forward and agreed to establish a subcommittee to progress this work.

Attendees

In person and via videoconference

The Chair, the Hon Ed Husic MP, Minister for Industry and Science

The Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government

The Hon Julie Collins MP, Minister for Small Business

Ms Melissa Adler, Housing Industry Association

Ms Irma Beganovic, National Electrical and Communications Association

Ms Deborah Coakley, Dexus Funds Management and the Property Council of Australia

Mr Brent Crockford, Australian Owned Contractors

Mr Jon Davies, Australian Constructors Association

Ms Alison Mirams, Roberts Co

Ms Naomi Brooks, Construction, Forestry, Maritime, Mining and Energy Union

Mr Tony Callinan, Australian Workers' Union

Mr Steve Murphy, Australian Manufacturing Workers' Union

Ms Stacey Schinnerl, Australian Workers' Union

Mr Michael Wright, Electrical Trades Union

Mr Zach Smith, Construction, Forestry, Maritime, Mining and Energy Union

Other participants

Ms Gabrielle Trainor AO, Construction Industry Culture Taskforce (Invited Participant)

Ms Diana Burgess, Construction Industry Culture Taskforce (Invited Participant)

Ms Natalie James, Secretary, Department of Employment and Workplace Relations (Observer)

Mr Jim Betts, Secretary, Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Observer)

Ms Julia Pickworth, Deputy Secretary, Industry and Commercialisation Group, Department of Industry, Science and Resources (Observer)

Apology

The Hon Tony Burke MP, Minister for Employment and Workplace Relations

More information on the Forum is available at: https://www.dewr.gov.au/australian-building-and-construction-industry/national-construction-industry-forum.

Enquiries: WR.Building@dewr.gov.au

ATTACHMENT D

National Construction Industry Forum – Due diligence checks

- The Department undertakes the following due diligence checks for all nominees for appointment to statutory positions in the Workplace Relations portfolio:
    - Media checks of nominees, including Google News checks
    - Bankruptcy check – name and date of birth search of the Australian Financial Security Authority bankruptcy register
    - Company directorships check – personal name search of the Australian Securities & Investments Commission (ASIC) database
    - Banned and disqualified check – a search of ASIC's banned and disqualified register
    - Lobbyist register check – a lobbyists search of the Attorney-General's Department Lobbyist Register
    - Google for the first 60 results to check for anything adverse in relation to the nominee
    - AustLII to check that, as far as possible, the nominee's declarations in relation to being a respondent in any criminal or civil matters are correct.

- These checks were completed for all NCIF nominees ahead of their appointment by the Minister.

Publicly available information – Zach Smith

ACT Integrity Commission

- As noted in SQ23-001207 and SQ23-001577, the due diligence process undertaken by the department did not return any information suggesting that Mr Smith was under investigation by the Australian Capital Territory Integrity Commission.

- As of 8 January 2024, the ACT Integrity Commission website indicates that the Commission has only one public examination currently underway: Operation Kingfisher. From publicly available information, it appears that – while not the subject of the investigation – Mr Smith attended as a witness on 7 September 2023.

- Operation Kingfisher is described by the ACT Integrity Commission as "an investigation into whether public officials within the ACT Education Directorate failed to exercise their official functions honestly and/or impartially when making recommendations and decisions regarding the Campbell Primary School Modernisation Project between 2019 and 2020."

Court/FWC proceedings

- Respondent in Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Constitution Place Case) [2020] FCA 1070 (28 July 2020) (austlii.edu.au) as a CFMEU Official and found to have contravened s 47 of the *Building and Construction Industry (Improving Productivity) Act 2016* by engaging in an unlawful picket at a building site in the ACT and was fined $12,600.

- Respondent in Commissioner of the Australian Building and Construction Commission v Hall & Ots (No. 3) [2020] FCCA 2352 and held to have contravened s 499 and s 500 of the *Fair Work Act 2009* by exercising a State or Territory OHS right and failing to comply with a reasonable request made to comply with an occupational health and safety requirement that applied to the site, namely a request not to walk around the site unaccompanied, and acting in an improper manner at the site by yelling and swearing at workers on site. A declaration of contravention was made and he was fined $6,000.

- Respondent in Director, Fair Work Building Industry Inspectorate v Hall & Ors [2015] FCCA 2874 for alleged breaches of ss 340, 343 and 355 of the *Fair Work Act 2009* (adverse action and coercion) in respect of an alleged 'blockade' at a building site in the ACT, but the case was dismissed as the applicant failed to discharge the onus of proof.

Allegations of involvement in cartel conduct

- During the Trade Union Royal Commission allegations surfaced of corrupt payments, intimidation and cartel behaviour by the ACT branch of the union. It was alleged ACT branch secretary Dean Hall, assistant secretary Jason O'Mara, and other officials including Zach Smith were involved. The allegations concerned trying to coerce contractors to sign union-drafted enterprise bargaining agreements (EBAs), getting all contractors of a major trade to charge the same base rate for their services, and trying to shut down sites for alleged safety breaches if such conditions were not adhered to (Volume 3 of the Report refers).

- From 2016-2018 the ACCC conducted an investigation into those allegations of cartel conduct by the Union and officers of the Union and in 2018 the Director of Public Prosecutions commenced proceedings against the Union and an officer (Jason O'Mara) alleging contravention of section 44ZZRF and subsection 79(1)(b) of the *Competition and Consumer Act 2010*. The charges related to allegedly seeking to induce suppliers of steelfixing and scaffolding services to reach cartel contracts, arrangements or understandings containing cartel provisions in relation to services provided to builders in the ACT between 2012 and 2013.

- Zach Smith was not charged.

- All charges were withdrawn and no convictions were entered. ACCC chairman Rod Sims was quoted as saying "In this case, the decision to withdraw was made in the context of the extended period of time which has elapsed since the alleged conduct occurred, and the challenges that posed for witnesses' memories of relevant events"

Recent media (non-exhaustive)

- In 'CFMEU boss Zach Smith lays down the law', published in The Australian on 4 March 2023 (Attachment D (i)), the following statements were attributed to Zach Smith:

  - "sometimes bad laws need to be broken".

- “CFMEU officials do not seek to ‘break laws wantonly’ but will act where the safety of members, or the security of their conditions, are on the line”.
- “I think if you have a look at a lot of social change, and improvements to safety that have been made in this country by unions, it’s often, if not in nearly all cases, involved some sort of breach of the law”

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001577

Senator Slade Brockman on 25 October 2023, Proof Hansard page 68

ACT Integrity Commission

Question

Senator BROCKMAN: Secretary, do you agree with Mr Smith's statement that the Fair Work Ombudsman prioritises the antiworker ideological fight?
Ms James: Without context, I'm not going to cast judgement on a statement that I don't have in front of me. It doesn't sound like the sort of thing I would agree with, but I would say that the purpose of the forum and those who are on it is to bring experience representing people in the construction industry, and he fulfils that requirement. Having attended the first of the meetings, I would say that he played a very constructive role, as did all of the other members. It was a very constructive meeting, and there was a lot of goodwill in the room. Based on my observations, I don't have any concerns.
Senator BROCKMAN: Were you aware of the ACT Integrity Commission investigation?
Ms James: Not specifically.
Senator BROCKMAN: So you're unaware if the minister's office was aware of the ACT Integrity Commission—
Ms James: I think we've taken that on notice.

Answer

The due diligence process undertaken by the department did not return any information suggesting that Mr Zach Smith was under investigation by the Australian Capital Territory Integrity Commission. Further detail of this process is provided as part of SQ23-001207.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001207

Senator Slade Brockman on 25 October 2023, Proof Hansard page 67

Due diligence report into Zach Smith

Question

Senator BROCKMAN: Okay. Did the due diligence report into Zach Smith to the National Construction Industry Forum include the fact that he was under investigation by the ACT Integrity Commission?
Ms Godden: I would have to take that one on notice.
Senator BROCKMAN: Were you aware, and is it part of the due diligence report on Mr Smith, that he was facing numerous Fair Work Act breaches in the Federal Court during the appointment process?
Ms Godden: I would have to take that one on notice to properly answer you.

Answer

The due diligence process undertaken by the department did not return any information suggesting that Mr Zach Smith was under investigation by the Australian Capital Territory Integrity Commission. A search of the ACT Integrity Commission website following the Senate Estimates hearing on 25 October 2023 revealed that there is only one public examination currently underway by the ACT Integrity Commission, named Operation Kingfisher. From publicly available information, it appears that – while not the subject of the investigation – Mr Smith attended as a witness on 7 September 2023.

As part of the due diligence process the department searches www.austlii.edu.au to ensure that a nominee's declarations in relation to being a respondent in any criminal or civil matters are correct. This search was conducted for Mr Smith, as it was for all members of the National Construction Industry Forum, and the department identified three civil matters in which Mr Smith had been named as a respondent.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001206

Senator Slade Brockman on 25 October 2023, Proof Hansard page 67

Due diligence procedure for appointments

Question

S enator BROCKMAN: You have a due diligence procedure which comes after a name is presented to you. Did you do any work in presenting names to the minister for inclusion?
Ms J Anderson: No.
Mr Hehir: I don't recall, but I'll check that. It isn't my recollection that we did, but I'll check.
Senator BROCKMAN: Okay, you can take that one on notice also. And you undertook the due diligence on everyone who was appointed?
...
Senator BROCKMAN: So you report on the outcome. Were there any other additional names put forward that were not finally appointed? By the sound of it, no—you just did the due diligence.
Ms Godden: Could I take that one on notice, please?

Answer

The department did not provide any names to the Minister for consideration for appointment to the National Construction Industry Forum and no potential member was not appointed due to the due diligence process.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001205

Senator Slade Brockman on 25 October 2023, Proof Hansard page 66-67

Agreement of appointments

Question

Senator BROCKMAN: Do appointments then go to cabinet?
Ms Godden: That depends on the exact appointment that we're talking about. We do have a number of different appointments in the workplace relations portfolio—
Senator BROCKMAN: I'm talking about the National Construction Industry Forum.
Ms Godden: I don't believe that appointments to the National Construction Industry Forum are cabinet appointments.
Mr Hehir: The normal appointment process in this case—and I'll take this on notice to take advice on this—is that there's an option. It can be agreed by the PM or it can be agreed by cabinet. I just need to check how it was done. That's quite a standard thing for—
...
Senator BROCKMAN: Yes, absolutely. Could you just get me that on notice—if they were agreed by the PM directly or if they were agreed by cabinet?
Mr Hehir: Yes.

Answer

Approval for the current appointments to the National Construction Industry Forum was given by the Prime Minister.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001181

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 49

Draft Terms of Reference provided to Minister's office

Question

Senator CASH: Has the minister consulted with the department or sought advice from the department as to how this forum will be implemented or should actually function?
Ms Anderson: We have provided draft terms of reference to the minister's office. Mostly, these forums work in a way where those terms of reference are usually provided to the first meeting for endorsement. I can't see that it would be much different to the normal process.
Senator CASH: When were the draft terms of reference provided to the minister's office?
Ms Anderson: I would have to take that on notice.
Senator CASH: Has the minister considered the guidelines for appointment of the varying members?
Ms Anderson: I would have to check that with the minister's office.

Answer

On 31 March 2023, the Department of Employment and Workplace Relations provided draft Terms of Reference for the National Construction Industry Forum (Forum) to the Office of the Minister for Employment and Workplace Relations.

Questions about 'guidelines for appointment' were addressed, by the department, during the hearing (see Proof Committee Hansard Tuesday 30 May 2023, page 50). In addition to the usual checks that the department undertakes in relation to appointments, requirements for appointment to the Forum are already established under Part 6-4D of the *Fair Work Act 2009* (Fair Work Act). In particular, subsection 789GZE(2) of the Fair Work Act requires that the Minister must appoint:

(a) one or more members who have experience representing employees in the building and construction industry; and

(b) an equal number of members who have experience representing employers in the building and construction industry, including at least one member who has experience representing contractors in the building and construction industry, and one member with experience in small to medium sized enterprises in the residential building sector.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000672

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 51

Matters for appointment for Minister

Question

Senator CASH: If a person had previously been found to have, say, verbally abused women within the building and construction industry in particular, would this be a barrier to them being appointed?
Mr Breen: The grounds are set out as I just read out.
Senator CASH: That was for termination, though.
Mr Breen: That's right.
Senator CASH: I am looking at appointment. If a name is put forward and there is a record that this person has previously abused women, is that a barrier to appointment?
Mr Breen: With the process of appointment, as I mentioned earlier, there are due diligence checks undertaken. Matters for appointment or decisions around appointments are a matter for the minister, ultimately.
Senator CASH: Minister, in particular, because it is the construction industry, if a person has engaged in, for example, the verbal abuse of women, would they be considered a fit and proper person to attend meetings of the forum or to actually sit on the forum as a member?
Senator Watt: I'm happy to take that on notice.

Answer

The Australian Government has high expectations around conduct and the abuse of women in any environment is unacceptable.

Each potential appointee to the National Construction Industry Forum will be assessed on their merits as to their suitability to be appointed having regard to the Forum's function, being to provide advice to the Government in relation to work in the building and construction industry, informed by the results of due diligence checks undertaken by the Department of Employment and Workplace Relations in relation to those persons.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000662

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 50

Direct appointments to Minister's office

Question

Senator CASH: Will they be direct appointments from the minister's office?
Mr Breen: Yes. Direct appointments by the minister. Yes, that's right.
Senator CASH: There is a direct appointment process?
Mr Breen: Yes. That is set out in the provisions.
Senator CASH: I know that they are now direct appointments. Will there be a formal expression of interest process for the appointment to this forum?
Mr Breen: That would be a matter for government.
Senator CASH: Minister, in terms of the appointments, will there be a formal expression of interest process?
Senator Watt: I'm happy to take that on notice.

Answer

There will not be a formal expression of interest process for appointments to the National Construction Industry Forum.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000661

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 49

Stakeholders approached for the Forum

Question

Senator CASH: Have any members or stakeholders been approached by the minister, the minister's office or the department to sit on the National Construction Industry Forum?
Mr Hehir: We're aware of other ministers who have been approached to sit on it. I need to take that on notice. In fact, it may have been something the minister's office might need to take on notice. I don't necessarily have that detail.

Answer

On 23 July 2023 the Minister for Employment and Workplace Relations announced the appointment of the following 12 representatives to the National Construction Industry Forum:

- Ms Melissa Adler – Housing Industry Association
- Ms Irma Beganovic – National Electrical and Communications Association
- Ms Deborah Coakley – Dexus Funds Management and the Property Council of Australia
- Mr Brent Crockford – Australian Owned Contractors
- Mr Jon Davies – Australian Constructors Association
- Mrs Alison Mirams – Roberts Co.
- Ms Naomi Brooks – Construction, Forestry, Maritime, Mining and Energy Union
- Mr Tony Callinan, – Australian Workers' Union
- Mr Steve Murphy – Australian Manufacturing Workers' Union
- Ms Stacey Schinnerl – Australian Workers' Union
- Mr Michael Wright – Electrical Trades Union
- Mr Zach Smith – Construction, Forestry, Maritime, Mining and Energy Union (CFMEU).

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000656

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 48

Meetings with Minister's office on National Construction Industry forum

Question

Mr Hehir: I need to pass to Ms Anderson for the detail of this. Certainly we've had a range of interests around what the National Construction Industry Forum could look at. People have talked about mental health being an issue within the construction industry, the lack of women in the sector and the security of payment to various subcontractors. Not all of those issues are necessarily Commonwealth issues, but they are good issues for a discussion. A range of those have been raised as possible areas of focus.
Senator CASH: When did the meetings with the minister or his office occur?
Mr Hehir: We would need to take that on notice. I do not have it in front of me.
Senator CASH: Who attended the briefings? How many times has the department worked with the minister's office or the minister in relation to the forum?
Ms Anderson: My recollection is that we primarily have been liaising with the minister's advisers on this matter. We would have to take that on notice in terms of when that has been.
Senator CASH: But you've had more than one meeting?
Ms Anderson: Conversations, more than one.
...
Senator CASH: Not actual meetings but conversations. The two-page brochure—you've also mentioned the legislation that was passed last year—says that other members will be appointed by the minister. How many other members will be appointed?
Ms Anderson: That would be a matter for the minister to determine.
Senator CASH: Have you had any discussions with the minister in relation to that or provided advice on how many other members should be appointed?
Ms Anderson: We've certainly had high-level conversations with the advisers on options there. We have explored issues around Indigenous representation as possible avenues for additional membership and the like. We are certainly having conversations around what that might look like.
Senator CASH: Minister, do you have any information on how many other members would be appointed by the minister?
Senator Watt: I do not, but I am happy to take it on notice.

Answer

Between the passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* in December 2022 and Budget Estimates on 30 May 2023, officials from the Department of Employment and Workplace Relations have had a number of conversations with representatives from the Minister for Employment and Workplace Relations' office about the National Construction Industry Forum (Forum).

The department's records indicate that conversations with the Minister's Office about the National Construction Industry Forum occurred on the following dates:

- 24 Mar 2023
- 3 April 2023
- 11 May 2023
- 19 May 2023
- 24 May 2023
- 25 May 2023.

The department notes that the National Construction Industry Forum may also have been raised in passing during other broad conversations about the department's work, and that these instances may not be captured by the list above.

The Minister can appoint any other person as a member of the Forum under subsection 789GZE(3) of the *Fair Work Act 2009*. The Minister announced the appointments to the NCIF on 23 July 2023 and there were no appointments made under subsection 789GZE(3).

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000654

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 48

Budget breakdown on Secure Jobs, Better Pay

Question

Senator CASH: Thank you, Ms Anderson. Page 108 of Budget Paper No. 2 shows that there is $4.4 million to establish the body, including $1.1 million in continuing funding. Are you able to break the funding down for me and how it will be allocated?
Ms Anderson: I haven't got the breakdown on me. I do recall that there is some funding allocated for the department for secretariat support. There is also an element allocated to travel costs for members as well. That is a requirement in the legislation.
Senator CASH: Could I get you to take on notice the actual breakdown of the $4.4 million and the $1.1 million?
Ms Anderson: Yes.

Answer

In the 2023-2024 Budget, the Government committed $4.4 million over 4 years ($1.1 million per year), and ongoing funding of $1.1 million per year from 2027-2028, to fund the National Construction Industry Forum (Forum).

These funds will:

- enable the department to provide secretariat and research support to the Forum,
- fund up to four Forum meetings per year, and;
- cover travel allowances for Forum members, which the Government must provide under section 789GZM of the *Fair Work Act 2009*.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000653

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 48

National Construction Industry forum

Question

Ms Anderson: In terms of public information, there are a couple of pieces I can refer you to. There's obviously the Secure Jobs, Better Pay act itself. It outlines the establishment of the forum, the membership cohorts, notes around how many times they will meet and things like that. That is all established under the act. There was also a measure in the budget that is providing $4.4 million over four years. Apart from the document you referred to on the website, I think that is the complete public information at this stage.
Senator CASH: At this point in time, it still commences on 1 July 2023?
Ms Anderson: The provisions of the act commence on that date.
Senator CASH: When will the forum itself first stand up?
Ms Anderson: That will be a matter for government in terms of timing.
Senator CASH: Minister, when will the forum itself officially stand up?
Senator Watt: I would need to take that on notice.

Answer

Work is underway to establish the National Construction Industry Forum (Forum), including secretariat, governance arrangements and appointments.

Section 789GZH of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* requires the Forum to convene at least 2 meetings in each calendar year. One meeting must be held in the first 6 months of the year and another in the second 6 months of the year. In this regard, the Forum will meet in the second half of 2023.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2022 - 2023

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ22-001194

Senator Michaelia Cash provided in writing.

National Construction Industry Forum

Question
1. Was the Department aware that the Minister was going to announce the establishment of a National Construction Industry Forum prior to the announcement being made in early September? If yes:
- How was the Department informed?
- Who informed the Department?
- When was the Department informed?
- Had the Department received a formal briefing from the Minister or his office?

2. Since the Minister made the announcement that a National Construction Industry Forum would be established, has the Department been briefed (formally, informally, or otherwise) by the Minister or his office as to what exactly this Forum might entail? If yes:
- When did this occur?
- Who attended the briefing?

3. Can you please advise what the composition of the Forum will be?
- How many union representatives will there be?
- How many construction industry/business representatives will there be?
- How many representatives will the Government have?
- How many members will there be in total?

4. Can you please advise how often the Forum will meet?

5. Could you please provide an outline of what the costs associated with establishing this Forum are?
- Has any money been committed to the establishment of the National Construction Industry Forum in the October 2022-23 Budget?
- How will funding for this Forum differ from funding for the ABCC?

6. Has the Minister consulted with the Department or sought advice from the Department as to how this Forum will be implemented or how it should function?

7. Can you please outline what the main differences are between the functions of the proposed Forum and the ABCC?

Answer

1. Refer to SQ22-001074.

2. Refer to SQ22-001074 and SQ22-001075.

3. The membership of the Forum would be governed by a new section of the *Fair Work Act 2009* (789GZE), which would provide that the Minister for Employment and Workplace Relations (the Minister), the Industry Minister (Minister administering the *Australian Jobs Act 2013)* and the Infrastructure Minister (Minister administering the *Infrastructure Australian Act 2008)* are members of the Forum, along with the members appointed by the Minister.

   Under new section 789GZE(2), the Minister would be required to appoint one or more members who have experience representing employees in the building and constructions industry, and an equal number of members who have experience representing employers in the building and construction industry, including at least one member who has experience representing contractors in the building and construction industry. On 10 November 2022 the House of Representatives passed the Fair Work Legislation Amendment (Secure Jobs Better Pay) Bill 2022 with an amendment that would also require the Minister to appoint one member with experience in small to medium sized enterprises in the residential building sector.

   The Minister would also have a broad discretion under new subsection 789GZE(3) to appoint other persons as members of the Forum, which might include relevant statutory appointees, representatives of community groups (e.g. disability or women's representative groups) or other persons with experience relevant to the functions of the Forum.

4. The Forum will meet at least twice per calendar year, once in the first six months and once in the second six months.

5. The financial impact of the Forum is yet to be determined in consultation with the Department of Finance, and any other associated departments.

6. The Department presented the Minister with key considerations relevant to the establishment of the Forum.

7. The Forum would have a broad remit to provide advice to the Government on matters relating to work in the building and construction industry that are either raised by Government or agreed by the members. The matters include, but are not limited to, workplace relations, skills and training, safety, productivity, diversity and gender equity, and industry culture. The functions of the Australian Building and Construction Commissioner are set out in section 16 of the *Building and Construction Industry (Improving Productivity) Act 2016*.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2022 - 2023

Minister for Employment and Workplace Relations

Department of Employment and Workplace Relations Question No. SQ22-001291

Senator Michaelia Cash on 09 December 2022, Proof Hansard page 61

National construction industry forum - CFMEU

Question
Senator CASH: Minister, can you guarantee that the CFMEU will not have a seat at the table in relation to the national construction industry forum? In this bill that abolishes the Australian Building and Construction Commission, the government has also acknowledged that they are recidivist offenders and will be banned from multiemployer bargaining for 18 months.
Senator Watt: I will try to get some information for you.
Senator CASH: Minister, do you think, based on your knowledge of the CFMEU and the findings against them, that they should be given a seat at the table of the national construction industry forum?
Senator Watt: I am here representing the minister. It's the minister's role. It is Minister Burke. I will do my best to get an answer for you on that as quickly as I can.

Answer

The members of the National Construction Industry Forum will be the Minister; the Infrastructure Minister; the Industry Minister; and other members appointed by the Minister.

The Act requires the Minister to appoint one or more members who have experience representing employees in the building and construction industry; and an equal number of members who have experience representing employers in the building and construction industry, including at least one member who has experience representing contractors in the building and construction industry, and one member with experience in small to 20 medium sized enterprises in the residential building sector.

The Government is continuing to consult with stakeholders on the membership of the forum.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2022 - 2023

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ22-001075

Senator Matt O'Sullivan on 08 November 2022, Proof Hansard page 60

National construction industry forum

Question
Senator O'SULLIVAN: So in terms of any of the discussions that you've had regarding the forum with the minister, who else has been involved in those discussions? Is it just departmental officials, the minister and the minister's staff, or are there other people involved?
Mr Hehir: There are things that I can't discuss because they go to government decision-making. I need to go back and look at the material and see what I can share. It does go to government decision-making.

Answer

Discussions between the Department of Employment and Workplace Relations and the Minister and his office regarding the National Construction Industry Forum have not involved other parties.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2022 - 2023

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ22-001074

Senator Matt O'Sullivan on 08 November 2022, Proof Hansard page 59-60

National Construction Industry Forum

Question
Senator O'SULLIVAN: Had you or anyone else in the department received a formal briefing from the minister or his office?
Mr Hehir: I will need to take that on notice in terms of whether it was a formal briefing. As I said, it was certainly raised with us as a broad concept, not in its final form or as it was announced or suggested by Senator David Pocock. I will explain it this way. The concept of tripartism had been raised on a number of occasions by the minister. We talked about that and a range of factors, including a commitment to ongoing tripartism in the building and construction area. That broad concept in terms of having parties around the table talking about it, yes, had been raised. I'm not sure it was raised formally apart from being a very strong theme within the election material. We were in discussions about how that might look rather than necessarily a formal briefing.
Senator O'SULLIVAN: Since it was announced, what conversation has the minister had with the department?
Mr Hehir: Some of them go to government decision-making, so I will need to take that on notice.

Answer

In line with common practice, the Department of Employment and Workplace Relations has had a range of discussions with the Minister and his office regarding the National Construction Industry Forum.

WR Consultations

What has been announced

- On 8 February 2024 Minister Burke was interviewed on Triple J Hack where he said:

  "I reckon we've actually ended up with a better bill as a result of all the discussions with the crossbench. I'm really happy with where it's landed."

- On 7 December 2023 Minister Burke announced he had secured the passage of some measures of the Closing Loopholes Bill:

  "In the Senate today, the Closing Loopholes Bill will be divided into Closing Loopholes and Closing Loopholes 2. The remaining measures will be dealt with at the time that had already been announced, at the first possible opportunity next year. And I have to say – I am even more optimistic about those remaining provisions, because of the goodwill that we're showing today, and the goodwill and good intentions of the crossbench."

Current status

- Significant consultation has occurred on the Closing Loopholes measures, including on the amendments moved to the Closing Loopholes No.2 Bill.
  - For example, the Minister and department recently met with the CEOs of BCA, ACCI, MCA, AiGroup, MBA, ARA, COSBOA and RSCA on 2 February 2024.
- Consultations have been underway on workplace reform measures since **mid-2022**, to support development of the following legislation:
  - *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*- received Royal Assent on 9 November 2022;
  - *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) - received Royal Assent on 6 December 2022;
  - *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Protecting Worker Entitlements Act) - received Royal Assent on 30 June 2023; and
  - *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* – (Closing Loopholes Act) - received Royal Assent on 14 December 2023;
  - The Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 (Closing Loopholes No.2 Bill) – still before Parliament.
- An overview of consultation on the measures in the Closing Loopholes Act and Closing Loopholes No.2 Bill is outlined below.

Consultation on Closing Loopholes measures

- A public consultation process on the Closing Loopholes measures commenced in early 2023, noting initial discussions on some measures that became part of the legislation had occurred before then.
- The process included more than 100 meetings with business and industry representatives, employee representatives, employers, academics, community groups and Commonwealth and state and territory governments.
- The department received over 220 written submissions from over 160 organisations in relation to the measures.

- Consultation was also undertaken with the National Workplace Relations Consultative Council (NWRCC), chaired by Minister Burke, and made up of representatives from employee and employer groups, and its subcommittee the Committee of Industrial Legislation (CoIL). State and territory government Ministers and Senior Officials for workplace relations and work health and safety were also consulted.
- Key dates of formal consultation meetings and public communications on the Closing Loopholes measures are outlined below:
    - **1 February 2023** – Minister Burke delivered a speech at the National Press Club.
    - **8 February 2023** – Minister Burke chaired a meeting of the NWRCC to outline the Government's proposed workplace relations reforms for the year, including the proposed approach to consultation.
    - **20 March 2023** – Minister Burke wrote to state and territory ministerial counterparts providing information on measures for consultation in 2023.
    - **23 March 2023** – the department sent letters to more than 70 stakeholders (business, industry, unions and other stakeholders), seeking written submissions by 6 April 2023.
    - **24 March 2023** – the department published summaries on 11 measures on the department's website.
    - **27 March 2023** – the department began consultation meetings with stakeholders on the 11 measures.
    - **13 April 2023** – the department published 4 consultation papers on the more detailed measures, seeking written submissions by 12 May 2023. The consultation papers were:
        - Closing labour hire loopholes
        - Compliance and enforcement: Criminalising wage theft
        - Extend the powers of the Fair Work Commission to include 'employee-like' forms of work, and
        - Provide stronger protections against discrimination, adverse action and harassment.
    - **6 June 2023 –** the department convened a Senior Officials meeting to discuss the measures proposed for introduction in the second half of 2023.
    - **8 June 2023** – Minister Burke chaired a meeting of the NWRCC and separately a WR Meeting of Ministers and provided an update on the workplace relations reforms proposed for the second half of 2023, including additional measures that developed as a result of consultation.
    - **16 June 2023** – the Minister and departmental representatives held confidential meetings with employer and employee representatives to provide further detail on proposed measures, including additional measures that were developed as a result of consultation.
    - **16-17 August 2023** – the department convened a CoIL to provide a draft of the Bill ahead of introduction to Parliament.
    - **18 August 2023** – the department convened a meeting with state and territory Senior Officials to provide a draft of the Bill ahead of introduction to Parliament.
    - **4 September 2023** – The original Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 introduced. The department published 19 fact sheets on the measures contained in the Closing Loopholes Bill on the DEWR website, including one on measures specifically relevant to small business. An email was also sent to over 150 subscribers of the department's WR consultations web page on the introduction of the Closing Loopholes Bill and publication of fact sheets.
    - **7 December 2023 –** the Government announced the Closing Loopholes Bill as presented to Parliament on 4 September 2023, would be split into two.

- **22 December 2023** – following Royal Assent of the Closing Loopholes Act on 14 December 2023, the department published updated and new fact sheets on measures contained in the Act, as well as new and updated fact sheets on the measures in the Closing Loopholes No.2 Bill. A summary of all Closing Loopholes measures consulted on by the department in 2023 is provided at **Attachment A**.
- **9 January 2024** - An email was sent to over 170 subscribers of the department's WR consultations web page to advise that the fact sheets had been published.

- A list of the organisations the department consulted with (between February 2023 – 13 December 2023), dates and frequency of meetings is provided at **Attachment B**.

Written submissions on Closing Loopholes

- Over 23-27 March 2023, the department wrote to 75 stakeholders seeking written submissions on 11 measures considered for introduction in the second half of 2023.
- The department invited written submissions on measures in **two tranches**.
- Tranche 1 invited responses **on 11 measures** published on the department's website. Submissions were accepted until 6 April 2023.
- Tranche 2 invited responses on **consultation papers on 4 measures** (outlined below). Submissions were accepted until 12 May 2023.
    1. Closing the labour hire loophole
    2. Compliance and enforcement: Criminalising wage theft
    3. Extend the powers of the Fair Work Commission to include 'employee-like' forms of work, and
    4. Provide stronger protections against discrimination, adverse action and harassment.
- Some submissions received in tranche 2 also addressed tranche 1's 11 measures and were not limited to the consultation paper measures only.
- The department accepted late submissions in both tranches.
- During the consultation process, the department received more than 220 written submissions from more than 160 organisations. Some organisations made multiple submissions.

Consultation on Engineered Stone

- **28 February 2023** – Meeting of Commonwealth, State and Territory Work Health and Safety (WHS) Ministers. Ministers requested Safe Work Australia (SWA) prepare a further report on the impacts of a prohibition on the use of engineered stone under the model WHS laws.
- **March – August 2023** – Between March and April, SWA sought feedback to its consultation paper via a submission process. A total of 114 submission were received. This process informed the *Decision Regulation Impact Statement: Prohibition on the use of engineered stone* (the Decision RIS).
- **27 October 2023** – Meeting of WHS Ministers. Ministers discussed the detailed analysis of the Decision RIS and agreed to its publication, to ensure public debate is informed by expert analysis.
- **13 December 2023 –** Meeting of Workplace Relations and WHS Ministers. Ministers unanimously agreed to prohibit the use, supply and manufacture of all engineered stone with the majority of jurisdictions to commence the prohibition from 1 July 2024.
- See SB24-000007 for more information on Engineered Stone.

Recent media on this policy

The following items are included in **Attachment C:**

Latest IR changes create less productive and more rigid and complex workplaces | Ai Group	*8 February 2024*
Industrial relations changes a blow to Australia's prosperity - Business Council of Australia (bca.com.au)	*8 February 2024*
Radical industrial relations reform an economic risk Australia can't afford - Business Council of Australia (bca.com.au)	*22 January 2024*
Australia will become the first country to ban engineered stone bench tops. Will others follow? | Health | The Guardian	*14 December 2023*
Lambie, Pocock hand Labor big win on same job, same pay laws | Sydney Morning Herald	*7 December 2023*

Key Government statements

The following items are included in **Attachment D**

Workplace Loopholes Closed - Media release - The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts https://www.tonyburke.com.au/media-releases/2024/workplace-loopholes-closed	*12 February 2024*
Workplace Loopholes to be Closed - Media release - The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts https://www.tonyburke.com.au/media-releases/2024/workplace-loopholes-to-be-closed	*7 February 2024*
Closing Loopholes- Press conference, Parliament House- The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts Press conference, Parliament House | Ministers' Media Centre (dewr.gov.au)	*7 December 2023*
Closing Loopholes- Media release - The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts Closing Loopholes | Ministers' Media Centre (dewr.gov.au)	*7 December 2023*
Closing Loopholes Bill – The National Press Club, The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts Speech - National Press Club, Closing the Loopholes Bill | Ministers' Media Centre (dewr.gov.au) Q&A National Press Club Speech, Closing Loopholes Bill | Ministers' Media Centre (dewr.gov.au)	*31 August 2023*
Closing Loopholes Bill – Speech- The Sydney Institute, The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts Speech - The Sydney Institute | Ministers' Media Centre (dewr.gov.au)	*24 July 2023*
Address – National Press Club, The Hon Tony Burke MP, Minister for Employment and Workplace Relations; Minister for the Arts Address - National Press Club | Ministers' Media Centre (dewr.gov.au)	*1 February 2023*

Related Questions received on notice

PDR Link	Submitted By	Date	Subject	Answer Summary
SQ23-001572	Senator David Pocock	25 Oct 2023	Closing-loopholes bill: Emergency services communications operators category	Department explained the consultative process for defining 'emergency services communications operators'.
SQ23- 001203	Senator Michaelia Cash	25 Oct 2023	Departments awareness of the measures for the Omnibus bill	Department outlined policy development process undertaken.
SQ23-000657	Senator Matt O'Sullivan	30 May 2023	Employer groups at roundtable	Answers refers to the consultation changes to the Road Transport Industry and Fair Work amendments.
SQ23-000649	Senator Michaelia Cash	30 May 2023	How many people are currently working on same job, same pay in the department?	Discusses staff allocation including the consultation branch, and the work of the consultation branch.
SQ23-000645	Senator Fatima Payman	30 May 2023	2nd tranches of consultations	Department provided a list of the consultations including the organisations and frequency of meetings
SQ23-000664	Senator Michaelia Cash	30 May 2023	Minister's input on the workplace relations reform proposals	Department provided the drafts of the consultation papers that had been provided to the Minister's Office ahead of publishing on 13 April 2023.
SQ23-000180	Senator Michaelia Cash	15 Feb 2023	Letter and list of Stakeholders in relation to First Tranche IR Legislation	Department provided the letter sent and list of letter recipients.
SQ23-000179	Senator Michaelia Cash	15 Feb 2023	Consultation Feedback on IR Legislation Tranche	Department outlined who provided written and verbal feedback in relation to the department's consultation process.

Departmental-led Consultations

The table below provides the approximate data on departmental-led consultations undertaken on proposed measures contained in the original Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 – from February 2023 to 13 December 2023.

Note: this is the most accurate count of departmental-led consultations available. In addition to the below, the department and Minister's office may have engaged in other consultations.

Number	Organisation	Date	Total
1	Academics (group) **3 April 2023** s. 22(1)(a)(ii) **4 May 2023** s. 22(1)(a)(ii)	3 April 2023 4 May 2023	2
2	Attorney-General's Department	1 May 2023 2 June 2023	2
3	Australian Chamber of Commerce and Industry	8 February 2023 (NWRCC) 29 March 2023 5 April 2023 2 May 2023 5 May 2023 15 May 2023 8 June 2023 (NWRCC) 14 June 2023 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	10
4	Australian Capital Territory • Chief Minister, Treasury and Economic Development Directorate	31 March 2023 4 April 2023 (labour hire) 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	12
5	Australian Council of Trade Unions	8 February 2023 (NWRCC) 4 April 2023 19 April 2023 26 April 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	7

Number	Organisation	Date	Total
6	Aesthetic Beauty Industry Council	19 May 2023	1
7	Australian Business Lawyers & Advisors (to advise ACCI)	16-17 August 2023 (CoIL)	1
8	Australian Human Resources Institute	15 September 2023	1
9	Australian Industry Group	8 February 2023 (NWRCC) 29 March 2023 5 April 2023 2 May 2023 3 May 2023 4 May 2023 5 May 2023 15 May 2023 18 May 2023 x 2 23 May 2023 8 June 2023 (NWRCC) 14 June 2023 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	15
10	Australian Manufacturing Workers' Union (participation via the ACTU)	16-17 August 2023 (CoIL)	1
11	Australian Nurses and Midwifery Federation	8 June 2023 (NWRCC)	1
12	Amazon	3 May 2023 10 May 2023	2
13	Australian Small Business and Family Enterprise Ombudsman	29 March 2023	1
14	Association of Professional Staffing Companies	3 April 2023 28 April 2023 8 May 2023 27 June 2023 2 November 2023	5
15	Australia Wide	8 May 2023	1
16	Australian Constructors Association	16 June 2023 (Stakeholder Meeting)	1
17	Australian Convenience and Petroleum Marketers Association	15 May 2023	1
18	Australian Hairdressing Council	23 May 2023	1
19	Australian Livestock and Rural Transporters Association	15 May 2023 23 May 2023	2
20	Australian Resources and Energy Employer Association	8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	3
21	Australian Restructuring Insolvency and Turnaround Association	5 April 2023 15 May 2023	2
22	Australian Retailers Association	6 April 2023 19 April 2023 10 May 2023	3
23	Australian Road Transport and Industrial Organisation	16 June 2023 (Stakeholder Meeting)	1
24	Australian Trucking Association	4 May 2023 23 May 2023 8 August 2023	3

Number	Organisation	Date	Total
25	Basic Rights Queensland	17 May 2023	1
26	Bunnings	26 October 2023	1
27	Business Council of Australia	8 February 2023 (NWRCC) 29 March 2023 5 April 2023 2 May 2023 5 May 2023 10 May 2023 11 May 2023 15 May 2023 18 May 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL) 26 October 2023	13
28	BHP Group Limited	27 April 2023 16 May 2023 13 July 2023	3
29	Children and Young People with Disability Australia	8 May 2023	1
30	Cleaning Accountability Framework	20 April 2023 (labour hire)	1
31	Clubs Australia	6 April 2023 12 May 2023	2
32	Coles Group	31 March 2023 26 October 2023	2
33	Commonwealth Technical Advisory Group (labour hire)	30 March 2023	1
34	Community and Public Sector Union (participation via the ACTU)	16 June 2023 (Stakeholder Meeting)	1
35	Construction, Forestry, Mining and Energy Union (participation via the ACTU)	16-17 August 2023 (CoIL)	1
36	Cornerstone Group	3 April 2023 8 May 2023 2 November 2023	3
37	Corrs Chambers Westgarth	27 April 2023	1
38	Council of Small Business Organisations Australia	8 February 2023 (NWRCC) 29 March 2023 5 April 2023 2 May 2023 5 May 2023 15 May 2023 18 May 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	10
39	Direct Selling Australia	17 February 2023 23 May 2023	2
40	Disability Advocacy Network Australia	8 May 2023 17 May 2023 (roundtable)	2

Number	Organisation	Date	Total
41	Doordash	27 April 2023 3 May 2023 14 August 2023	3
42	Down Syndrome Victoria	8 May 2023	1
43	DP World	2 May 2023 9 May 2023	2
44	Electrical Trades Union (note: 16 June, 16-17 August participation was via ACTU)	16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	2
45	Endeavour Group	26 October 2023	1
46	Equality Australia	12 May 2023 17 May 2022	2
47	Expert Advisory Group (labour hire) (except for AUSVEG and unions)*	6 April 2023 (labour hire)	1
48	FCB Group	10 May 2023	1
49	Federation of Ethnic Communities Councils of Australia	17 May 2023	1
50	HireUp	17 March 2023	1
51	Housing Industry Association	6 April 2023 11 May 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16 August 2023 (CoIL)	5
52	Health Services Union (participation via the ACTU)	16-17 August 2023 (CoIL)	1
53	JustEqual	17 May 2023	1
54	Kmart	31 March 2023 12 April 2023 19 May 2023 24 May 2023 26 October 2023	5
55	Law Council of Australia	5 April 2023	1
56	Mable	14 August 2023	1
57	Master Builders Australia Association	27 March 2023 12 May 2023 8 June 2023 (NWRCC) 16-17 August 2023 (CoIL)	4
58	McDonald's Australia	26 July 2023 26 October 2023	2
59	Menulog	8 February 2023 3 May 2023 14 August 2023 28 August 2023	4
60	Migrant Justice Institute	19 May 2023	1

Number	Organisation	Date	Total
61	Minerals Council Australia	8 February 2023 (NWRCC) 28 March 2023 20 April 2023 (labour hire) 27 April 2023 10 May 2023 18 May 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	9
62	Mining and Energy Union (note: 16 June, 16-17 August participation was via ACTU)	16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	2
63	Mitsubishi Development	27 April 2023	1
64	National Women's Alliance - National Women's Safety Alliance - Harmony Alliance - National Rural Women's Coalition - Equality Rights Alliance Office for Women observed	4 April 2023	1
65	Newcrest Mining Limited	27 April 2023	1
66	National Farmers' Federation	8 February 2023 (NWRCC) 28 March 2023 10 May 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	6
67	New South Wales • Department of Premier and Cabinet (Industrial Relations New South Wales) • SafeWork NSW	31 March 2023 4 April 2023 (labour hire) 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	12
68	NSW State Insurance Regulatory Authority (SIRA)	19 September 2023	1

Number	Organisation	Date	Total
69	Northern Territory: • Office of the Commissioner for Public Employment • NT WorkSafe	31 March 2023 4 May 2023 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	10
70	Northern Territory Working Women's Centre	17 May 2023	1
71	People with Disability Australia	8 May 2023	1
72	PeopleIN	31 March 2023 13 April 2023 (labour hire) 11 May 2023	3
73	Pharmacy Guild (note: 16 June, 16-17 August participation was via COSBOA)	3 April 2023 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	3
74	Professor s. 22(1)(a)(ii) University of Technology Sydney	28 June 2023	1
75	Qantas	3 April 2023 20 April 2023 14 June 2023 14 August 2023	4
76	Queensland: • Office of Industrial Relations	9 February 2023 31 March 2023 4 April 2023 (labour hire) 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	13
77	Queensland Working Women's Centre	17 May 2023	1
78	Recruitment, Consulting and Staffing Association	6 April 2023 24 April 2023 (labour hire) 9 May 2023 14 June 2023	4
79	RGF Staffing	18 May 2023	1
80	Rideshare Drivers Association	11 May 2023	1

Number	Organisation	Date	Total
81	Rio Tinto	27 April 2023 27 June 2023 15 August 2023	3
82	Shop Distributive and Allied Employees' Association (participation was via ACTU)	8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting)	2
83	Shopping Centre Council of Australia	19 May 2023	1
84	South Australia • SafeWork SA • Attorney-General's Department South Australia	31 March 2023 4 April 2023 (labour hire) 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	12
85	South32	27 April 2023	1
86	Tasmania: • WorkSafe Tasmania	31 March 2023 4 April 2023 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	12
87	Tech Council Australia	19 June 2023	1
88	Tess Hardy (individually)	18 May 2023	1
89	Thiess	17 May 2023	1
90	Transport Workers' Union (note: 16 June, 16-17 August participation was via ACTU)	19 April 2023 16 June 2023 (Stakeholder Meeting) 16-17 August 2023 (CoIL)	3
91	Uber Australia	28 March 2023 3 May 2023 10 May 2023 14 August 2023	4

Number	Organisation	Date	Total
92	United Workers Union	4 April 2023 8 June 2023 (NWRCC) 16 June 2023 (Stakeholder Meeting)	3
93	Victoria: • Department of Premier and Cabinet (Industrial Relations Victoria) • WorkSafe Victoria	27 February 2023 2 March 2023 31 March 2023 4 April 2023 (labour hire) 1 May 2023 4 May 2023 19 May 2023 (labour hire) 5 June 2023 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 21 June 2023 16 August 2023 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	18
94	Victorian Locomotive Division of the Rail, Tram & Bus Union	12 May 2023	1
95	Victorian Transport Association (note 16 June participation via ARTIO)	16 June 2023 (Stakeholder Meeting)	1
96	Virgin Australia	18 May 2023	1
97	Wesfarmers	31 March 2023 12 April 2023 19 May 2023 24 May 2023 26 October 2023	5
98	Western Australia: • Department of Mines, Industry Regulation and Safety	31 March 2023 4 April 2023 (labour hire) 4 May 2023 19 May 2023 (labour hire) 6 June 2023 (WR-SOM) 8 June 2023 (WR-MoM) 18 August 2023 (WR-SOM) 19 October 2023 (WHS-SOM) 27 October 2023 (WHS-MOM) 4 December 2023 (WHS-SOM) 5 December 2023 (WR-SOM) 13 December 2023 (WR-WHS-MoM)	12
99	WEstJustice	15 May 2023	1

Number	Organisation	Date	Total
100	Woolworths	3 April 2023 26 April 2023 10 May 2023 25 May 2023 26 October 2023	5

*Expert Advisory Group:

Employer groups

- Australian Chamber of Commerce and Industry
- Australian Industry Group
- Business Council of Australia
- Council of Small Business Organisations Australia

Peak industry bodies

- National Farmers' Federation
- AUSVEG
- Recruitment, Consulting and Staffing Association

Unions

- Australian Council of Trade Unions
- Australasian Meat Industry Employees' Union
- Australian Workers' Union
- United Workers Union

Civil society organisations

- Uniting Church in Australia
- Australian Catholic Migrant and Refugee Office

Measures consulted on in the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (as introduced to Parliament on 4 September 2023)

1. Meaning of 'employee' and 'employer' in the *Fair Work Act 2009*.
2. Extend the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers.
3. Given workers the right to challenge unfair contractual terms.
4. Allow the Fair Work Commission to set minimum standards to ensure the road transport industry is safe, sustainable and viable.
5. Regulated labour hire arrangement orders.
6. Stand up for casual workers.
7. Compliance and enforcement: Criminalising wage theft, civil penalties and sham contracting.
8. Strengthening rights of entry to investigate underpayments.
9. Addressing anomalous consequences of the small business redundancy example in insolvency contexts.
10. Amendments to the *Asbestos Safety and Eradication Agency Act 2013*.
11. Presumptive provisions for first responders in the *Safety, Rehabilitation and Compensation Act 1988*.
12. Industrial manslaughter and other work, health and safety reforms.
13. Provide stronger protections against discrimination, adverse action and harassment.
14. Enhancing delegates' rights.
15. Fair Work Commission preparing enterprise agreement model terms.
16. Transitioning from multi-enterprise agreements.
17. Enabling multiple franchisees to access the single-enterprise stream.
18. Repeal de-merger from registered organisations amalgamation provisions.
19. A single national framework for labour hire regulation, which could be implemented in place of existing state and territory schemes.

Latest IR changes create less productive and more rigid and complex workplaces

AiGroup

Feb 08, 2024

"The latest round of industrial relations changes passed by the senate today are a further handbrake on productivity that will add more complexity, conflict and rigidity to our workplaces and increase job insecurity for many Australians," Innes Willox, Chief Executive of the national employer association Ai Group said today.

"In an economy facing persistent inflation, rising unemployment, record business closures, rising costs and global uncertainty, these laws are the last thing we need to navigate uncertain times.

"In many cases, what has been proposed are solutions for problems that do not exist.

"Together with other business groups, we have worked hard over the past nine months to wind back some of the original excesses proposed by unions, the Government and other political players.

"We recognise the efforts of many of the cross-bench MPs in both the Senate and the House of Representatives to act on industry concerns and push back against proposals that were simply unworkable, unnecessarily restrictive or would be egregiously damaging to both employers and employees.

"In this regard, the efforts of senators David Pocock and Jacqui Lambie, who both sat on the Senate committee examining the Government's original proposals, should be particularly recognised.

"There has been some success in winding back the worst elements of initial proposals in some key areas, including plans to much more heavily restrict casual employment, to provide wider powers to unions to enter workplaces, and to provide an even heavier handed approach to the regulation of the dynamic gig sector.

"That said, what has been passed by Parliament remains in various respects problematic and deeply concerning for Australia's future economic vitality. The amendments secured by the cross-bench are important but can't overcome the fundamental deficiencies in legislation that has been crafted with far too little care for the damage and difficulty that it will cause to Australian Industry.

"Costs and regulation of employment will increase, certainty of long-term employment for many Australians, including our young and most vulnerable, will decrease and tremendous uncertainty has been created by handing over interpretations of hundreds of pages of new regulations to the Fair Work Commission and the courts.

"Not a single additional job will be created by the workplace relations changes. They will not make workplaces more harmonious, give workers more job security, sustainably put extra money in workers' pockets, make businesses more secure and productive or in any way support workplace innovation or skills development. Instead, they will undermine these objectives.

"Looking to the future, certainty around contracting arrangements and casual employment have been upended.

"The so called 'right to disconnect' laws are impractical and will simply add unwarranted conflict and uncertainty into our workplaces. There are already provisions in the *Fair Work Act* and awards that regulate the extent to which employees can be unreasonably required to work outside normal hours. These changes were unfortunately added into the mix at the last moment, without being properly thought through, with a view to securing the Greens' support for the passage of the rest of the legislation.

"It is also difficult to properly convey the alarm that will be felt in industry over the adoption of the Greens' unfair proposal to changes to the rules around resolution of 'intractable bargaining disputes' to essentially prohibit the Fair Work Commission from resolving a bargaining dispute by deciding that a term in an agreement should be changed in a way that is less beneficial than the current provision. The problem isn't just that the changes will render proceedings before the Commission unfair, they will colour the way bargaining unfolds in practice. There will be little incentive for unions to genuinely compromise with employers when the system is so skewed in their favour.

"The Government's all too eager adoption of the Greens' changes to bargaining is a critical mistake that will undermine the efficacy of our bargaining system for years to come. Ultimately, far too many businesses will now simply give up on trying to obtain any form of productivity improvement through enterprise bargaining in the future. In many sectors it will mean employers will be stuck with unworkable agreement terms negotiated in very different times. They will have no ability to modernise their agreement to reflect changed working arrangements given they will be held hostage to obtaining union agreement to improvements and with no incentive for unions to be reasonable. The changes are a big step backwards.

"The changes permitting the Fair Work Commission to set minimum rates of pay for contractors in the road transport industry obviously amount to the implementation of TWU demands to resurrect the widely condemned Road Safety Remuneration Tribunal, albeit with a different name. That body had to be urgently abolished after it set minimum rates for owner drivers that were so high it was set to destroy their livelihoods by pricing them out of work overnight. Sadly, there is a predictable risk that we will see a repeat of such a devastating mistake.

"More broadly, regulations only tabled in Parliament today giving the Fair Work Commission – a body that has only ever regulated employment conditions – sweeping powers to intervene in complex commercial arrangements between road

transport businesses and the broader supply chain is a risky regulatory experiment that has the potential to impact virtually every part of the economy. It is frankly outrageous that such a dramatic measure was introduced at the last minute and without any genuine attempt to permit it to be subject to proper scrutiny by industry.

"What also needs to be appreciated is the cumulative impact of the broad array of avenues that the Government has now created through this legislation and earlier tranches for unions to drag employers into what will be costly and time consuming Fair Work Commission proceedings in order to argue over matters that parties should be encouraged to resolve at the workplace level.

"The changes to be introduced through this legislation are, overall, neither desirable nor necessary. They incorporate further radical reregulation of the workplace relations system. There is nothing modest about them, as union leaders have claimed. Instead, they further deliver on a long-held wish list of unions who are increasingly out of touch with the dynamics of a modern economy and the needs of an evolving workforce.

"We will now work with employers and the relevant authorities over the coming months to try to minimise the disruption and uncertainty that this legislation will create. Crucially, we will continue to press the Government to remain open to making sensible amendments to the legislation in order to address what we fear will be entirely foreseeable difficulties flowing from its implementation," Mr Willox said.

Media enquiries
Tony Melville – 0419 190 347

Industrial relations changes a blow to Australia's prosperity

Business Council of Australia

08 February 2024

The Government's workplace relations legislation, which has passed the Senate, is anti-business and will impact the prosperity of all Australians by adding costs and complexity for employers and costing jobs, according to the Business Council.

BCA Chief Executive Bran Black said changes secured by the crossbench, the Opposition, the BCA and other employer groups made a bad bill slightly less bad.

"We remain opposed to the Bill as a whole because it adds complexity, cost and red tape at the worst possible time, making it harder to do business and hire staff, and negatively impacting jobs and our economy.

"The Government's anti-business industrial relations policies have united Australia's major employer groups to work together and we will continue to advocate against policies that negatively impact businesses and workers, and which ultimately drive down our prosperity.

"The number one intergenerational challenge we have is our declining competitiveness and productivity, and so it's time we all - government, business, unions and communities - worked together on policies that take us forwards, rather than continue pursuing policies that set us back."

Mr Black said the BCA didn't believe the case for broadscale changes to casual employment had been made, however the significant amendments secured were a less challenging outcome for 2.7 million casual employees and the businesses that employ them than what was originally planned.

"Securing a single conversion for casual employment after 6 months, rather than the duplication that was proposed, and allowing a business to decline permanent employment on fair and reasonable grounds is a less concerning outcome than what was first put on the table."

Mr Black said the last minute addition without consultation of the 'right to disconnect' was disappointing and would present new challenges in the workplace.

"Everyone deserves to be able to switch off at home, though it's really important to get the balance right here given people are now wanting more flexibility and to work different hours in different ways.

"There has to be give and take - some employees value the ability to leave work early or arrive a little later than others with the understanding that they work at other times, so it's about balance.

"As a result of rushing this legislation with no consultation, the Government has made the grave error of criminalising companies, and this just proves the problem of ramming through policy that no one has seen. We expect the Government to correct this error in the House of Representatives."

Mr Black said he was deeply concerned that the Greens' policy on intractable bargaining remained in the legislation because it would cause significant economic damage.

"The changes to intractable bargaining give a green light to unions to shut down businesses and our economy by incentivising them to drag out bargaining without agreement, and even the Victorian Labor Treasurer wanted them changed.

"The clause-by-clause change upends decades of good faith bargaining between unions and businesses where a package of better terms and conditions could be negotiated to deliver shared benefits to both employers and employees and higher living standards for all Australians.

"These changes will fuel inflation and risk taking our country back to the 1970s and 80s, when crippling strike action destroyed business, jobs were lost and the economy ground to a halt."

Mr Black said some union power had been curbed in the amended legislation, but businesses were still concerned.

"The changes that have been secured provide stronger guardrails around union rights to enter business unannounced but we remain concerned this policy will lead to more altercations between employers and unions."

Mr Black said industry agreed on the need for a range of minimum standards for gig workers however the Government's further changes would result in higher costs for consumers.

"The approach taken by the Government is very broad and risks capturing many gig workers, making them employee-like and applying unclear standards that we fear will add unnecessary cost to consumers for the services they enjoy everyday."

Mr Black said the BCA, along with all major employers didn't believe inserting a definition of employment into the Act was necessary.

"This change will make it so much harder for thousands of tradies to be their own boss and that's bad for productivity.

"Even with the new amendment including a high-income exemption and an option for people not to become employees, overall the Government has just made it significantly harder for thousands of tradies and people who just want to be their own boss."

BCA
Business Council of Australia

FOR IMMEDIATE RELEASE

Media release

Opinion article: Radical industrial relations reform an economic risk Australia can't afford

22 January 2024

This opinion article by Business Council Chief Executive Bran Black and The Council of Small Business Organisations Australia Chief Executive Officer Luke Achterstraat was published in The Australian on 22 January 2024.

Bad policy does not discriminate: radical industrial relations reform is a key economic risk in 2024. Whether it is small or big business held back from being productive, the ramifications are felt by all.

There's an economic storm coming for businesses of all sizes this year, which will be made worse by the hand of government.

The government's radical workplace relations agenda will bring self-inflicted damage to our economy at a time when we can least afford it, creating ripple effects for all.

The remaining "Closing Loopholes" legislation, which the government will try to pass next month is going to make offering casual jobs far less appealing for employers, and finding those kinds of jobs far harder for employees.

It's difficult to overstate the importance of casual jobs to our economy, they make up almost a quarter of all jobs. Try telling an events business to function without casuals. Or a seasonally driven business such as a beachside cafe.

Whether you're a small local business trying to work through rostering, or a larger business looking to hire and grow, it's about to get harder, riskier and more expensive to do so.

Meanwhile, more than two million Australians enjoy the flexibility of casual work, including students, carers and parents. For many Australians, their first job is a casual job.

The ability to take home an additional 25 per cent casual loading is highly valued in our current cost-of-living crisis.

While small and bigger businesses will not agree on everything, it is clear that when bad policy is presented, the opposition is unanimous.

Business Council media team
(02) 8224 9214

GPO Box 1472
Melbourne VIC 3001
www.bca.com.au

T 03 8664 2664
F 03 8664 2666
reception@bca.com.au

And when it comes to something as fundamental as the ability to hire workers, it is little surprise that if a policy is bad for small businesses, it is bad for medium and larger businesses too.

Employers of all sizes are in it together to push back on these damaging changes for one reason: we need a strong economy to enable the success of all businesses.

Small businesses are key drivers of innovation in the economy, representing the majority of entrants and exits in the economy each month. In other words, they are the incubators for new ideas and products.

Small businesses are also customers and suppliers to larger businesses, with well-established interdependence.

It is self-evident that we need to foster an environment where small businesses can start, survive and then also thrive. It is just as evident that we need an environment where big business can continue to create jobs while supporting thousands of small and medium-sized businesses.

When a proportion of the 2.5 million small businesses in Australia are pushed to the wall by industrial relations red tape and having to decide whether to shut up shop or cut staff, it hurts the economy, consumers and other businesses.

Conversely, when larger businesses are held back from running productively, from creating jobs and investing more, they reduce their spending and smaller businesses inevitably suffer.

This is already evident from the belt-tightening happening across all parts of our economy. According to the ABS, spending on services (often smaller businesses) has dropped quarter on quarter. In other words, the ability for small business to benefit from larger businesses is undermined.

When major projects don't get off the ground, or close (in the recent case of Alcoa's Kwinana refinery), the knock-on effect hits small businesses that might have supplied those workers with much-needed accommodation, hospitality and food services particularly in regional communities.

Unworkable changes to casuals are just one of many potholes in the Closing Loopholes Bill that will make the road rockier for all businesses.

Anti-productive changes to the trucking industry will push up prices in the supply chain that feed through to Australian firms of all sizes that receive road-transported goods. Radically overhauling the definition of employment, and making it harder to be your own boss, will tie a rope around the 1.1 million self-employed contractors in Australia working as tilers, scaffolders, architects and builders on projects both big and small.

Excessive interference in the gig economy runs the risk of making successful food delivery models unviable, a service relied on by 97 per cent of small hospitality businesses, but also numerous larger firms.

The government's radical workplace relations agenda will make it harder and more expensive to run a business for every enterprise in Australia, small, medium or large. That's going to make our dismal productivity growth worse and the next generation will be left to pay the bill of lower living standards.

Australian businesses of all shapes and sizes are appealing to Workplace Relations Minister Tony Burke as he puts forward this remaining legislation: this policy will leave all Australians worse off.

Business Council media team
(02) 8224 9214

Australia will become the first country to ban engineered stone bench tops. Will others follow?

Ban is the culmination of a years-long campaign, driven by doctors, trade unions and workers involved in its cutting and handling

Benita Kolovos
Thu 14 Dec 2023 18.52 AEDT

When an Australian worker developed a debilitating lung disease in 2015, it didn't take researchers long to connect it to engineered stone bench tops – a popular feature in kitchens and bathrooms.

A years-long campaign, driven by doctors, trade unions and workers, was launched to ban the artificial material as silicosis cases rose among those involved in its cutting and handling.
This week, that campaign culminated in Australia becoming the first country to announce a complete ban on engineered stone, to begin next year.

Health experts, trade unions and governments from California and London are taking note.

The Australian Council of Trade Unions' assistant secretary, Liam O'Brien, said Australia appeared to have learned its lesson from asbestos, which took decades to ban.

"Australia's got a pretty horrible legacy with asbestos, so I think we know very well what happens if you don't take action early," he said, noting the county continues to have one highest death rates from mesothelioma and other asbestos-related illnesses.

O'Brien has now turned his attention to the United States, where he is working with his counterparts the American Federation of Labor as further research emerges about the health risks of engineered stone.

"Australia has this fascination with the product, that really no one else in the world has, but [its] market share is growing in North America," he said.

"There are about 10,000 stonemasons in Australia and 100,000 in the US, so I suspect there is a sizeable proportion that are working with this product – and they most likely have worse controls."

The largest US study on the material, released in July, found silicosis has claimed the lives of several stonemasons, predominantly young Latino men in California, since the first case was detected in Texas in 2015.

Between 2010 and 2018, fewer than five cases were reported each year in California. In 2022, there were more than 20 cases.

It has led to the state's workplace safety regulator to draft emergency protections, while Los Angeles county is considering a ban.
Sheiphali Gandhi, an assistant professor of medicine from the University of California, San Francisco, who co-authored the study, said the research was the "tip of the iceberg" of the issue in the US.

"Our best estimate based off the data in the US and Australia is that probably 15 to 20% of people who work in this field have silicosis or will develop it," she said.

"We've been relying a lot on Australian researchers for advice on how to approach this problem and they say it feels like deja vu."

'Dangerous product': Australian ban on engineered stone to begin next year
Read more

The UK workplace health and safety authority, the Health and Safety Executive (HSE), considers silica dust "the biggest risk to construction workers after asbestos", although rates were largely attributed to sandstone and other materials.

In 2020, the HSE warned that despite a lack of similar cases to those recorded in Australia and elsewhere, "there remains a concern that the use of artificial stone in the UK is very likely to present a potential risk to the health of exposed workers here as well".
An all-party parliamentary group for respiratory health report released in January estimated 600,000 workers in the UK are exposed to silica dust each year.

In New Zealand, a dust disease taskforce was set up in 2019 to combat the disease, with about 190 people having lodged claims for assessment of accelerated silicosis as of September 2023.

Australia's workplace safety watchdog investigated the issue earlier this year and its report, released in October, found stonemasons develop silicosis at a "disproportionate" rate compared to other industries. Most workers who developed the condition were under 35 and face a faster disease progression and higher mortality rate.

The report prompted several businesses, including Australian hardware chain Bunnings and Swedish furniture giant Ikea, to announce plans to phase out the sale of engineered stone products.

Jonathan Walsh, a principal lawyer at Australian law firm Maurice Blackburn which has represented hundreds of stonemasons with silicosis, said engineered stone had "exploded" through the mid-2000s as a cheaper and more durable alternative to marble and granite.

He said he was now particularly concerned about the US, which was about "five years behind Australia's experience of a full-blown epidemic".

Kyle Goodwin, a Maurice Blackburn client, was diagnosed with the most severe form of silicosis in 2018.

Goodwin worked as a stonemason on the Gold Coast, in Queensland, which was going through a construction boom at the time.

"All these new suburbs were popping up, people were buying homes out of a catalogue and engineered stone was a very popular choice because you'd know you'd get a very consistent finish in all the units," the 38-year-old said.

"I reckon we were turning out 10 to 20 kitchens per day in our shed, between five to eight guys [working] at a time."

Goodwin said he didn't know the dust that filled the air in the workshop contained crystalline silica, which has been found to cause the deadly disease.

"The rest of the world can't just shut their eyes and pretend they didn't know that these kitchen bench tops were killing people," Goodwin said.

"They need to act before it's too late."

END OF ARTICLE

Lambie, Pocock hand Labor big win on same job, same pay laws

By Paul Sakkal
December 7, 2023 — 6.57pm

Labour hire workers will be paid more and intentional wage theft will be criminalised after Employment Minister Tony Burke secured a surprise deal with Senate crossbenchers to pass his same job, same pay laws.
Unions hailed the changes while peak business groups and the Coalition labelled it a sneaky deal that would increase business costs and hinder the economy.

Employment Minister Tony Burke (centre) announces his deal with Senate crossbenchers. CREDIT: ALEX ELLINGHAUSEN

Burke clinched the political victory – which split the government's workplace bill in two but allowed its controversial labour hire changes to go through the Senate on the final sitting day of the year – after weeks of talks with independents Jacqui Lambie and David Pocock.

Gig economy and casual worker reforms were not included in the agreement, which was also backed by independent senator Lidia Thorpe and the Greens, and will be voted on next year.

Business groups representing companies including BHP and Qantas, which both use labour hire, spent millions campaigning against the same job, same pay changes, which aim to ensure employers don't undercut enterprise agreements by bringing in auxiliary workers on lower wages.

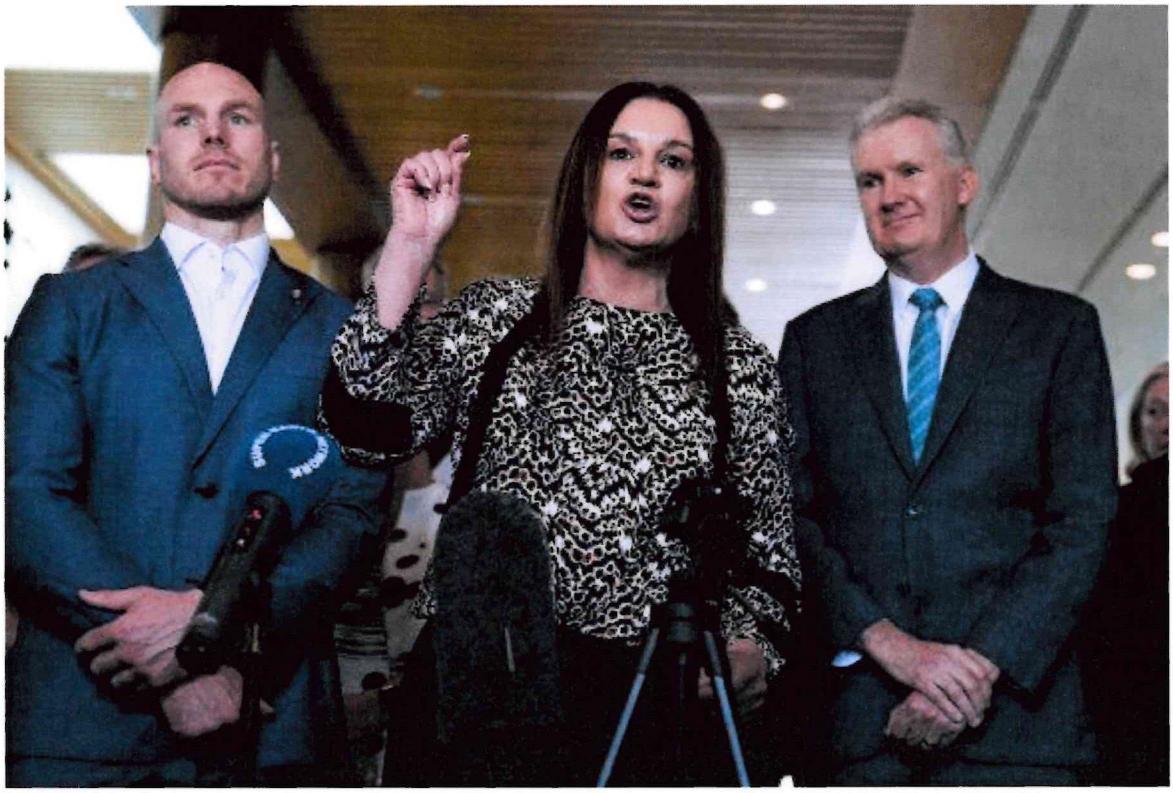
"Today is a really good day for workers' wages and a really good day for workers' safety," Burke said, spruiking a win on a key Labor agenda item after a fortnight in which Labor also won support for environmental, water and National Disability and Insurance Scheme reforms.

"People are being underpaid by the labour hire loophole, that the small minority of employers think it's okay to steal from a worker. Those days are over."

In other changes, employers who deliberately underpay workers could be jailed for up to 10 years or fined $7.8 million, rather than merely being forced to pay back workers. Firms with 15 or fewer employees will be exempt from the new rules.

Greens leader Adam Bandt, who secured the criminalisation of superannuation theft in the bill, said his party would continue to campaign next year for a so-called right to disconnect from work emails and calls after-hours

Other parts of the deal with Lambie and Pocock included criminalising industrial manslaughter; a review of the national authority for work safety and workers' compensation Comcare; and boosting support for first responders with post-traumatic stress disorder.



Senators Jacqui Lambie and David Pocock with Burke on Thursday. CREDIT: ALEX ELLINGHAUSEN

Pocock, who along with Lambie initially wanted to push the labour hire changes into next year, said the deal proved parliament could work collaboratively.

"This is democracy working," he said. "Being able to deliver for workers and first responders now [on] things that have consensus. And we've both committed to working in good faith on the rest of the bill."

Pocock and Lambie said the labour hire overhaul would stop companies using the practice to pay workers less and boost profits.

"I've had enough of having 12 different lots of payments for hosties out there when I get on a plane, knowing that they're not getting paid the money that they should be paid," Lambie said.

"I'm sick and tired of miners doing the same damn job where some [are getting] $30,000 [less] a year."

Opposition industrial relations spokeswoman Michaelia Cash warned the new rules would make businesses more costly to run, which would lead to firms hiking prices.

"They've rushed the bill through on the last day of sitting with no debate," Cash said, arguing the policy was a case of Labor being led astray by trade unions.

Senator Michaelia Cash slammed the deal. CREDIT: JAMES BRICKWOOD.

Australian Council of Trade Unions secretary Sally McManus said "companies that will be crying loudest about these changes are some of Australia's biggest and most profitable", as big business signalled it would fight the remainder of the proposed bill.

Australian Chamber of Commerce and Industry boss Andrew McKellar said: "There is a breach of trust here. This is a dishonourable deal that has been done in the shadow of the Christmas recess."

END OF ARTICLE

ATTACHMENT D

TONY BURKE MP

MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

MINISTER FOR THE ARTS

LEADER OF THE HOUSE

WORKPLACE LOOPHOLES CLOSED

Workers will benefit from better pay, improved job security and stronger workplace rights under new Albanese Government laws passed by Parliament today.

The second part of the Government's Closing Loopholes legislation will:

- End the concept of a forced permanent casual by providing a proper pathway for casuals seeking to convert to more secure permanent work and simplify the process for employers.
- Introduce world-leading minimum standards for gig economy workers such as rideshare drivers and delivery riders.
- Ensure a safe, sustainable and viable trucking industry – including for owner drivers.
- Stop unpaid overtime for workers through a right to disconnect from unreasonable contact out of hours.

Last year we changed the law to criminalise wage theft and stop the underpayment of workers through the use of labour hire.

Now we've closed more of the workplace loopholes that have been undermining wages and worker safety.

The Government will introduce separate legislation later this week to remove any possibility of criminal penalties from the "right to disconnect" element of the legislation. This should have been fixed in the Senate last week – but the Liberals threw a pathetic tantrum to keep criminal penalties in.

The Government is getting wages moving. We've now had two consecutive quarters of real wage growth, and the latest data shows wages growing at 4 per cent – the highest they've been in 15 years.

Peter Dutton wants Australians to work longer and get paid less.

Not content with keeping wages low for a decade in Government, Peter Dutton and the Coalition are still at it.

They've voted against every measure to get wages moving and have now confirmed their workplace relations policy is to "take a targeted package of repeals to the next election".

The Opposition's workplace relations policy is a targeted package:

- Against wage rises
- Against job security
- Against safer workplaces
- Against closing the gender pay gap

Under the Albanese Labor Government there are more people in jobs, they're earning more – and under our tax cut plan they'll keep more of what they earn.

ENDS

MEDIA CONTACT: s. 22(1)(a)(ii)

TONY BURKE MP

MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS

MINISTER FOR THE ARTS

LEADER OF THE HOUSE

WORKPLACE LOOPHOLES TO BE CLOSED

Casual workers will have a clearer pathway to permanent work, while gig workers and truckies will finally benefit from minimum standards under new Albanese Labor Government laws.

A majority of senators have now declared support for the Government's Closing Loopholes 2 legislation.

The new laws will:

- End the concept of a forced permanent casual by providing a proper pathway for casuals seeking to convert to more secure permanent work and simplify the process for employers.
- Introduce world-leading minimum standards for gig economy workers such as rideshare drivers and delivery riders.
- Ensure a safe, sustainable and viable trucking industry – including for owner drivers.

Last year we changed the law to criminalise wage theft and stop the underpayment of workers through the use of labour hire. Now we're poised to close more of the workplace loopholes that have been undermining wages and worker safety.

Under the Albanese Labor Government there are more people in jobs, they're earning more – and under our tax cut plan they'll keep more of what they earn.

We know many Australians are doing it tough right now dealing with the cost of living.

Providing tax relief and getting wages moving again is key to dealing with that.

Wages are now moving again after a wasted decade.

We've now had two consecutive quarters of real wage growth, and the latest data shows wages growing at 4% – the highest they've been in 15 years.

Under the previous government keeping wages low was a deliberate design feature – and they were successful, with wages growth averaging 2.1%.

Not content with keeping wages low for a decade in Government, Peter Dutton and the Coalition are still at it.

Every step of the way Mr Dutton and the Liberals have voted against measures to get wages moving, including the Closing Loopholes legislation.

Peter Dutton wants Australians to get paid less.

We're taking the opposite approach. Wages growth is a deliberate design feature of this Government.

It's why we also twice backed a pay rise for workers on the minimum wage, backed and funded a 15 per cent pay rise for aged care workers and passed Secure Jobs Better Pay laws to introduce a better bargaining system.

The Government thanks the Senate crossbenchers for their constructive engagement.

Following consultation with the crossbench, the Government has agreed to a range of changes, like:

- Stopping unpaid overtime for workers through a right to disconnect from unreasonable contact out of hours.
- Changes to the casual provisions to streamline and simplify the process for employers, including a single pathway for casual conversion.
- Requiring the establishment of a majority owner drivers sub-committee to advice the Fair Work Commission on road transport minimum standards.

ENDS

MEDIA CONTACT: s. 22(1)(a)(ii)

Transcript :7 December 2023

Press conference, Parliament House

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

E&OE TRANSCRIPT

Subjects: Support for Closing Loopholes in the Senate, preventative detention.

TONY BURKE, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS, MINISTER FOR THE ARTS, LEADER OF THE HOUSE: Thanks very much everybody. Today, I'm really pleased to be standing here with Jacqui Lambie, David Pocock, with a whole lot of first responders, with Kay Catanzariti who has been fighting for industrial manslaughter for years ever since her son Ben was lost in a workplace. Pleased also that Anne Urquhart and Tony Sheldon, who have been fighting on these issues for years, are all here.

Today is a really good day for workers' wages and a really good day for workers' safety. You'd all be aware for a long time, there's been discussions between myself, Senator Lambie and Senator Pocock, trying to find a way through on the fact that the legislation that I introduced earlier this year, contained a very large number of provisions. But also wanting to make sure we could get as much done this year as possible. I'm really pleased to say the goodwill, and the good intentions from all of us, have come together today, for me to announce that there is an option available to Australia's Senate to get a whole lot done today.

All four of the measures that were in my Bill, that were part of the Private Members' Bills that Senators Lambie and Pocock moved, all of that can be done today. Criminalising industrial manslaughter can be done today. Reforms to Comcare can be made today. Making wage theft a crime can be done today. And closing the labour hire loophole – you've seen the ads, same job same pay, can be done today. All of that is possible.

The Green party are having their own processes right now, and so it's for them to make their own announcement. I can also add that Senator Thorpe has been consulting constructively with me the whole way through this, and has also authorised me to say that she will be supporting all of these measures.

In the Senate today, the Closing Loopholes Bill will be divided into Closing Loopholes and Closing Loopholes 2. The remaining measures will be dealt with at the time that had already been announced, at the first possible

opportunity next year. And I have to say – I am even more optimistic about those remaining provisions, because of the goodwill that we're showing today, and the goodwill and good intentions of the crossbench.

I have no doubt that the Opposition will do what they've always done. When it involves improved wages, they've tended to vote "No". When it involves acting on wage theft, they've always voted "No". But this government wants two things, and we can advance them today. Today, we can advance safer workplaces for Australians. Today, we can do what we need to do to make sure that a whole lot of people who are being underpaid, have the Parliament of Australia decide that it's time for them to get a pay rise. All of that can be done today.

I want to once again thank Senator Lambie and Senator Pocock for all the goodwill that has led to this. This is a great outcome for working Australians. I'll invite each of them to speak, and then I will also invite Jim Arneman, a paramedic to speak and then Kay Catanzariti, who, as I say, has been fighting for industrial manslaughter to be a crime for so long to be able to say a few words.

But in short. People are being underpaid by the labour hire loophole, that the small minority of employers think it's okay to steal from a worker, those days are over, and it can end in Australia's parliament today.

SENATOR JACQUI LAMBIE: Thank you, I won't take much long, much time because these first responders I know, certainly want to speak. There are about eight or nine parts to what's going on this morning. I want to thank, first of all I want to I do want to thank the Liberal National Party for being really constructive with myself and David Pocock for the first four that we tried to give up. I know that now that thanks to Tony that we have put the manslaughter charges in there and I think that's a great result. Just out to keep workers out there safer.

I also want to thank the Government for finally doing checking this in here and saying, you know, this is where we can have a very big review on Comcare, which I know is very significant out there. Not just the first responders, but public servants and also veterans, it has been a very big problem. It still leaves a very bad taste in my mouth. I had to deal with Comcare and DVA at the same time, and it was bloody God awful. We have finally got there. And finally, Comcare will now be under review, it will have an independent review. I also thank the Government, for allowing me to put some names up to sit on that review, people that are actually experts in this area, probably the top six in Australia, will do this review. And I'm very, very grateful for that.

So, to not take any more time off the first responders, but I do want to say this. There is a ripple effect when you have PTSD. It's not just that you are told no, you do not have PTSD. And you're wondering what is wrong with you. It is the impact it has on your family. And it is God awful. So, to do so to removes that impact, when you have PTSD, which is bad enough to deal with that, you don't have to go out there and prove that because of your job. You're in the state that you're in, I tell you what would have to be the biggest relief off the shoulders today. So thank you to the Government and also to the LNP on those matters, thank you.

SENATOR DAVID POCOCK: I'd like to thank Senator Lambie for her support of the four measures and for the Senate for their support on really pushing this, and to Minister Burke and the Government for putting together this package. This is a great result for first responders, and it's on the back of years and years of advocacy. I want to thank Senator Urquhart for the work that she's done in this area. And to our first responders, thank you for what you do, we need to value you more. We need to look after you and your families, and this is a step in the right direction.

Really importantly, with the PTSD provisions that will now be expanded to Border Force, there'll be a look at independent medical examinations and as Senator Lambie said really importantly, a review looking into Comcare and how that is treating and dealing with our first responders. But on that note, I'll pass over to Jim.

JIM ARNEMAN: Hi everybody. These provisions for me, showing the Australian Parliament working at its best. You know, we've finally had people listen to the pain that some of our colleagues have gone through for a long, long time.

I want to thank Minister, I want to thank David, I want to thank Jacqui, and particularly Anne. We had an inquiry into from the mental health and wellbeing of first responders. I think it was 2018 which was instigated by a colleague of ours, Simone Haigh, paramedic in Tasmania, after the suicide of a very dear friend of hers, a paramedic down there. And that was really what started this ball rolling. And it's been a long, long journey. But we've arrived and that's a great place for us to be.

My wife is a paramedic. Unfortunately, she was involved in an incident with a patient with a knife in the back of an ambulance about five years ago. If this legislation had had been in place at that time, she wouldn't have had to go through the journey she did with Comcare. She wouldn't have had to go through the independent medical examinations that actually worsened her condition. She wouldn't have had to go through the situation where she's not going to return as a paramedic. And she was a bloody great paramedic. She

was compassionate. She was caring. She looked after a colleague, she looked after her patients. And she's not Robinson Crusoe, you know, I acknowledge AFP colleagues that are here today. Lots of police, people in that same space, lots of volunteers in the first responders section in that same space, lots of paramedics in different jurisdictions across the country in that same space.

So do not underestimate the importance of this reform. It will save lives. We had a press conference here a month or so back that I was involved with, and I asked the question on that day. Who cares for the carers? I think we've seen the answer to that today. These guys are caring for the carers. And that's a wonderful outcome. Thank you.

KAY CATANZARITI: I believe there's some legislation is made through the blood of the workers who never came home.

Sorry.

And all of the tears of the families.

This legislation will make a difference. A big difference. It needs to be upheld. And used to the full extent, across all jurisdictions. We all have to work together. Because we're all Australians, doesn't matter what jurisdiction you get killed in. We have a right to come home.

And to all the affected families and advocates. This is just one part of the puzzle. We've got the framework now. Now we have to fill it in with all the other pieces. So we can make sure that no other worker goes to work and doesn't come home or isn't seriously injured.

Also, I have to express my gratitude to first responders. When Ben got killed, after the 39-metre concrete boom collapsed and crushed his skull. They have to go to that. They spent time with me afterwards and took me through step by step. They didn't have to, but they did because they're human beings with a kind heart. They chose this profession.

We didn't choose to be here. I don't want to be here. But these people, Jacquie, and David, and Minister Burke, this is their job, because we pay them. And they have listened.

Thankfully, after the 2018 inquiry that we got, and also in a timely manner since I've spoken to Minister Burke. And hopefully some families this Christmas, you can put a smile on your face. Thank you.

JOURNALIST: Could I please ask Senator Lambie and Senator Pocock about Closing Loopholes 2.0. And why did you feel that the gig economy changes and the casual changes should wait until next year? And do you agree with Minister Burke's rosy assessment now that it's all the more likely that that will pass in the new year?

POCOCK: We've been saying all along that there's consensus over a number of issues. So you had the four private senators bills. I think there's still work to do on casuals and gig. Clearly, some of the gig reforms are incredibly important. And there is consensus over some of them. But they also go across the economy, across the care sector, and I think it's working through those details.

And for me, this is democracy working, this is the Parliament working, and being able to deliver for workers and first responders, now, things that have consensus. And we've both committed to working in good faith on the rest of the bill, you know committee process kicks off again on 22nd of January, and we'll both be there and going through it.

JOURNALIST: What are those changes. Is it excluding the care economy from the gig economy changes or what is it?

LAMBIE: Okay, mate, we've got limited staff, we're trying to do the right thing here. This is the problem that we have. What we do is we tell Australians, they we'll put everything under the microscope that is our job. We don't take money from big business and unions, okay, we look at everything as it is. And that is our job to do that.

But what I will tell you about the labour hire is I've had a gut full of these big companies, not paying people what they deserve. I've had enough of having 12 different lots of payments for hosties out there when I get on a plane, knowing that they're not getting paid the money that they should be paid. And they're trying to get through to put bread and milk on their table. I'm sick and tired of miners doing the same damn job where if some of them less than $30,000 a year doing the same job. Enough is enough. And they've got massive profits, these bloody little buggers, and they're not doing the right thing. Well, now you're going to be made to do the right thing. That's what you're going to be made to do from here on in from today.

As for the rest of it, we have limited time. We have about six weeks. I know that certainly our staff will not get much leave over the Christmas period, because we are right back into it, it is a massive bill. So we have tried to work with the Government where we can to get as much through that we believe is the right thing to do before Christmas, and make sure those people, especially our hosties out there that flies around and bring us their coffee on airplanes,

you will now get a bloody decent pay for you and your kids. And that is more important to me than anything right now. So that's what needs to be done. And it's time the big boys were told you will start paying, you've got massive profits start paying.

JOURNALIST: What do you think of the class action against McDonald's 5000 current and former employees over unpaid wages is going to get off here. And what does it say about wages?

BURKE: Not every case of underpayment will qualify as wage theft. I don't want to pretend that it will, the wage theft criminal penalty is about where it is intentional.

For example, the 7-Eleven examples would have been clearly caught by that. I don't want to give a judgement of a particular case that's out there. But can I say, for companies like McDonald's, I used to be an organiser looking after some of those kids. Before I was an organiser, looking after some of the kids who work in that place, I was one of them myself. For many people, that is the first experience of work they have, and there is an obligation on every fast-food company in particular, to make clear that it's on you to make sure you are paying people properly. It's an obligation, it's not an option, whether people are caught specifically by the wage theft provision or not.

Can I say this sends an almighty message around workplaces around the country. In particular, some of these big companies that employ very young people to say, you have an obligation to pay people properly. As this amount has got bigger and bigger, in the class action and the action being taken by the SDA. Can I just add, that behind every one of those stories is not simply an amount of money that someone's been underpaid, but a first experience of work. That is appalling. That is not about your rights being respected.

And I want the message from wage theft becoming a crime, to ricochet everywhere that, just pay people properly. If you're not sure how to do it, the Fair Work Ombudsman, as a result in particular of advocacy from Senator Lambie and Senator Pocock is going to be given additional resources to be able to help small business with that.

But for heaven's sake, just pay people properly. It's always been a crime for the worker to steal from the till. Now, it'll be a crime for the employer to steal from the worker.

JOURNALIST: Sorry Senator Pocock can I just get you to clarify? So earlier this month when you sent back to those four changes to the Fair Work

legislation? What's additional today? So what else is being done on top of those four?

POCOCK: In terms of those four?

JOURNALIST: Yeah, so that obviously has government support. Is there anything else on top of that that's being announced today?

POCOCK: Same job, same pay? Some clarification around independent medical examiner's what the new elements of it?

JOURNALIST: Yeah, just what the new elements are about.

POCOCK: PTSD will be expanded. If you look at the drafting of that Border Force, telephone operators. There's criminalisation of wage theft, and criminalisation of super non-payment.

LAMBIE: Extra resources for small business.

JOURNALIST: Is it just Border Force?

BURKE: Can I add something about Defence? Because I know, Jacquie's pushed really hard on this. Every time we have improved rights for workers across the board Defence have looked at this really closely, as well. So, while my legislation doesn't reach Defence, they're employed under different acts. I do know that Defence will be looking very closely at we do what we do with PTSD and working out what the appropriate action should be. But when we previously put legislation through Defence have then worked out okay, what is the best way to apply this to their personnel, and I have no doubt they'll be asking the same question when they have a look at what we do today.

JOURNALIST: Sorry, I might go to what Steffi was asking. Are there further amendments being like, obviously splitting the Bill, that's an amendment, but are there further amendments being made to any of these provisions that you're expecting will pass today than what you've already made in the House?

BURKE: There are, for example, what Senator Pocock, just referred to with Border Force, Border Force are not covered in what went through the House of Representatives. They'll be covered by amendments that go through today.

We've got the media release with the full list for you. But there are there are some improvements in safety. Importantly, there are some improvements for small business. So, for example, both Senator Lambie and Senator Pocock have been very determined to make sure that small business are not unfairly caught. So, one of the things that's in the bill is that there will be a small

business code that's already there. But what will be clarified today is the provision can't start until that small business code has been put in place.

So, there's a series of measures like that. There is nothing in the changes that causes workers' rights to go backwards. There is nothing in this where workers are worse off because of amendments that are happening in the Senate. Some things that are happening are clarifications, some things like the areas with respect to Comcare are brand new. But there's there is nothing here where workers rights go backwards.

JOURNALIST: On what you did the other week, I think it's fair to say there was some degree of surprise that the changes you made around service contractors, extended it to joint ventures. Is there any further changes going to happen on the labor hire provisions or not?

BURKE: No. And can I say for that, joint ventures were already arguably covered by the Act previously, and that amendment in the House of Representatives really shouldn't be seen as anything more than a clarification of how people already thought the bill would work. Charles?

JOURNALIST: There was a pretty aggressive campaign against some of the changes that are both being dealt with now, what do you say to the people that ran that campaign?

BURKE: If you've had a choice between spending money on ads, or paying your workers properly, the message is pay your workers. Pay your workers properly. When I introduced the Bill, there's a standard way that people who don't want to engage in the argument tend to go. They ask for delay. They complain about the consultation, or they'll pretend that the issue is something that it's not. We got all three in that business campaign.

At no point did that business campaign, in fact, defend the underpayment of workers through the labor hire loophole. At no point did they actually own up to the issue that this legislation would deal with. I think the message is simple. If something's indefensible, if you're not willing to defend it, it's probably because it's indefensible. To those business organisations that took a different approach, the Australian Hotels Association, AREEA – that has big membership through mining and gas – there are amendments that are in the Bill as a result of them having constructive engagement. For those people who thought it was better just to stand on the sidelines and throw rocks. That was their decision, not something that was asked of them.

JOURNALIST: Minister Burke, just on the preventative detention passing the House.

BURKE: I have to be in the house at 9.

JOURNALIST: The vote was labelled by teals as a perversion of democracy. And they argued there were so many attempts to avoid debate. Why were there so many attempts?

BURKE: The Government took a view that this was urgent to get through the Parliament. We very rarely have used motions like that the question be put and the member be no longer. We've never moved that the member be no longer heard. Questions like, the questions be put, we use much more sparingly than the previous government. That doesn't change the fact that there are times when the Government makes a decision that something's urgent, and we made that decision on this.

I am genuinely the first speaker so I have to respond to the Bill. Thank you very much for coming.

Media Release :7 December 2023

Closing Loopholes

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

The labour hire loophole will be closed, wage theft will finally be made a crime and workers will benefit from safer workplaces under Albanese Labor Government legislation to be voted on today.

The Government has secured the support of Senate crossbenchers Jacqui Lambie and David Pocock to vote for key elements of the Closing Loopholes Bill before Parliament concludes for 2023.

Under this agreement the Senate will vote today to:

- Stop companies underpaying workers through the use of labour hire
- Criminalise intentional wage theft
- Introduce a new criminal offence of industrial manslaughter
- Better support first responders with PTSD
- Better protect workers subjected to family and domestic violence from discrimination at work
- Expand the functions of the Asbestos Safety and Eradication Agency to include silica
- And close the loophole in which large businesses claim small business exemptions during insolvency to avoid redundancy payments

The Government has also agreed with Senator Lambie to boost funding for the small business advisory service within the Fair Work Ombudsman and initiate a comprehensive independent review of the Comcare scheme aimed at improving outcomes for injured workers.

The Government has also agreed with Senators David Pocock and Jacqui Lambie to include new guidelines on independent medical assessments for workers.

Changes that the Government has agreed with Senators Jacqui Lambie and David Pocock today will reverse the onus of proof for first responders with PTSD, ensuring workers are provided appropriate support to recover and rehabilitate. The provisions will cover the Australian Federal Police, ambulance officers, paramedics, emergency services communications operators, firefighters and members of the Australian
Border Force.

Senator Lambie has raised with the Government the relevance of these important protections for the Australian Defence Force. Historically Defence has upgraded its practices and procedures based on developments in the wider workplace relations system. We have every expectation that Defence will look very closely at the new presumption we will put in place for first responders and consider its appropriateness
for Australian defence personnel.

Other important elements of Closing Loopholes – including minimum standards for digital platform gig workers, road transport industry reforms and a better deal for casual workers who want to become permanent – will be considered by the Senate early next year.

The Government is committed to proceeding with every remaining clause of the Bill at the earliest opportunity next year, including the additions that were made through amendments in the House of Representatives.

The Government is also working constructively with the crossbench to deliver an agreed amendment which would provide Australian workers with a right to disconnect from unreasonable contact from their employer outside of work hours.

I want to thank Senators David Pocock and Jacqui Lambie for their constructive engagement during this process. I look forward to continuing to talk with them about next year's legislation.

Boosting and protecting wages is a key part of the Government's plan to help Australians deal with the cost of living.

It will make a material difference in the lives of Australian workers.

It means labour hire workers will no longer be underpaid.

It means it will finally be a criminal offence for an employer to steal from a worker's pay, closing a long-standing loophole that created unfair competition for the vast majority of businesses that do the right thing.

It means that employers will be held properly accountable if their actions lead to the
deaths of workers.

And it means workers will be safer and better supported on the job.

Peter Dutton and the Liberals and Nationals have voted against this legislation every step of the way. They still want to keep wages low and hold workers back.

Under the Albanese Labor Government unemployment is at historic lows, wages are moving again after a decade of stagnation, industrial action has fallen and the gender pay gap is at the lowest level on record.

This legislation is the next step in giving workers a better deal.

Transcript – 31 August 2023

Speech - National Press Club, Closing the Loopholes Bill

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

TONY BURKE MP, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS, MINISTER FOR THE ARTS: Thanks so much, Laura, and thanks to the National Press Club for having me here. I acknowledge the Traditional Owners and Elders and Ancestors and I'm very proud to be here as part of a government that's asking the Australian people to respond to an incredibly generous statement in the Uluru Statement from the Heart with the same level of generosity with a Yes vote only in a few weeks' time.

I want to acknowledge my parliamentary colleague Dave Smith, the Secretary of my Department, Natalie James, and we have a number of representatives from both the trade union movement and from business organisations. Sally McManus and Michele O'Neil, Innes Willox, Andrew McKellar, Tania Constable and Denita Wawn. All people who've been involved at different levels and in different ways in what has been a mammoth consultation task in getting the legislation together. Legislation which I'll be introducing after Question Time on Monday, and it will be called the Closing Loopholes Bill.

Given it's the Press Club, I thought it was reasonable here, of all the different venues, that I could read something from the press. There's an article that was published on the 23rd that I want to draw to your attention. It'll sound familiar. "Australia's largest employer organisations have threatened a fully funded anti-government campaign unless the Minister for Industrial Relations satisfactorily consults with them on proposed changes to the Act. "A meeting of the five big organisations in Melbourne unanimously resolved to fund a campaign unless they were satisfactorily consulted. They were already funding commitments to the campaign and planning had begun. "The meeting was convened by the Australian Chamber of Commerce and Industry, and was attended by the Business Council of Australia, the National Farmers' Federation, and other organisations."

They went on to say, "The legislation is an unfair and unbalanced document which ignores both employer interests and the fundamental issues of labour market reform. It's completely unacceptable to employers and it does nothing

to encourage investment or create jobs. It would in fact cost jobs and reduce investment."

Even though we're at the Press Club, the person who wrote that article's not in the room today. That's because it was Mike Taylor, when he was the writer for The Canberra Times on 23rd of September 1993.

Not much has changed. But when he wrote that, let's also remember what was the big reform that had different groups so alarmed? It was enterprise bargaining. It was the exact reform that, when we were dealing with multi-employer bargaining last year, we were told, "But surely if you want good productivity outcomes, enterprise bargaining is where you should be looking."

There's a whole lot when you deal with reform where there are debates you are automatically in. And, similar to during the election campaign, when the Prime Minister talked about the need to make sure, in the Annual Wage Review, that wages didn't go backwards, we were told by our opponents at the time that that was reckless and dangerous.

When Secure Jobs, Better Pay legislation was introduced to the Parliament last year, we were told it would lead to unemployment. We were told it would lead to strikes. We were told it would fail in getting wages moving. On all of that, the results are now in.

At the exact same time that inflation has been moderating, what's been happening in our workplaces? Wages have gone up. The Wage Price Index at the moment at 3.6 per cent has a "3" in front of it - something that didn't happen under the previous government, where low wage growth was a deliberate design feature of their management.

In fact, not only did it not have a "3" in front of it – the Wage Price Index in the entire history of the index has only had nine quarters where it's been below 2 per cent – and all of those have happened under Coalition governments. In terms of the threats as to what all this would mean for jobs - we had, as a new incoming government, the best new jobs growth of any incoming government. We now have more than half a million jobs that have been created.

But are they secure? 85 per cent of the new jobs created are full-time. 85 per cent. You think of the four different categories that exist when you do the jobs data. Male full-time, male part-time, female full-time, female part-time. 55 per cent of the jobs that have been created are women full-time. The legislation's making a difference. It's making a difference.

But then, what about the threats that, if we put that legislation through, we would have coast-to-coast strikes? The last quarter of the previous

government, how many days were lost to industrial action for the last quarter of the previous government? 128,000. Think about that. 128,000 days lost to industrial action. We've got the figures for the most recent quarter for this government. Not 128,000 - 7,700 days lost to industrial action.

The result of the legislation is exactly what we had argued it would be, and the result of this government's policies are exactly what we are intending them to be.

We want people to be in work, and we want those jobs to be secure.

We want wages to be moving as inflation is coming down.

The work that we've done on the Annual Wage Review, and the work that we did in the Secure Jobs, Better Pay legislation affected every workplace in Australia, and affected it in a variety of ways. Because the other statistic that we don't want to let go of – because it didn't just deal with Secure Jobs, Better Pay, it also dealt with gender equality – the gender pay gap, is now the lowest it has ever been.

You look at all of that and say, "Well, does that mean job's done?" The answer, obviously, is no. That's why we're here. Because, while last year's legislation was about - "How do we reach into all the workplaces and provide outcomes for those who are under the awards system, provide outcomes for those who are on the minimum wage, provide outcomes for those who are already bargaining and provide outcomes for those who want to bargain, but have had trouble getting into bargaining in the system, particularly in feminised industries?" this year's legislation doesn't reach into every workplace.

It deals with the loopholes that undercut wages and conditions and closes those loopholes. Most businesses don't use the loopholes. Most will be unaffected. Although, for many businesses, they have competitors that are unreasonably undercutting them who do use these loopholes.

There's a series of them in the Bill that I introduce next week, but I want to deal with the four major ones today. And, in particular, on the fourth, provide a good level of detail that hasn't been provided until now.

The first of the loopholes goes to wage theft.

Take any shop, for example. The employer and the employee both have access to each other's money. The employee has access to the employer's money through the till. The employer has access to the worker's money through the wages. It is and should be a criminal offence for the worker to be

taking money from the till. But it is not a criminal offence, in most of Australia, for the employer to be taking money from the wages.

That loophole needs to be closed down. Most underpayments are not wage theft. Most underpayments are a mistake. Sometimes, there can be issues of recklessness and things like that. But often, there's just an honest mistake that's been made, and we don't want to catch any of that with the criminal law. But where someone has that same intention that the worker would have when they take money from the till, the criminal law needs to be available there as well. We'll close that loophole in the legislation that I introduce on Monday.

The second one – and I've gone through this in some detail already through a speech I gave at the Sydney Institute – is when someone is forced to be a permanent casual. The concepts of permanent casual are logically either/or. You either have a permanent job as a part-timer or full-timer, or you're a casual. Increasingly, there are many people where the hours that they are working are indistinguishable from the hours that would be rostered for a part-timer or full-time worker, and yet they have difficulty transferring across.

Under common law, the situation - and the previous government legislated around this - it was the case where common law had a definition and said, if you're incorrectly classified, backpay would have to be paid as well.

That always carried the risk of backpay in those situations of discouraging someone from wanting to convert, because they would have a long period of time where they could be accumulating both leave and loading. The legislation that we'll deal with will increase the rights for people to make that conversion. It'll increase their capacity so they can do so after six months.

They won't be able to keep asking every week or anything like that - it'll be every six months they can ask again. The existing system that the government put in place where the employer makes an offer after 12 months will remain. Most casuals won't take this up. Particularly casuals who are students, who are not the person responsible for paying for the main household expenses - things like that. But there will be people who want to be able to convert, who currently are having trouble doing so.

There's a minority of employers that, as a management tool, like to avoid giving people security. It's a minority. It's not many. But for those people, this change will be life changing. They'll be working the same hours they were already working, but they'll be doing them with leave entitlements. They'll be doing them knowing that they have a secure job.

The third of the loopholes is what we refer to as the labour hire loophole.

This arises in industries where you have an enterprise agreement - so if you don't have an enterprise agreement, this is irrelevant for you. But if you have an enterprise agreement in place, the labour hire loophole is where the employer has agreed for particular tasks, particular classifications, that there'll be a particular rate of pay. And then, having agreed to it, having had it registered, says, "But I'm now going to use someone who's technically a different employer," and all those rules instantly disappear, and now we can go right back down to the award again. That's a loophole. It's not what's intended. It's currently legal for the companies that are doing it.

It's frustrating, unreasonable competition for someone who's got a similar enterprise agreement and is not undercutting it in that way. But effectively, all we're saying here is the rates that should be paid are the rates that have been agreed to. It's as simple as that.

That loophole is something that'll be closed in this legislation. It's not to get rid of labour hire. There are lots of appropriate uses for labour hire. At different times that I've been an employer over the years, I've used labour hire. The labour hire workers traditionally, particularly at one point when I was employing people running a bar in Lakemba, was that the temps you'd get in – because we didn't have enough people if we got a big function – were all paid more.

That's how labour hire normally works, and that's fine. But if you have an enterprise agreement and you've agreed to certain minimum rates of pay, labour hire shouldn't be used as a device to undercut what's been registered and agreed to.

The fourth loophole - and it's the one I want to spend most of the detail on today - is what's happened with the gig economy.

To explain this, I'll start with this principle - the gig economy and the platforms that are involved are proud of their role of being disrupters. In their role as being disrupters, they have ended up with products that most of us have on our phones, that most of us like the convenience of, and that a whole lot of people working in the sector like the flexibility that goes with it. So, while there's been some campaigns and some concern - is the government going to try to turn everyone into an employee? The answer's no.

We accept the technology. We accept the method of engagement. But we can't have a situation where we have this growing section of the workforce where they, at the moment, have no minimum standards. The reason they have no minimum standards is this - at the moment, you turn up to the Fair Work Commission, and the Fair Work Commission asks the initial question. "Are you an employee?" If you are an employee, you have a whole series of

rights. If you're not an employee, all of those rights – all of them – fall off a cliff.

What we want to do is turn that cliff into a ramp. So, for people in the gig economy, have a situation where you don't get all the rights that you would have as an employee, but you do have some minimum standards.

I'll never forget during the election debates, there was one - I think it was the one in Perth with Mark Riley chairing it, where each the Prime Minister of the day and Leader of the Opposition of the day got to ask each other a question as part of the debate. Anthony Albanese, as Leader of the Opposition - his question to Scott Morrison as Prime Minister was to say, "Should every Australian worker be paid at least the minimum wage?" Under current law, the Prime Minister of the day couldn't guarantee that, because we've got people doing jobs that we all used to envisage were the sorts of jobs where you'd have minimum standards – and because they technically fall outside the definition of an "employee", they've got none.

So, along this ramp, at the top of the ramp, you've got the rights for employees. Halfway along, gig workers who are employee-like, and down the bottom of the ramp, independent contractor. I want to talk about each of those three levels.

Right at the top of the ramp – most people won't be aware, but effectively, there's no definition of what it is to be an "employee" in the Fair Work Act. So, without that definition being there in any serious detail, what has happened is the courts have gone through a case called Jamsek to a principle that basically says, "If the contract says you're not an employee, then you're not an employee."

Even if every feature that we look at, we say objectively we are talking about an employee here. If the contract says that you're not, then effectively you're not. That's not a common-sense way of making sure we've got standards here in Australia.

We'll be putting a definition in of what it is to be an employee, which will go back more effectively to what the common-law definition had been thought to be before that case. Having established what it is to be an employee, that allows us to have the definition further down the ramp for workers in the gig economy for what it is to be employee-like.

Some good points were made – including from some of the people in this room – about some of the people who we wanted to make sure were not included in this and not regulated in this. Certainly, examples were put forward

of people who get work just through Facebook groups or on WhatsApp groups.

That sort of thing, even though it's digital - is that really gig economy? No, that wasn't what we were trying to capture. Other people have raised examples of, on building sites, do we suddenly want tradies, because they're doing work through Airtasker, to find themselves regulated in this way? No, we don't want that. So, the way we've drafted the legislation is to establish two initial questions, and unless you answer 'Yes' to both, this whole section is irrelevant.

First question - "Are you on a digital platform?"

Second question - "Are you employee-like?"

If the answer is 'Yes' to both, then there's a new jurisdiction for the Fair Work Commission.
So, what is it to be employee-like? There are effectively three things that the Fair Work Commission will look at.

Do you have low bargaining power?

Do you have low levels of control over the work that you do?

And finally, are you being paid low wages in the sense that less than what you would get if you were being employed as an employee?

With those three tests, and the digital concept, you put that together, and people say - OK, while it's a decision for the Commission, realistically, who's in and who's out?

Realistically, the food-delivery apps that you use would be covered, and the workers there would be covered. The rideshare apps that you use would be covered. And the apps that are used in the care economy would be covered. Because they all meet that employee-like test. Obviously, they're all digital platforms, but people getting work through a Facebook or WhatsApp group would not be covered.

People getting work in the way, certainly at the moment that I've seen Airtasker work, I haven't seen anyone using Airtasker who you could possibly satisfy that definition of being employee-like. They would not be covered, because effectively, Airtasker runs like a digital version of the Trading Post. That's effectively how it runs.

The next question - and I'm very grateful to the platforms, some of whom are represented in the room today, for the consultation that we've had. Because part of what they've put to us is said "OK, it's one thing to get that gateway right, but once you've got the gateway, you need to make sure that the rules that the Fair Work Commission brings in place don't effectively turn someone into an employee, even though you've said you want to accept the form of engagement."

How does that work? Think of it in these terms. If the Fair Work Commission – as I reasonably expect it would – came up with a minimum rate of pay for people on various platforms. It probably wouldn't define that as an hourly rate. It may go for a 5-minute or per-minute rate or something like that. Why? Because if you had a minimum hourly rate, you would fundamentally change the form of engagement on a large number of platforms.

Realistically, you'd find the Commission making those decisions on much smaller time periods as to how they worked out what those minimum rates were. But if the Fair Work Commission were to introduce rostering rights - at that moment, you have killed the form of engagement for people who work in the gig economy. Because the moment they're committed to a roster, the whole nature of their engagement would fall over, so rostering rights wouldn't be possible.

Similarly, you've only got to wander past any of the delivery riders who are outside any of your takeaway places in your main streets, or if you're taking a rideshare arrangement yourself, you'll often see the case that someone's got multiple apps running. You couldn't logically pay somebody for the time that they're just on an app, because that would wreck the form of engagement. You couldn't do that. But things like minimum rates of pay, things like terms of payment, time periods, how quickly you have to be paid after a shift. Those sorts of principles would all be able to find their way through decisions of the Fair Work Commission into being minimum standards.

This is a game-changer for what it is to work in the gig economy – because it means you keep all the flexibility that you know, all that flexibility is there, hop onto the app when you want, take shifts when you want.

The apps will still have different surge mechanisms where, at different points of day, where there's higher demand, your rates go up. That will all still be possible.

But we'll no longer have a situation where there is no floor.

We'll no longer have a situation where some of the more reputable apps are being undercut by other apps that emerge on the market that are putting

people into unreasonably poor remuneration and unreasonably unsafe working conditions.

Those changes create the situation for those workers where they go from effectively no guaranteed rights at all to having some.

I know technically at the moment, all of these people who work on the apps are technically small businesses. But let's be realistic here. I know what a small business is. I grew up in a small business family. I've run my own small business over the years.

Someone delivering pizzas on the back of a bike is not running a small business.

They are a worker with very few rights and, depending on their app, they'll get different levels of treatment.

We want them to have some minimum standards.

Because – while we all love the technology – it's got to be possible to have 21st-century technology without having 19th-century working conditions.

That must be something that we can manage as a country.

The next right that'll be available for gig workers - and I hate the term, and I'm now going to say it out loud on television, so that's just life. I remember the first time I dealt with unfair dismissal jurisdictions, and people often used the word "termination", and the word - you know, as language, it's pretty dramatic language.

They managed to go one up in the gig economy, and they call it "deactivation". It's effectively what happens if you're dismissed from a platform. There can be cases here, like with any dismissal, that are completely reasonable. And there can be cases that are unreasonable. But at the moment, you don't have a guarantee of any dispute resolution mechanism for people in those circumstances.

There will be a jurisdiction within the Fair Work Commission for people to be able to effectively make a claim for unfair deactivation if they're bounced off one of the platforms and they believe that there's no merit to that decision. That takes us halfway down the ramp. So, not as many rights as an employee, but certainly more than zero, which is where people are at the moment, and the full flexibility of the technology and the convenience of the technology remains. Down the bottom - independent contractors.

There's a small jurisdiction that will be established in the legislation when I introduce it next week for the Fair Work Commission. In my first term here, John Howard was in his last term as Prime Minister. And, as part of the industrial relations changes - we all remember WorkChoices, but they also talked a lot about the Independent Contractors Act - that they were going to create rights for independent contractors, and this would be a game-changer.

In the life of that legislation – so, it's about 17 years since it was brought in now – it's been used 68 times. And only three occasions, in all of that time, where a court has made a ruling under the Independent Contractors Act.

There's a reason for this. It's not that it created rights that no-one wanted. It's that, to be able to use the Independent Contractors Act, you have to be able to lawyer up and turn up with a legal team to the Federal Court of Australia. Most independent contractors are not in a position to be able to do that. We don't want to have a case where everything would come into the Fair Work Commission. What we will do by regulation is set a threshold, and below that threshold, the Fair Work Commission will be able to deal with cases as a no-cost jurisdiction, effectively, where you don't have to be able to lawyer up to exercise your rights.

Above the threshold, it'll still be as the Independent Contractors Act as it currently operates. This will give independent contractors, for the first time, an affordable way of being able to enforce their rights. But the description of those rights won't change from what was introduced by John Howard when they introduced the Independent Contractors Act. It'll simply be that they'll now be an affordable jurisdiction. I don't know how many people will use it. I reckon it'll be more than three over the course of 17 years. That's the ramp.

The higher you are on the ramp; the highest point is to be an employee. At the lowest point is to be an independent contractor. The employee gets the most rights. The independent contractor gets a right against unfair contracts. But that's it. Halfway along, for gig workers, we establish a set of minimum standards for them.

All of that will be in what I introduce on Monday. I don't pretend for a minute that that will necessarily change the dynamic of the public debate. It will still be the case that, in the public debate, some things - no matter what's in the legislation - will continue to be argued are somehow at risk, and we'll have that debate, and it'll bounce back and forth.

There will still be some articles - unattributed, which I don't think anyone's spotted the irony of this, but there were articles last week of an unattributed person complaining that they wanted all the consultation to be on the record, and to be made publicly. But those sorts of comments all happen, and people

will give whatever off-the-record information they'll want to be able to give, and there'll be an advertising campaign, as there was in 1993, as there was earlier this year. That's all fine. Different organisations will represent their members.

But there are three arguments that are always put when people don't want to argue the merits of an issue.

They will ask for delay.

They will complain about consultation. And they will talk about something that the issue is not.

My simple request in the debate is, for anyone who does want to stop us closing the loopholes - defend them. Because so far, no-one has defended any of the loopholes I've described.

If someone thinks it is reasonable that wage theft is not a crime, argue it.
If someone thinks it is reasonable that someone who can easily be converted to secure work isn't given it, argue it.

If someone believes that gig workers should have a complete race to the bottom and no rights, then argue that.

And if someone believes that the labour hire loophole is fair and having agreed to an enterprise agreement rate you shouldn't have to have that as the minimum standard for people who are working and embedded within your crews, then argue it – and let's have a serious policy debate. Because the serious policy debate is important, and what's happened behind closed doors, I have to say, has been really high-quality discussion. The legislation is different as a result. None of this, of course, will affect what happens in the debate between myself and my counterparts, where the other side of politics are already warming up to say this one is even worse than what Labor did last year.

I'm not quite sure how Senator Cash and Peter Dutton will argue it's worse, given that last year's Bill was going to close down Australia, I'm not sure how you build a crescendo from there. If anyone can, I reckon Peter Dutton and Michaelia Cash will make a good fist of it, and they'll be able to get there.

But all of that drama will be around us, and ultimately, at one level, none of that will matter either. What will matter is how does this legislation change people's lives. Because for the person working in a convenience store, who is worried about whether they might be breaking their visa, or what the laws might be for them, they had no protection that the employer was stealing their

money and yet not committing a criminal offence. They'll now have the protection of the criminal law.

The casual worker who is supporting people, who hasn't had a holiday for years and years and years, will have some rights to be able to convert to more secure work – and that will be life changing.

The labour hire worker, like the guy I met in the Hunter, who took me in his truck, well it was called a truck, but it was more like an apartment block that he drove in. The whole thing shuddered as the coal load landed behind us. He said he has never worked in another industry where casuals are paid less than permanent workers. How do you do that with a loading? Because of a loophole that radically cut the base.

For a gig worker who we have all seen, currently out there, running red lights, going up onto the footpath, down on the road, on the road, creating an extra lane between the parked cars and the traffic, knowing at any moment if a car door opens, instead of riding between the lanes, they'll be lying beneath the traffic, they'll have some minimum standards. They'll have some minimum standards.

Closing these loopholes will change their lives, and that's the debate that starts on Monday.

ENDS

Transcript - Date:31 August 2023

Q&A National Press Club Speech, Closing Loopholes Bill

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

LAURA TINGLE, HOST: Thanks, Minister. You mentioned that this will be the first time we've had a definition of what an employee is. Could I ask – what will that definition be? And given that we haven't had that, are there likely to be flow on consequences or reverse engineering of existing legislation outside this area of focus at the moment?

TONY BURKE MP, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS, MINISTER FOR THE ARTS: Effectively the new definition of an employee will be a legislated version of the old definition of an employee. So, before Jamsek the common law effectively looked at all the elements of the relationship to work out whether there was realisitically an employment relationship going on. I call that sort of test "what's really going on" test. It's a very practical sort of definition. I get why business prefers the simplicity of 'if it's in the contract that's the end of the matter'. I respect the simplicity of that. But we can't have a situation where you can put something in a contract that is objectively not what's going on and have it prevail. The extent it will be gamed will really only be the extent to which the old common law could've been gamed. That test – the employment one – will be very familiar to all the industrial relations practitioners in the way it's drafted.

TINGLE: Phil Coorey has a question.

JOURNALIST: Hi Mr Burke, Phil Coorey from the AFR. Just something – a lot of claims and counterclaims obviously in the lead-up to the release of the legislation. And – being in the fourth estate, we haven't been privy to any of the details or the discussions. Something that's come from the mining sector under labour hire, same job, same pay – the issue of service contractors. So an example, if a mining company brings in service contractors to maintain a big bit of equipment, or do catering or something like that, and the mining company itself doesn't have its own people doing that job, will those people have to be paid at a different rate? Or they're engaged under the rate their own employer has them at?

BURKE: Thanks for that. I'm not announcing all the bits all at once. There's a bit more to come. But if I can put it in these terms, the relationship with AREEA was not good last year, in terms of the engagement. It was all done through newspapers and the media. This time AREEA came to me with their members, and I sat in the little room around the corner from my office in Parliament House and there with a whole range of service contractors who were everything from heavy equipment to repairs, to catering. The case they made was compelling.

Some of them acknowledged that part of their business is labour hire, and completely accepted that part of their business would be caught by what we were doing. But made a very good case that there is a good level of work that is done on site where the service provided is not labour. The service provided is far more specialist than that, and what I introduce will be drafted to take very full account of the points they raised with me.

JOURNALIST: So, they'll be exempt?

TINGLE: David Crowe.

JOURNALIST: Thanks Laura, thanks Mr Burke. David Crowe from the Sydney Morning Herald and the Age in Melbourne. There are many different aspects to the Bill that you'll put next week, but one of them is about casuals. You mentioned the changes you have got in mind there. There are 2.7 million casuals in Australia. So, a lot of people in the community with a great interest in the changes you're going to make. Not of all of them want to be permanent workers, but some would. You mention back pay. And I just want you to clarify the situation there because there was a warning from your department several years ago that the cost to employers if this led to backpay claims would be 18 to 39 billion dollars. So, there's a lot riding on this. Are you closing off any option for those casuals who become permanent to seek backpay, an absolute guarantee there won't be back pay claims?

BURKE: The way we've drafted it is whatever could be owed is offset by the loading paid. If you had some weird occasion where the casual loading that was being paid was something like 5%, you'd offset it to 5%, but in most situations casual loading is at 25%, which would fully offset leave entitlements. Effectively you have a situation where you end up with a worker at any point in time, either getting leave, or getting loading.

JOURNALIST: So they could then claim some of what they are – what they believe they would be owed from the past?

BURKE: You're talking about a situation-- I have invented an example of if the casual, because I'm trying to make sure we don't create a new loophole.

Where an employer, for example, could put through a new agreement with a really low casual loading, that did not in fact offset the leave entitlements. So, similar to what the previous government put in place, we're not interfering with that concept at all. The concept of there being some big liability coming to business, no. We have ruled it out.

TINGLE: Rhiannon Down.

JOURNALIST: Hello. Rhiannon Down from The Australian. Thank you for your speech. Business groups have scheduled a press conference directly after your speech, it's likely they'll say the changes will increase complexity, cost jobs, and that the first and second waves are all one way of benefitting workers and unions. But how do these changes actually benefit employers rather than just deliver on a union wish list? And can you guarantee these reforms – especially in the gig economy – won't just jack up the prices for consumers?

BURKE: OK, there's a lot in that. Let me work through it. First of all, what you say about increased complexity – I don't want to disregard that, it's true. Having no standards at all is really simple. Having no protections is completely simple. You don't need to put anything in the Act to provide the levels of protection that we currently have for gig workers. So, yeah, it adds something, it needs to. If we're going to be a nation where you don't have to rely on tips to make ends meet, then there needs to be some extra regulation and words on the page – and that has to be done. Businesses put to us there'd be some aspects and ways we could regulate that would create a real problem in complexity for them. So, we have evaded that. I went through in the speech the different ways we've made sure that you can't have a minimum standard that would change the form of engagement.

That full level of flexibility is there. And once again, when you say, "Could there be a pass through to somebody getting the pizza delivered to their home?" Underpaying people is cheaper – yeah it is. Slavery is probably cheaper too. There is some modest pass through here. We are talking about some of the lowest paid people in Australia, and if that means there's a tiny bit extra you pay when your pizza arrives to your door and they're more likely to be safe on the roads getting there, then I reckon it's a pretty small price to pay.

TINGLE: David Speers.

JOURNALIST: Minister, thank you. David Speers from the ABC. What you said there, a tiny bit extra to get your pizza delivered, you also said, though, this will be a game-changer for that rider delivering the pizza, they won't have to, you know, weave through the parked cars and end up on the road. Is a tiny bit

extra really going to achieve that game-change you're talking about? What can we expect in terms of the change for that delivery rider?

BURKE: It's inappropriate for me to give you a figure here – simply because it's the Fair Work Commission that would be doing it, and ministerial direction on that would be really inappropriate. But can I also put it these terms, the co-operation from the platforms and the goodwill that's been there from all the food delivery platforms as we work through these principles would not be there if there would be a really significant cost impost on people. It just wouldn't be there. Some of the issues that go to people racing go to rates of pay. Some of them go to risk of unfair deplatforming, or deactivation.

For example, people worried unless they get there at lightning speed, they'll lose their – they won't get the next shift, the speed being taken into account from the algorithm, those sorts of arguments. The delivery you get to your door is not the only delivery that person is making in the course of that hour. So, the fact that the cost might be modest for yourself doesn't mean it doesn't all add up in a significant way for that worker. Effectively if I go back to years ago, I remember when the delivery service used to be Pizza Hut and everybody doing it was an employee. They were all employees, they all had rights. We always accepted that this sort of work who be work that had minimum standards attached. In the last decade that's gone. We're simply wanting to bring back what those appropriate minimum standards should be for the Commission to be able to work it out. If it created a price problem for consumers, you wouldn't find the co-operation we've had from the platforms.

But it is a real change. Don't just think when you think of the people delivering your pizza, for example, if it's coming through Uber Eats, don't forget the disproportionate – for the size of the business – number of injuries we saw with businesses like Hungry Panda. There's some small apps out there, that have been radically undercutting, that have been a real safety concern. I've met with those workers over the years, I've been to memorials with them. That's why I say it's a game-changer.

TINGLE: If I could just intervene on that question of the gig economy, everyone is focusing on the delivery drivers, but a huge part of the gig economy as you mentioned is care economy workers now. It's hundreds of thousands of people who are going onto platforms to get work in the NDIS and the like. Are you sure that you are doing enough with these reforms to stop this trend to people being, you know, what's the opposite of being deplatformed – being platformed and becoming employee-like, rather than employees?

BURKE: If I can explain what one of those platforms does. A lot of people, if you're not involved in the aged care sector or the NDIS directly, you won't realise how much of this is being delivered through the gig economy.

First thing to remember with this is, as taxpayers, we all pay for the service to be delivered at the rate of pay that would apply for an employee. As taxpayers, we've already made that commitment for that money to be spent. What happens is it then goes to the platform, takes a percentage from the user, and a percentage from the worker, and workers bid down against each other over who is willing to get the work. One of those platforms, for example, will say, "But we have a minimum rate." Their minimum rate is not based on the award. Their minimum rate is not based on an award that would have a minimum shift attached to it. Their minimum rate is based on the minimum wage, not for an occupation that in fact has an award that is relevant. So, even on the platform itself where they say, "We do a minimum rate, and we do a loading, and we do money for superannuation". It's still less than what you are legally meant to pay someone. They get away with it because of a loophole, and as taxpayers, we still fork out the full amount.

That's not sustainable. The flexibility will work for a whole lot of people, and you can still have the flexibility, but our objective is to fund services for people with disabilities, and to fund services for people who are aged. That's the objective. It's not to make money for a platform that is underpaying workers. The platform I'm sure will be up in arms about these changes, and that's fine. They can have their argument. But I just suggest to them, don't pretend that this means fewer services get provided to the person needing them, because that's not true – because the Government's already fully paying for it. Be honest and defend the loophole. Be honest and defend that somehow there's a business out there that thinks it has a right to take taxpayers' money, clip the ticket, and underpay workers at the other end. And if they're willing to have that argument, I'll turn up to.

TINGLE: Anna Henderson.

JOURNALIST: Anna Henderson, SBS News. Minister a substantial portion of the workers in the industries you've been talking about do come from migrant backgrounds and are new arrivals. So, what do you see as your IR obligations to protect new arrivals from exploitation, injury, or death at work? And do you see any merit in for some industries at least, the idea of default union membership as an extra form of protection?

BURKE: Default union membership is not something we're going to. That's not there. I hear the policy arguments about it. But it's not something the Government is proposing in any way. The issue with respect to – that you start with, though, Anna, is sadly true. People who are exploited are disproportionately here in Australia as our guests. And it's an issue that I've been grappling with both here, dealing with employment law, and similarly with the obligations I've got as Employment Minister dealing with the PALM scheme as well, trying to make sure that people are not underpaid.

There is a particular obligation that Anna Booth will take on, in her ombudsman role, and there'll be that's work happening there. There's legislation we have before the Parliament at the moment, improving the rights for workers who are on visas. But this is going to be a continued job lot. There is a cruel, deliberate and menacing project out there from some, to exploit people on the basis that you can't just threaten to fire them, you can threaten to deport them. It will take some time for us to get on top of that, but this legislation is part of that project.

JOURNALIST: Thank you.

TINGLE: Poppy Johnston.

JOURNALIST: Thanks for your speech, Minister. There's been some concern from industry, but you say you have responded to flexibility issues and the like. Do you expect any digital platforms to leave the Australian market in response to these changes?

BURKE: No, I don't. No, I don't. The only reason one would, would be if they were really determined to exploit people. And that's not the sort of business I would welcome anyway.

TINGLE: Melissa Coade.

JOURNALIST: Melissa Coade from the Mandarin. You mention the efficacy of the ICA legislation over 17 years and also the three perils, I guess, of pragmatic politics, where people delay, complain about consultation, and argue about issues that they're not. So, my question is about – if you want to make sure the legislation is closing loopholes, is there any sort of directive you have given to your public servants about evaluating whether those reforms are in place, what does that look like, how are you going to be looking a little this no fee jurisdiction and whether it's getting the uptake you like.

BURKE: Thanks. First of all, I will take the opportunity just to thank my department again. It has been a mountain of work and a mountain of engagement and for all the engagement that I've had personally with the different employer organisations, you can multiple that many times in terms of what the Department have put together. I really want to give full respect to their work on this. I keep checking in terms of trying to make sure people are working respectable hours, but I certainly know some people have been putting in hours beyond what I would hope would be part of a workplace. So, I just I want to pay respect to the members of the department.

The challenge is you need to get your data in two different ways. You need to get your data in terms of what is happening with the cases. But then you also

need to be doing your general surveys for what is happening out there, because the cases will only be what happened when something was challenged, not what happened. For example, we don't have cases at the moment about family and domestic violence leave clogging up the system. But I know anecdotally it's being used and it's creating a circumstance where a whole lot of women in particular are not having to choose between safety and pay. But if we only went to court decisions, we wouldn't get that sort of information. It will be a combination of the department keeping a line of sight on what's happening in first the Commission and then ultimately the courts on appeal. But secondly making sure both generally and specifically through Jobs and Skills Australia that we are continually capturing the data to be able to establish the extent to which we are improving job security for people in Australia. There will always be people who want some insecure jobs. They'll always be there and that's fine. They won't have trouble finding them.

But I'm very conscious, your rent's not casual. Your bills aren't casual. Feeding your kids isn't casual. None of your liabilities are casual, and if you're in a circumstance where you've got all of those liabilities heading your way, it's not unreasonable you want your job to be secure as well. Finding out how that's happening across the economy is something that Jobs and Skills Australia I'm hoping will help me with.

TINGLE: Paul Karp.

JOURNALIST: Thanks very much Minister, Paul Karp from the Guardian. You've been quite clear you think that Airtasker, these new laws won't apply to that platform. How did you distinguish that -- a platform that says it just matches independent contractors with consumers of a service, with something like Mable, a care economy platform who would say it's doing the same thing. And relatedly, given the legislation gives the Minister the power to prescribe the characteristics of an employee-like worker by regulation, do you have an extraordinary discretion to get platforms you don't like and put them within scope?

BURKE: The latter is simply – if you end up with a decision that's widely off what anyone was expecting to be able to have a way of dealing with that. Because we're dealing with something new. The cliff I referred to has been within our workplace relations system in Australia right back to the days of the Harvester Judgement. This concept of an employment cliff has been there, and the concept of businesses being treated separately has always been there. The concept now of saying there's some people, they're being classified as businesses, but they need some protection. This is a new jurisdiction for the Fair Work Commission that we're dealing with.

I can't give a short answer to the first question. So, I may talk a little bit faster to try to get through it. Because what you have described there, Paul, is something that we weighed up.

It's described as vertical versus horizontal. One way of doing the test in this new jurisdiction was to say, whether the platform sets the rate, or whether the worker sets the rate. And could that be the way you define who was in and who was out. Here's the problem had we gone down that pathway. If you look at the airports at the moment, there's big signs up for a business called InDrive. And they say, "You set the price".

This is a driving app that will be a direct competitor with the other driving apps, which is using the exact method you just described of the matching Airtasker, Mable style matching. If we set minimum standards and didn't capture apps like that, effectively all the ones that most people will have on their phones at the moment, Uber and the like, they would have minimum standards, and they would be facing a competitor for the exact same customers that was able to undercut, because they found a different way of doing the algorithm.

What would happen at that moment – there would be economic pressure on all of those platforms to make the same jump and evade. That's what would happen. The idea of this reform is effectively to give the Fair Work Commission the same level of flexibility that the platforms have, because around the world, if you give too rigid a system and you give this high-definition, 'This is how you're in', 'This is how you're out', platforms would then say this is a how-to guide to evade it. One of them evades it and that then creates commercial pressure for all of them too. We would have replaced one loophole with another. I don't want to do that.

That's why we said instead of should the test be who sets the price, the test should be what do the workers look like? If the worker is, I gave those three exampling, low bargaining power, low control, low pay. If you look at those features, that tells you who is going to be employee-like, and once you look at it that way, businesses like Mable come in, businesses like Airtasker fall out.

TINGLE: Jack Quail.

JOURNALIST: Thank you very much for your speech, Mr Burke. It's Jack Quail from NCA news wire. On your point about those minimum standards, under Mable's system, they would be covered by the minimum standards. You might have a worker doing the exact same work on Airtasker, then that doesn't have those minimum standards, how does that work – you said it wouldn't create another loophole, but effectively you have two different operating

environments where one has minimum standards, and one doesn't? How does that work?

BURKE: We're describing in terms of the platforms, but the Commission will be able to deal with the type of work. It is not inconceivable, for example, a whole lot of people who are employee-like to start using a platform where the main business of that platform would never be caught – and there end up being minimum standards for workers on those platforms. That's not impossible. It needs to be that way. Otherwise, you end up with circumstances where once again there's a how-to guide on how to evade. So, the Commission would have the full flexibility to be able to work out how things were extended in that way.

JOURNALIST: So, Facebook Marketplace, because you've got people in the care economy there... Are they all going to be dragged into this too?

BURKE: No. There's seven or eight ifs there. We are talking about a jurisdiction that hasn't even heard the Mable case yet. Let's not get ahead of ourselves.

TINGLE: Kimberley Caines.

JOURNALIST: Kimberley Caines from the West Australian. Thank you, Minister, for your speech. Just following on from your response to Phil Coorey's question, how many mining and services companies have told you they will have to restructure their operations because of the new labour hire rules, and is your government preventing the critical minerals boom from happening in WA with these rules?

BURKE: The answer is none and no. For the very simple reason, the service contractors have come to me saying – they've come with a solution, to their absolute credit. They haven't come to me saying, this is a disaster, and we need to stop you from doing it. They've actually come and said, "part of what we do is labour hire, that's going to be caught, we're OK with that. But there's these other things that we do, which we don't think you're intending to catch". And a proposal, in terms of – which has been written about – a multifactor test, to say how they think we may go about making sure that we only affect those parts of their business – and they're right – that we're actually trying to reach. As long as we get that right, and we've been following their advice on how we draft this, there is no restructure required from them. The restructure was required in terms of how we drafted the Act.

TINGLE: Andrew Tillett.

JOURNALIST: Thanks, Laura. Thanks, Minister. Just going back to Phil's question about – you said about exemptions for service contractors –

BURKE: You all want to get a few days ahead of this announcement.

JOURNALIST: Well, I was going to ask about the Bulldogs but I think we're going through enough at the moment. But this exemption for service contractors, we understand and we're hearing they can only be exempt if they put themselves through a sort – a 12-factor test, and effectively litigate themselves out of the same job say pay system. What do you say about that?

BURKE: You're being told wrong.

TINGLE: Can I just – Phil Coorey is going to ask another question, but before he does. I'm just still a little bit unclear on what that minimum standards will be. In the sense that you were talking about delivery drivers getting injured in the traffic, a care worker getting injured looking after somebody lifting them or whatever, you're not talking about workplace safety rules here, are you? What are the actual minimum standards going to be?

BURKE: Workplace safety is already managed by the states. In terms of a jurisdiction, the states already regulate workplace safety. There is for riders, for example, an additional safety issue that if you're paid such low rates you have to absolutely rush to be able to get any sort of meaningful income – that regardless of safety rules creates an additional risk on the roads. That's the only real relevance to safety. The issues that the Fair Work Commission will be empowered to do is effectively to deal with establishing minimum standards that don't break the form of engagement. That's effectively the remit. There will be some things in the Act we make clear you can definitely do this, there will beother things where we say you definitely can't do this. Most of it is governed by the single test – if the minimum standard you were wanting to apply would change the form of engagement, then there's no jurisdiction to do it. If it simply provides minimum standards within the form of engagement, like rates of pay for example can do that. For the first time the Fair Work Commission can put that in place.

TINGLE: Phil Coorey.

JOURNALIST: Thanks again. Just back to the gig economy, and you said consumers should expect to say a little bit more just to guarantee the fair treatment of the workers. You have talked about minimum standards. I think on radio this morning you ruled out overtime. What about penalty rates? Is that going to factor into the minimum standards for Uber drivers and delivery workers?

BURKE: It's not something that's specifically referred to in the legislation. It's something the Commission would be able to make a decision on. They'd hear evidence each way. Some people would argue for particular times of day. The

reality is, at particular times ,of day those rates already go up, that's sort of inbuilt into the algorithm. I don't the extent to which that would be taken up. There's neither a requirement or a prohibition on that.

TINGLE: We're looking towards to an interesting few weeksof debate, I'm sure. Please thank Tony Burke for speaking.

Date:24 July 2023

Speech - The Sydney Institute

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

TONY BURKE MP, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS, MINISTER FOR THE ARTS: Thank you very much, Gerard. It's a great pleasure to be back at The Sydney Institute. I was a very early associate in the early days of The Sydney Institute, and it's great to be back.

I acknowledge the Gadigal people of the Eora Nation and their Elders past and present, and I stand here as a member of a government which sincerely hopes the Australian people respond to the generosity of the Uluru Statement from the Heart with the same level of generosity in return.

It's some years since I last spoke here, long enough that according to one of the papers today, this speech is being delivered to – and I quote – "The left leaning Australia Institute". Gerard, you have changed. Some of you might have not realised what you were turning up to.

At the election, we made a commitment to get wages moving, a commitment to act to close the gender pay gap, and a commitment to deal with job insecurity, and our first workplace relations Bill was to establish Family and Domestic Violence Leave, our second workplace relations Bill was to establish a law referred to as "Secure Jobs, Better Pay", matching up with the fact that the policy we took to the election was called "Secure Australian Jobs Plan".

Last year's Bill put many of the key aspects of the framework that we had promised to put that in place. But any framework can be threatened by the different methods in which it's evaded. Effectively those forms of evasion are what we've all for years colloquially referred to as loopholes. They're not unlawful, but they're loopholes that undercut principles that you otherwise have in law.

These reforms are about strengthening the current workplace relations framework, providing certainty, fairness and a level playing field for both business and workers. It won't be radical change, but it's certainly trying to make sure that the current law works effectively.

For the loopholes that would undercut job security, we intend to close them this year. For the loopholes that make it a criminal offence, as it should be, if

an employee steals from an employer, but not if the employer steals from the employee, that is a loophole that we will close this year.

Similarly, the loophole where there is an agreed rate of pay, and the agreed rate is undercut through the strategic use of labour hire, that is a loophole that we will close this year. And finally the loophole where a large number of workers now are doing the exact same sort of work that was always imagined to be covered by the award system, but because of the nature of the gig economy have fallen out of the employment relationship and are now in a circumstance where they have no minimum standards at all. We will make sure they are no longer working with no minimum standards, that there are minimum standards there by closing that loophole.

Today I want to focus on just one of the loopholes, which is the one with respect to casuals. There's a term that when you think about it probably shouldn't exist logically, the permanent casual, and it's a term that we hear more and more. For someone who is a voluntary permanent casual nothing will change. But for somebody who is a forced permanent casual, there should be a pathway to permanency for them.

What's clear is that some casual workers are working in permanent capacities without the job security or benefits that come with a permanent position in law. They lack leave entitlements and can be dismissed without notice.

The former government's reforms compounded this problem. They institutionalised job insecurity for casual workers. Now, under the law as it stands, if an employer signs you off as a casual on day one of your employment, and says yes in writing, “there is no firm advanced commitment to ongoing work", but on day two gives you a roster fixed for the rest of the year, that rort of the system is legal. You're a casual for the 12 months, and there's nothing you can do about it.

That's certainly not what most Australians would expect the definition of casual work was. Workplace relations is at its best when it's a practical jurisdiction. The legal game here where what is practically and realistically occurring at the workplace is ignored because of what the contract said on day one, runs counter to a fair industrial relations system, and our reform on casuals aims to fix this.

The Government will legislate a fair objective test to provide certainty to business and to provide clearer pathways to permanent work. Our reforms won't affect the use of casual employment in those cases where it's genuinely flexible work that benefits both worker and business, where the worker is choosing the shifts that they get, not a situation where they are forced to be a

permanent casual with all the expectations of a full time worker but none of the protections.

Our reforms won't affect cases where workers want to remain casual. Workers will have the option to stay casual if that's what suits their circumstance. This will be the case for many students in sectors like retail and hospitality. But what our reforms will do is ensure the label "casual" is not rorted to exploit vulnerable workers.

Our reforms will give workers the tools for genuine dispute resolution, unlike the Morrison Government reforms which demand that in the event of a dispute, a casual worker – think about that – a casual worker, if there's a dispute, has to get a lawyer and turn up to the Federal Court to have it resolved under current law.

Now, there have been, and I mention this for completeness rather than annoyance, there have been some fear campaigns about it, which it would be remiss of me to not deal with them directly. There is an ad campaign that's been running for a couple of months now, I think, which I have found interesting. The words of the ad are these, and I've realised now in asking for the words of the ad to be part of the speech, this will now be in my language, so there is a danger there.

"The Federal Government wants to introduce a new law called 'same job same pay'. It doesn't mean equal pay for men and women, it means if you work hard because you want better pay by law, you can't be paid any more than someone who barely works at all. Let's find a better way, because same job same pay takes your reward for your hard work away." Nice rhyming couplets at the end.

Now, it's a policy idea that I had never heard of until I saw the ads. The moment I saw the ads I agreed it was a terrible idea. I immediately made clear, publicly and privately, that the Government would not be creating a situation where you could not pay people a different rate based on their experience; made that clear the day the ad campaign started.

For reasons that I don't understand, that has made no difference on the ad campaign, it's still out there running, and the business groups are entitled – it's a democracy – they're entitled to continue running the ads, it's up to them how they want to campaign, I do get that.

The campaign, I should announce, will be completely successful. They will take an idea that was not government policy, run an expensive campaign against it, and at the end of the campaign, it will still not be government policy.

But as I said earlier, the Government will be closing the labour hire loophole. A loophole where an employer had already agreed that for a particular worker with a particular level of experience there should be a specific minimum rate of pay, and then labour hire is brought in to undercut the rate of pay that they'd only just agreed to. That's the loophole the Government wants to close.

I've focused most of the speech today on that forced permanent casual loophole. But before I go into further detail I do want to say a little bit more about the consultation the Government's been undertaking.

Most of those involved in the consultation will acknowledge privately – and I'll be upfront, I probably wish this would be said publicly as well – that the level of consultation the Government is undertaking now is more than has been seen in my portfolio for many, many years.

Notwithstanding that we've had some public comments. The first was from someone who I had worked well with for my entire time in Parliament, I have to say, and that's Denita Wawn from the Master Builders, but she was quoted The Australian on 21 May saying, "There hasn't been consultation, we talk about sham contracting, from our perspective, this has been a sham consultation."

More recently, and I'll just give this as a bit of a case study, there was an interview with an excellent business representative, Tania Constable from the Minerals Council on Radio National Breakfast.

In that interview she said the following, "The consultation process has not gone well with Government. You provide information, it gets sucked into a black hole and then it comes back out. Not much has changed with most of the issues that we've raised, whether it's employee rights, casuals, same job same pay, but what we've now seen is even worse changes to the IR system."

But here are the facts, and I'll just give the example of the Minerals Council, because that was the most recent complaint. My department has held 20 meetings with the Minerals Council and its members in 2023. There's been a series of additional meetings on top of that that I have conducted personally. The Department meetings have included 17 on workplace relations reforms, three on work health and safety matters.

My department and I have undertaken extensive consultation on all elements of the legislation that I intend to introduce later this year. Consultations with the Minerals Council actually began last year on some areas, even before the election had taken place, obviously not the ones with the Department; they're not allowed to talk to me much until we'd won.

This year my Department has convened more than 75 consultation meetings so far with business groups, trade unions, academics and civil society. We're still consulting, with further meetings this week. This is in addition to a number of meetings my office and I have had directly with business groups.

Can I just say that consultation makes a difference. Last year there was a whole lot made of the Senate negotiation, because in the Senate people are aware that the Government doesn't have a majority. Therefore, people look very closely at all the amendments that might be volunteered or forced on a government through the processes of negotiation in the Senate.

But that pressure is not on the Government and the House of Representatives, and yet as a simple example, in the House I moved 150 government amendments. Now, those 150 government amendments, some of them were because of issues raised by trade unions and academics, but the vast majority were because of various consequences that had been raised by business groups.

In the same way the legislation that I introduce later this year will have clauses, tests and expectations which were simply not under consideration at the start of the year. That's only happening because of the consultation. I'm not sure why some stakeholders have a perverse desire to undermine their own influence and effectiveness. The simple reality is consultation has been happening, it is continuing, and it is making a difference. The Bill that will be introduced will be different because of the consultation, and as it goes through the parliamentary process, that consultation will then commence with Members of Parliament as well.

I'll admit with all the scare campaigns, I do have a favourite. There was an article in The Australian on 10 July quoting John Seeley of Seeley International which made some interesting claims, and this one's a quote which I think I'm going to keep for the rest of my life: “The advice we are receiving is that the draconian industrial relations changes being rammed through will force us to offer these seasonal team members permanent roles with no leave loading, then sack them three months later. The result of this communistic view of the workplace is the death of productivity. What is the incentive to work hard when your peers, no matter what their experience, age or work ethic get paid the same?”

As a member of the New South Wales Right of the Labor Party it's not often I've been called a communist in my time in politics. I guess sometimes others feel they know you better than you know yourself, and I certainly thank Comrade Seeley for his insight.

But as I made clear, the key argument there is once again something that we're not doing to create a circumstance where regardless of your experience, age or work ethic, you get paid the same. That is not the proposal from the Government, and no matter how many times we repeat that that's not the proposal of the

Government, there's an argument on the sidelines that appears to be unstoppable, and as I said earlier, ultimately victorious.

So, in dealing with casuals, let me deal not with fear campaigns or misinformation but with some facts. Whenever I raise the issue of casualisation, the first issue that is often put forward is that there is in fact not a problem, because the percentage of casual workers has remained steady for some time. But there's more to the story than just that figure. Obviously not everybody who has insecure work is in an employment relationship at all. The entirety of the gig economy doesn't get counted when you talk about casual workers.

There are people now as part timers, working effectively under some arrangements with almost no guarantee of how many shifts they will get, if any, in the following week. There are people on back to back contracts who were it not for legislation that we passed last year were effectively on a treadmill of permanent probation.

Certainly the number of people without leave entitlements has increased and increased significantly through sham contracting and the growth of the gig economy. But beyond that, Professor David Peetz and Dr Robyn May have recently found the following: the majority of workers without leave entitlements have been with their employer for more than a year. Around half of all workers without leave entitlements to annual or sick leave have stable hours one week to the next. Concerningly the data shows that around half of workers without leave entitlements are not receiving the casual loading generally at 25 per cent, potentially an indication of under payment of wages.

These facts show that so many so called casual employees are really permanent workers in all but name, working regular rosters for extensive periods of time.

According to the ABS, there are just over two and a half million casuals in the Australian workforce. Strictly speaking, as I said, the way the ABS collects this data is you have to be an employee, but they there look at employees without entitlements, and that's taken as a rough equation to casuals.

Of that group – so of that two and a half million, there are 32 per cent, around 850,000, who have a regular pattern of work, and of those around 490,000 of

them have worked regularly for their employers for more than a 12 month period. This phenomenon occurs across the industries ranging from retail to hospitality and food services, arts and recreation services, and healthcare and social assistance. All of these industries include hours – all of them – include many hours which will always be best served through casual employment, and all of them include hours which by any measure should be permanent.

The majority of casuals are female. The majority of workers who have been casual for more than two years are women. The majority of under employed casuals are women, and the majority of people holding multiple jobs are women. Just as there is a gender pay gap, there is a gender security gap.

There was an article published this year by Innes Willox of the Australian Industry Group on 17 July. Innes is a very respected person in workplace relations circles, he's been in the policy area a very long time and has been a very strong advocate for legislative changes which would benefit his members. There are a couple of sentences in the op-ed though that really stood out for me, because they're statistics that would have been available to me, I just hadn't seen them presented that way before. And I quote, "Our research found 39 per cent of casual employees are between 15 and 24 years old, and another 19 per cent are 25 to 34. Casual employment often provides young employees with entry to the labour market and helps workers balance educational commitments."

The interest that many young workers have in casual work is something that I know well. Through my own life it reflected me when I worked as an organiser, as Gerard mentioned. It reflected the nature of many of the people I represented. But what's stark about the numbers in that article aren't who it includes, like we always knew there are a whole lot of casuals who are young, but who those statistics exclude. Just do the maths. It tells us that more than 40 per cent of casual workers in Australia are over 35. More than 40 per cent.

No doubt there will be some people in that group where casual work is exactly what they want, but this is the age group where people are paying their own bills, are supporting dependants, people that have a myriad of fixed costs, costs themselves that are never casual.

Now I'll concede, of all the data sets I'd looked at, I had not appreciated that more than 40 per cent of casuals were over 35. It lends real weight to the need to give these workers an option for more security. Behind all these statistics are real people.

Let me just talk about one meeting I had in Northern Tasmania a couple of years ago. I held a secure jobs forum, so it's obviously a self selected group, it's not, you know, going to be statistically relevant. People who have a

concern about job security are the people who are going to turn up. It still blew me away as they told me their stories.

One man in his late 30s who turned up apologised at the start because he said he was a casual when he accepted the invitation, but he'd only just managed to get a permanent job. He was over the moon and in a great mood. So the problems he was going to raise weren't with him anymore.

I asked him how long he'd been a casual. The answer was for 14 years. And just informally, to get a sense of budgeting, I asked him, "So what did you do for holidays, or over that time, like it's 14 years, did you use a loading, did you save it, what did you do?" His response was straightforward, he says, "Oh, no, I didn't take holidays, just kept working." 14 years. In Australia. For a man in his late 30s. That's not what permanent work should look like in Australia.

Another casual worker at the same meeting told me he'd given up his passion for cycling, because he knows if he has a crash and he has to take some days off there's no sick leave. His favourite recreation, just let it go. Philosophical about it, but still a big deal.

A third worker at the forum who had an insecure job was a woman working unpredictable hours. She told me she had school aged kids, and just said, "Look, I can't commit to coaching them because I never know whether I'll be available for training or game day. I'd always hoped to coach the kids at sport, but it's just not an option for me because I'm a casual."

One meeting, three people, with impacts on themselves, their families and their communities, all wanting better options for secure work, and the options that we're putting forward won't work for all of them. That is a step in trying to provide a shift in Australia back towards secure employment.

We all know people who are working multiple jobs because none of their individual jobs give them enough hours to cover their expenses. Rent isn't casual, electricity bills aren't casual, school fees aren't casual, they're a certainty. But people in insecure work do not have the same certainty about their hours or their income, and insecure work doesn't just affect your pay packet. Try getting a mortgage if you're a casual.

Now, it's hard to find a recent article about casualisation in Australia that doesn't use the words "WorkPac", "Skene", or "Rossato".

Ultimately the discussion in those Federal Court cases ended up being superseded by actions in the Parliament. But it is worth looking at exactly who those cases were about, because while they dealt with two different people, they dealt with the same circumstance. A casual employee, a casual

employee, is given a 12 month full time roster, which is strictly followed. In both cases the workers were embedded in work crews. The others were direct staff employed by the company. Rio Tinto in Skene's case, Glencore in Rossato's. I give them for information of the cases, but this is common across that industry.

Anyone who is looking objectively at those workers, when they turned up for shift, what they did, would have found them indistinguishable from the full time permanent workers they were working side by side with. Yet for these individuals there was an intersection of two loopholes, the forced permanent casual loophole and the labour hire loophole.

The forced permanent casual loophole was used to make sure that even though they were working permanently, they weren't permanent workers. And the labour hire loophole meant that even though they were casual, their hourly rate of pay, including the casual loading was less than the hourly rate of pay for the permanent workers engaged side by side with them doing the same job. Think about that.

You have a worker working side by side with another worker, with the same level of skill, but one of the two doesn't just have a lower hourly rate of pay, the one with the lower hourly rate of pay is the one with no sick leave and no annual leave. That sort of practice can't be allowed to stand. And while the issue was being litigated in the courts, the previous government did not wait. It introduced legislation as part of what was known at the time as the omnibus bill, to legitimise what I would contest was blatantly unfair.

But in one of the more extraordinary scenes I've seen in my time as a Member of Parliament, it wasn't the Opposition that managed to vote down particular provisions of the Bill. It was the government. The Minister at the time, Senator Michaelia Cash, and the Coalition government, voted against all the other parts of their own legislation. They voted against their own legislation that would have criminalised wage theft. They voted against their own legislation that would have modified the better off overall test. And why did they strip the Bill of all those other elements? Because the only commitment that ultimately mattered that day was to make sure that they got the section of the Bill through which would take rights away from casuals.

At the end of that, whether or not a casual was objectively working in a permanent job became pretty much irrelevant. If the terms of the contract said you were working as a casual, that was the end of the story. Immediately after that vote I made clear that should we be elected; an Albanese Government would return to an objective definition of a casual. The unreasonable definition has now been in effect for two years. The Government will seek to change that this year.

At the moment the definition of casual within the Fair Work Act is based only on the original offer of employment made to the employee, without taking into account the subsequent conduct of the parties.

This means that there are plenty of casual workers who are currently being used as though they are permanent workers without the security of permanent employment, just because of what was written on day one of their employment contract, a contract which ultimately bore no relationship to their treatment at work. This is an example of the employer double dipping, taking all the benefits of a reliable and permanent workforce without providing any of the benefits of job security.

What is written on a signed piece of paper at the start of an employment relationship will often guide what happens next. But sometimes, particularly with casuals, sometimes it doesn't. And yet the loophole of the current definition is being exploited in a way that has a single outcome. People who objectively would have a right to job security are being denied that right.

As I mentioned at the beginning, the new definition will meet our election commitment to legislate a fair objective definition of casual employment. In short, the test will be in colloquial terms what's really going on rather than determined by a contract which may have ended up bearing no resemblance to practical reality.

In substance we're returning to the state of the law before the Coalition's reforms took effect. When a dodgy written contract determined for all time whether you were a permanent worker, if it didn't reflect the reality on the ground. Just like the individuals in the Skene and Rossato cases.

We're keeping the core concept of a firm advance commitment, but ensuring this concept is understood by reference to the totality of the employment relationship.

Instead of the current situation, where firm and advanced commitment relies solely on the words of the contract on day one, the new test will allow an objective and practical assessment of whether the employer and employee are in fact intending for the hours to be treated as though they are permanent.

It effectively becomes a “what's really going on” test. An employee's status will only change from casual to permanent if an employee applies for the change. There will be no automatic conversion. The reforms are driven by employee choice. There will be no additional requirements for active employer consideration of status after the commencement of employment unless an employee seeks a change of status.

There will be a six month limitation on the frequency of seeking a change of status, the existing casual conversion framework remains, including the provision that allows employers reasonable grounds to refuse an offer or request a conversion.

The new definition will provide the change of status is prospective, so no back pay will have accrued. This is not about back pay, it's not about a cash grab. It's about a pathway to security for those workers who want the security of the permanent hours they are already working.

For the vast majority of casuals, nothing changes. No forced conversion, no giving up casual loading. But for those workers who desperately want security and are being rostered as though they were permanent, that job security is in sight. There's no net cost to business. Employers will pay a loading if someone is casual and will pay leave entitlements if someone is permanent. They don't pay both.

Now, I'm not pretending there isn't an argument against this; of course there's a counter argument to every proposal. But the counter argument presumes that the lack of security that so many Australians face is an acceptable outcome, even for those who are working hours which can easily be transferred to a permanent job, and in a situation where those workers want to switch.

That's a circumstance which, as Australia's Minister for Workplace Relations, I can't countenance. I'll always accept that there are many circumstances where work cannot be guaranteed, and on an ongoing basis. But if someone wants the security of permanent employment and they're already getting permanent hours, it shouldn't be too much to ask.

The outcome of all this is pretty straightforward. There won't be a massive number of people who want to convert. But there certainly will be some. And for those individuals a conversion to permanent employment will be life changing. They won't principally be the people who we often think about when we think of casuals. They're more likely to be a worker who is older, a worker who is supporting a household, or a worker who, for various aspects of their life has seen that there is a pattern of reliability that they are giving to the employer and wants to be able to have that pattern of reliability in the planning of their own life.

Security in their income, security in their time off, security in something as simple as being able to take a day off when they're not well. It's the sort of thing that most Australian workers do take for granted as part of working here, and as a result of closing this loophole, those people who work permanent hours will have the option of permanent employment.

Date:1 February 2023

Address - National Press Club

The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts

THE HON TONY BURKE MP, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS, MINISTER FOR THE ARTS: Thank you very much, Laura. Thank you to the Press Club. I acknowledge the traditional owners of the land that we're on and their Elders past and present. Also, I acknowledge all the members of the gallery and everybody who's back for the start of the year and, of course, the Secretary of my own department, Natalie James, and the members of the department who are here.

I want to start by giving you a statistic that you haven't heard before – 61 hours. I give you that statistic as an example of the way governing and the use of Parliament has changed with the change of Government.

61 hours. In any ordinary parliamentary week, there's 23 hours of Government time. During the life of the previous Government, that Parliament spent 61 hours voting that people be not allowed to speak; 61 hours of people being flown around the country, Clerks of the Parliament, all the resources that goes into here. We had figures that I'm reluctant to rely on from Paul Fletcher – given the way the Leppington Triangle figures turned out – but the figures from Paul Fletcher where he says a million dollars a day for the Parliament to sit. 61 hours dedicated to making sure no opposing voices were heard.

You will have people say what it was like to work with the previous government when consultation is talked about now. Back then, what the previous mob were requesting was confirmation and if you didn't deliver confirmation, you were given confrontation. The consultative approach that we have applied to the Parliament itself and to the way we have governed is of itself not just a difference in the way Government functions. It also delivers a difference in the quality of the outcomes. I want to be able to refer to quite a bit of that.

In terms of legislation, for the same number of sitting days as we had last year, we had 25 extra hours of debate. The legislative achievements for that time, for last year, ensured we enshrined the climate change targets in law; we implemented the recommendations of the Respect@Work report; we delivered on our commitment to the early childhood education sector for cheaper child

care; we established the National Anti Corruption Commission; we established world-leading paid family and domestic violence leave; we restored dignity in aged care; we made medicines cheaper with the first decrease in the Pharmaceutical Benefits Scheme in its 75-year history; we had the Secure Jobs, Better Pay Bill; we provided energy price relief for families and businesses; established Jobs and Skills Australia and expanded the Commonwealth Seniors Card. In all of that, there was a consistent guarantee that different opposing views were part of the debate. I'll get a bit later as to what that meant in terms of changed outcomes.

For the year ahead, though, it's not like with all of that agenda our job is done. Some people after the talk of so called small target during the campaign, then quickly said "This agenda is big" and now have said, "Oh, did you get it all done in the first six months?" No.

The year ahead: in the autumn session alone, we will be progressing the establishment of the Housing Australia Future Fund, the legislation required to hold a referendum in the second half of this year to enshrine an Aboriginal and Torres Strait Islander Voice to Parliament in our Constitution, to guarantee superannuation as a right under the National Employment Standards and to affirm beyond any doubt that temporary migrant workers are entitled at all times to workplace protections. Establishing the National Reconstruction Fund, delivering – and this will be one for next week – delivering on our commitments to extend paid parental leave, reform of the safeguard mechanism to enable Australia to meet our new emissions reduction targets of 43 per cent by 2030 and net zero by 2050 and, of course, the changes to cultural policy that the Prime Minister and I announced only on Monday, establishing Creative Australia – and I acknowledge the presence of Adrian Collette here, the CEO of the Australia Council. Establishing Creative Australia, including within it Music Australia and a Centre for Arts Entertainment Workplaces in legislation in the coming months.

We will be dealing next week with the legislation to protect what was thought to be presumed and that is the recommendations of the Bell inquiry into Scott Morrison's secret ministries to make sure that it never happens again. Later this year, there will be further legislation to abolish the Administrative Appeals Tribunal and replace it with an administrative review body that actually serves the interests of the Australian community. To implement a new package of national environmental legislation, as outlined in the Government's Nature Positive Plan. To deliver on the remainder of our election commitments in my own workplace relations portfolio, and I'll say more about that a little bit later, and to set obligations for streaming services to make sure that there are Australian content obligations whether you are watching your television through free to air, on the public broadcaster, whether you're watching through cable television or whether you're watching through a streaming service.

The way the Parliament conducts itself has changed in two key ways. It's changed as a result of the recommendations from Kate Jenkins and it's changed as a result of some standing order changes and a different approach that this Government has taken to the Parliament itself.
The Kate Jenkins recommendations are seen right through to the sitting calendar itself. The fact that we are now not sitting during school holidays makes a real difference for a Parliament where more of its members look like modern Australia. The fact that there is one week of school that we are avoiding, quite deliberately – this week – is because we want it to be possible to be a member of Parliament and still to be around on the first day of school with your family – notwithstanding that I'm here!

We've also, for example, when somebody goes on leave of absence for parental leave, the Parliament formally votes that they're on leave of absence, but then as a result of that, they have no way, traditionally, of being able to continue to engage or to represent their electorate during that time. The Federation Chamber, the second chamber to the House of Representatives, will now be available where members who are on official leave – that's been voted on by the Parliament – will be able to deliver speeches from their electorate office, beamed into the Parliament so even while on parental leave, they'll still be able, in a way that's effective, to get the comments that they need to get into the Hansard on behalf of their electorates.

We also, of course, are establishing the Parliamentary Workplace Support Service, and next week, on Wednesday, the Annual Statements will take place to the House of Representatives, and a similar process in the Senate, in terms of party leaders and members of Parliament being able to update the House on making sure that not only are we delivering a better Parliament, we are also delivering a decent workplace for the people who work in the building.

They're the Jenkins recommendations, and we've been responding to all of those. But the second part is to make sure the Parliament itself is allowed to do its job. If you ask anyone, "What's the job of Parliament?", it doesn't start for anyone with that 61 hours of spending time making sure that voices are not heard. The whole purpose of a Parliament is meant to be to allow the cut and thrust of debate. When people offer "Why can't the Parliament be kinder?", there's an extent to which we're just up front. When it's an argument and it's when it's fierce, and when it's real, is one of the functions of Parliament. It's not our job to be constantly agreeing.

It is the fact that you want the conflicts and different views that exist around the nation to be brought from 151 different places into the one room to be battled out. That's a healthy thing to happen. That's a democratic thing to happen. Every time we silence voices, we lose that, the very reason that a

Parliament exists. The methods that we've changed here have been in a few different ways.

First of all, the all-night sittings we've gotten rid of. If you take two conscience votes that have happened, we had one on Territory rights last year. We had one the year before with respect to the Religious Freedom Bill. Under the previous government, the way to deal with a conscience vote, because you can't gag a conscience vote – no one's tried that and nor should they – was to simply keep everyone there until 5.00 am for a Bill that was not ultimately proceed with anyway. What we did this time with the Territory Rights Bill was list that and nothing else in the Federation Chamber. Everybody who wanted to make a speech made a speech. It was dealt with and ready for the Senate after a week. Similarly, we're making sure that at 6.30 pm, after that there's no divisions so that people who have family responsibilities are able to be a member of Parliament and know that if they need to leave the building, they can. Having that has had a couple of impacts. One of which is it has been a way of more people leaving at 6.30 pm at a more reasonable hour and that has been one of the impacts on the drinking culture that historically has existed in the building.

We have also – and this is something that can't be enshrined in standing orders; can only be done with the goodwill of a Parliament that wants to work with the Parliament – said the Senate is not only place you'll deal with amendments. We had, for example, on the Climate Change Bill seven different amendments which were moved by the crossbench which became part of the law. On my Secure Jobs, Better Pay Bill, there was a set of amendments moved by the crossbench. On Respect@Work there was a set of amendments moved by the crossbench carried by the Parliament. We can't have a situation where the different voices are only heard in a hung Parliament where they need to be. People are elected with a range of views representing Australian citizens. They have every right to make sure that when these views are put, they are heard, listened to and where the Government can agree, it does agree.

That said, we still had plenty of occasions where it's been argued it's the exact opposite. Plenty of occasions where it's been argued that somehow nothing has changed in the Australian Parliament. When we have had an urgent bill, what we've been doing is saying, "Okay, Parliament can continue into the night. People who need to leave at 6.30 pm can. We'll do all the votes in the morning and everyone who wants to make a speech can make a speech."

We had then – in a parliamentary procedural sense I find this amusing though I may be alone in the room – we had a series of speeches where people would then argue that they were being gagged and prevented from making a speech while making the speech! Keith Pitt, for example, said "There's 151 members

in this House who have just been gagged by the Labor Government. I will go on to speak about …" and continued. He continued for another 10 minutes. The debate continued for another three and a half hours.

My favourite was Colin Boyce, the member for Flynn: "It is an attack on the democracy of Australia. The people of Australia put people like me here to speak on these things and for the Government to guillotine this debate by calling it an emergency bill is just absolutely appalling." He was objecting to not being given the full 15 minutes speaking time because we had shortened the debate to 10 minutes. After eight minutes he ran out of material and sat down.

So, the mechanisms we've been using, while there will always be the arguments from our opponents, "Well, nothing's changed", the truth is a lot has and people are being given the chance to speak. There will be times I suspect – and particularly after this speech, the Opposition will be taunting me into trying to create times – where we have to make resolutions to try to get through debate more quickly. But 61 hours of time in Parliament, of public money being wasted, simply making sure that people couldn't speak. Sometimes there were more votes, more times spent on voting to stop people from speaking on a particular bill than there were speakers remaining on the list in terms of their speaking time. It is an irresponsible and undemocratic way to run things.

Question Time itself, I'm often asked about in terms of, "Well, have you changed the culture of Question Time?" It will always be the cut and thrust and it will always be a mixture of information and performative art. That's what Question Time will be. I do find it interesting though, the silence that we've had. I do find it interesting that while every Minister has answered questions, every backbencher on the Government side has asked questions, senior frontbenchers such as Luke Howarth, Dan Tehan and Alan Tudge are yet to say a word during Question Time. Some of our Ministers, Minister for Education Jason Clare; Communications, Michelle Rowland; Ed Husic; Pat Conroy – yet to be asked a question by their opponents.

In terms then of workplace relations and a bit about the agenda going forward. When the Secure Jobs, Better Pay Bill reached in the House of Representatives the time to discuss amendments, after consultation with business, I moved amendments 1 to 100. Government amendments where we already had the numbers in the House for the bill, but amendments being moved as a result of the consultation, principally the changes of different things that business had asked for; some had come from the union movement as well. My political opponents, at that time, were saying, "You're losing control." I actually take it as a strength that we had been listening, consulting and where changes could be made – even before it got to the

Senate and you had to make changes to reach a majority – those changes were occurring.

The agenda for this year for workplace relations will involve a lot of the election commitments that we hadn't dealt with last year. We have time this year and so while there will be some legislation that comes up in the first half of the year, the more controversial parts of our election promises that we haven't yet dealt with will be in the second half of the year. The consultation will start next week. Next week I've now called a meeting for Wednesday with both the leading business groups and unions: so it will be ACCI, AiG, the BCA, Master Builders, National Farmers, the ACTU and COSBOA I've invited as well. To be able to start the consultation now on legislation that won't be introduced until the second half of this year.

That legislation will deal with a number of election commitments. It will deal with a number of issues but effectively, if I put it in summary this way: last year's legislation with the title of the bill was about taking significant steps on job security and getting wages moving. This year's legislation and the election commitments we have to get to are about closing loopholes that can undercut the principles that we put through last year.

The issues that we'll start the consultation on Wednesday and some of the consultation my department has already got moving on last year, but this will be the beginning of it with me directly involved; same job same pay, the definition of a casual, employee-like and how do we deal with the gig economy, wage theft, safety principles and minimum standards for long-haul drivers, having a low-cost jurisdiction at the Fair Work Commission to deal with unfair contract disputes for independent contractors, stronger protections against discrimination and the need to act on the dangers that are becoming increasingly obvious to everyone with respect to silica dust.

That consultation will commence, but obviously Wednesday's meeting will just be the start of it and there will be a detailed process as we work through before we get to introducing legislation in the second half of the year. I have no doubt, whatever I might have in my mind as the legislation right now, will progress and be better as a result of that consultation that will be taking place and starting on Wednesday.

So, allow me now just to also point to – while I've focused on consultation helping us through with respect to legislation. It also helps us through with respect to policy development generally. The National Cultural Policy that I've released on Monday, was very different to what I had in mind when I was in Opposition. Lots of people said to me, "Well, if you're serious about National Cultural Policy" – and some journalists would ask, "Why don't you write it out now and make it an election commitment and have the mandate for it?"

The simple fact is this: conducting consultation with the full resources of Government and the support of the Australian Public Service gets you to better policy than you can ever get to on your own.

There are a number of issues in Monday's launch of Revive that were not on my radar nor of my department until we had opened the process of consultation. Music Australia, which has received so much publicity over the last couple of days came from that process of accepting that not all the good ideas come from Government. Industry came forward with it. There will be legislation to establish it from 1 July this year; the money will be there and it will start work.

Similarly, for here in Canberra, the concept of sharing the collection for the National Gallery of Australia came from a submission from the National Gallery. What that will mean from the submission from both Ryan Stokes and from Nick Mitzevich, is that a collection where 99 per cent of it – it's all great but 99 per cent of it is always kept in darkness at any one point in time will start to find its way to galleries around the country on long-term loans. Not "Here's the National Gallery on tour" but "Here's a work which you have for a period of something like 10 years that makes your gallery a destination and gives you a destination exhibit." It's a completely different way of using the national collection, but it's a lot more useful than works being kept in darkness.

The third one that has received a lot of publicity that came from consultation is the National Poet Laureate. As I mentioned in a speech last year when we were just talking about the concept before the Government had committed to it, we're not the first to do this. Governor Macquarie beat us to this with Michael Massey Robinson who in the articles that you've read over the last couple of days it's been made clear that he was paid to be the Poet Laureate with two cows. What's not often mentioned is he was a convict actually sent here and his crime was for writing rhyming couplets. He was sent for the crime of poetry. He'd been bagging out a politician that he then tried to use as blackmail. This is the risk that every Minister knows you have with artists! But, yeah, he was paid in two cows. We think, "What a silly little payment." Let's think in terms of authors today. The annual average income for an author in Australia is $18,200. In today's dollars, that's nine cows – half a bull. That's the current rate. So, what this will mean in terms of elevation of the sector in treating all of our artists and arts workers as workers, as being part of a real industry and a driver of the economy as well as something that touches our soul is something that warrants the attention of a national policy.

Looking forward, the consultation will continue though, and the area of consultation that's probably most significant is what we have to do with respect to streaming. Streaming – and some people say, "Will you commit to

the 20 per cent? Where are you at?" The reason we haven't committed to a number is because the consultation is real and there's a few moving parts here. One of the moving parts is: what do you define as Australian stories and Australian content? Some people have put together statistics where they'll say the streamers are already meeting 20 per cent; nothing to worry about. I saw the movie; I loved the movie, but very few Australians watch Elvis and think, "I'm watching an authentically Australian story."

There are two issues that we need to work through here. To what extent are the quotas about Australian jobs and to what extent are they about Australian stories? How we work those principles through affects what percentage we land at. That consultation will be happening. It will be led by Michelle Rowland and myself, and we will be working through those principles and introducing legislation in the second half of the year.

But what I've largely spoken about today is how we benefit from listening to views. We benefit from listening to good new ideas and we benefit from listening to people who are opposed to us. If you don't have the courage of your argument to be willing to listen to the opposite argument, then it may say something about the argument you're advancing as well. But I also – not as Leader of the House, but as Australia's Arts Minister – just want to remind you as well it's not only the ideas and views that we benefit from.

Some of you will remember back to the days of the Hawke and Keating Government when Paul was Treasurer and he had a house at Red Hill that used to be a diplomatic residence. On a Sunday afternoon he would bring colleagues around – John Button, John Dawkins, a series of them – and they'd talk about Cabinet agenda. One day he stops the proceedings with his friends and said, "I just want you to listen to this." He had a Mahler album of Symphony No. 2 "Resurrection" and put that on, played it and everyone had to be silent. At the end, it stopped and Paul looked at them all and said, "So, what does it mean?" And the answers came back, "Oh, yeah classical music." "No, what it does it mean?" "It's a good recording." And no one either had an answer or had an answer that satisfied Paul. And Paul then said, "It means we have to do better. How can you listen to something that elevating and then just walk away with the lowest point of compromise?" National Cultural Policy, if we get it right, and we start to go through with the vision that the Prime Minister released on Monday, I think should remind us that the voices we need to listen to and be willing to be affected by and advanced by don't just go to opinion, don't just go to policy but go to those who touch our hearts and soul as well.

[Applause]

LAURA TINGLE: Thanks so much, Minister. The Voice is obviously going to be a really dominant issue in Parliament as well as in the national conversation. I thought it might be useful to ask you if you could explain to us the processes that will be involved in Parliament. We've got the machinery of Government – well, the machinery-of-referendum bill, the referendum question itself. Is it possible for you to just lay out for the audience what's involved in getting a referendum sort of through the Parliament, what are the opportunities for debate and what's the timeline?

BURKE: Okay. So, there are two different pieces of legislation. The first is the machinery of Government to be able to conduct the referendum itself, and that's before us now. The second piece is the legislation that contains the actual question and the changes that would be made to the Constitution. The first piece of legislation needs to be dealt with before we can contemplate having a referendum because you need to update machinery of Government principles. But once the second piece of legislation goes through, you're then on a very strict timeline. I don't have the dates in my head, but there's a set number of weeks within which you cannot have the referendum and a set number of months within which you must have the referendum. So, the moment that second piece of legislation goes through, the window will become very clear for when the referendum will be held. The Prime Minister has been making clear the second half of this year, but there will be a tighter frame that will be clear once that legislation goes through.

TINGLE: But the crucial issue being that the Parliament will actually have the sign-off on what the question is and what the constitutional changes are.

BURKE: That's right. Every word of the question and every word of the changes to the Constitution will have gone through the Parliament itself.

TINGLE: Tom Connell.

TOM CONNELL: Tom Connell from Sky News. Casting our mind back to the election, we had an inflation figure of 5.1 per cent and Labor saying despite any concerns that wages could contribute to more inflation, that real wages should not go backwards. Inflation is now 7.8 per cent. Does Labor still hold that view?

BURKE: The Prime Minister answered this yesterday, which is: we're going through a Cabinet process and I accept absolutely that for these sorts of issues Cabinet processes have been rare over the last 10 years. But part of us going through due process is that we make a collegiate decision. Obviously, no one ever wants anyone's wages to go backwards. No one ever wants that. And so we – in terms of the timing of that though, people have been asking this at a bit of a pace at the moment but let's remember two things. One, the

decision itself doesn't take effect until 1 July, so we're in January at the moment. But, secondly, the Fair Work Commission hasn't even started its process. There's no capacity at the moment for anyone – for that decision to be made. But the principles that the Government will apply will be worked through collegiately. That's the right way to do it and it's something that Australia hasn't seen for a very long time.

TINGLE: Rosie Lewis.

ROSIE LEWIS: Rosie Lewis from *The Australian*, Minister. Your Government has proposed laws to criminalise wage theft which you referenced in your speech. When caught out, employers often argue their conduct was inadvertent or they seek leniency. Do you expect any bosses to actually be jailed under your proposed law and what would the bar for jail time be?

BURKE: These are issues that will be part of the consultation that I just described and that consultation is real. There's three different categories that we need to be able to work through as we put these laws together. The first are the people who inadvertently make a completely honest mistake. The second group are the people where it might not have been deliberate, but they were reckless to the extent of really not making an effort to do the proper checks and they had the capacity to do so. The third group are people who it's absolutely eyes wide open that they are ripping staff off.

So, what we will be working through is how do you deal with those three different categories and, you know, certainly for the final group, criminal penalties are clearly applicable there. How do you then work through the rest? Because the other thing you want to do is you want to make sure that you keep an incentive for businesses to find out themselves and come forward and say: "This has gone wrong and I want to fix it". So, you want to keep those incentives in place while also creating enough of a disincentive that people are really strict on making sure that people aren't being ripped off in the terrible situations we've seen.

Some of the examples that we've seen, you know, probably the most glaring was 7-Eleven, but there's, you know, we can't – I'll put it in these terms. We can't continue to have a situation where if the employee steals money from the till, it's a criminal offence and if the employer steals money from the worker, it's not. We're fixing that this year.

TINGLE: David Crowe.

DAVID CROWE: Thanks, Laura. Thanks for your speech, Minister. David Crowe from The Sydney Morning Herald and The Age of Melbourne. Given the way inflation is going at the moment, real wages simply aren't going up; they're

going backwards. Wages were such a big theme at the last election. You did promise to increase wages. You're now talking about getting wages moving again. Are you now grappling with the reality or, sorry, actually I'll rephrase that. Do you think that by the end of this term, by the time you get to the next election, you will be able to point to wages going up in real terms for workers or will you have to explain to workers that even though despite the promise at the last election you won't be able to get real wages higher?

BURKE: Every worker knows that we are fighting to improve their wages. We did that from the moment we were in with the submission to the Annual Wage Review. Now, we made our commitments to that before we were in Government – where obviously we didn't have the resources of Government which we have now. We have the processes of Cabinet which you do not have in Opposition, and you have now. The second thing we did was with respect to the submission on the aged care pay and the third part was the Secure Jobs, Better Pay Bill. Secure Jobs, Better Pay is having an impact already and there are businesses that had refused to bargain that are back at the table now negotiating with their staff and those negotiations will result in pay deals. So, people are already seeing a fight for their wages.

The legislation this year will deal with how do you – even if you get those agreements moving, how do you deal with the different ways that the system gets undercut through different loopholes? We will be closing those loopholes in the legislation that we deal with in the second half of this year. People know that we are fighting for better wages, better pay for them and for them to be going forwards. Obviously, there are issues with inflation that are international that we have no control over. But we do want to see people moving ahead in real terms in their household incomes. So, the timeline you've given I certainly hope that's true and people will know that we have been fighting to deliver a better wage outcome for them from the day that we were elected.

CROWE: Thanks.

TINGLE: Ron Mizen.

RON MIZEN: Mr Burke, Ron Mizen from the *Financial Review*. Union leaders have called for the Albanese Government to bring in fees to cover non union members given support from EBAs to solve the so called free rider or – that's the phrase. Is that something you're contemplating and I've also just been asked to see whether you'd clarify which of your IR legislation is for the second half of the year and which is for the first half of the year?

BURKE: Okay. On the first question, I've gone through the list of what we're contemplating and that one is not on the list. But, you know, unions are free to argue whatever issues they want for their members. I'm not critical of them

for arguing that. But it's certainly something that is not on our list that's – you know, I've given you the agenda I've gone through it. It's not there. Sorry, the second part, Ron, was?

MIZEN: Just in relation to managing –

BURKE: All of those ones that I went through that I will be consulting about on Wednesday, they are all for the second half of the year. All of those. So, the issues on the first half of the year are issues such as superannuation being able to claim through the Fair Work Commission if underpaid. Things like that. It's much more straightforward issues. We've kept the controversial stuff for the longer period of consultation, but it's overwhelmingly issues for the second half of the year that were election commitments that we didn't get to last year.

MIZEN: Thank you.

TINGLE: Anna Henderson.

ANNA HENDERSON: Anna Henderson, SBS World News and NITV. Some of your most vocal critics in the No campaign for a referendum are questioning why Labor wouldn't put forward legislation on urgency to set up a Voice to Parliament now and then hold a referendum, but be upfront about what an initial structure would look like and eventually stress test it ahead of a big national vote. What is your argument for why you are not taking that approach?

BURKE: That's not how the Constitution works. It's just not. The Defence power doesn't list how many submarines we'll have. The way the Constitution works is you establish what are the things the Parliament should deal with, and it's for the Australian people to decide whether or not we should do the two things that the Government will be putting to them. Whether we should be recognising first Australians in the Constitution, and, secondly, whether we should consult with people on issues affecting them.

For the First Australians, recognition and consultation are the two things that will be in the Constitution, and what we are putting to the Australian people is exactly the full detail of what we are asking them to consider whether or not they want to change. The Constitution is their document. The Parliament will be in control of what legislation goes through if the Australian people make that decision.

But it's a very straightforward issue of the two things and what the – look, one thing that I've noticed is I'm yet to hear an argument from the No campaign that is actually about voting no to the question that will be put forward. I'm yet

to hear that from the No campaign. It's either been about issues that are nothing to do with it or issues that would be determined by Parliaments in decades and years to come if this constitutional change is made.

The constitutional change is really simple. Recognition and consultation. That's what we're asking the Australian people to decide on. That's what the Uluru Statement of the Heart has requested in a really generous and gracious request and I'm hopeful that the Australian people respond with the same generosity.

TINGLE: Andrew Probyn.

ANDREW PROBYN: Mr Burke, Andrew Probyn from the ABC. In his monthly essay, Jim Chalmers has talked about values-based capitalism and re-imagining and redesigning markets. Could you define for us what's values-based capitalism – in your own words? And, secondly, would you explain how your definition of values-based capitalism would apply itself to workplace reform, whether it's more intervention and the like?

BURKE: Well, in terms of the second principle, I think you can get that answer by what we've already done in terms of the argument that has been used for so long, which is "Oh, look, we can't give people a wage rise because inflation is low. We can't give people a wage rise because inflation is high. Productivity – if business profits go up, wages will automatically increase." All of those arguments were put and the truth is if you value and you have the principle that you want people to have a better chance of being able to pay their bills, then Government has to pass laws that help people get more remuneration. That, in terms of principles, make a difference to people's lives at home is huge and it is exactly what we've been doing and what this year's agenda in terms of the legislation I went to will go to as well.

The only other thing I'd say in terms of the first half of the question with the different comments that have been out there, I think you can actually find a lot of these values in the mission statements of major companies. You can actually find some pretty strong values in the various mission statements that are put forward by the BCA itself. So, I know there's been a rush to say, "Oh, how could we deal with anything like this?" Have a look at what a whole lot of major companies put in black and white as the principles that they espouse as mattering. It's a lot more than the bottom line. For Government to be backing those concepts, it is right and proper and I'm really glad that Jim's written the essay.

PROBYN: So, in your own words what is values based capitalism?

BURKE: No, I have given you the answer. You get one go. I have given you the answer and I explained it's not going to be in the terms that you want. But I have given you the terms of my answer and I hope you loved it!

[Laughter]

LAURA TINGLE: Thank you, Minister, for imposing that discipline. It's obviously your parliamentary experience. Ben Westcott.

BEN WESTCOTT: Thanks very much for your speech, Minister. Ben Westcott from Bloomberg. You spoke a lot about consultation in your speech and obviously during the first few months of the Government there was the Jobs and Skills Summit, which was a major point of consultation, but over the following months there were some complaints, particularly from business leaders, that the consultation had not been as thorough when it came to multi-employer bargaining; and then later on when it came to the gas price cap there were complaints from business it didn't feel like it was being listened to. You talk about now, next week, you're going to meet with business and union leaders again. How can business be sure that your consultation is genuine?

BURKE: For any of the criticism that was made last year, you would be hard-pressed to find a business leader who says that the previous government consulted more than we did – even on that Bill. So, notwithstanding that, business have asked for there to be a higher level of consultation than there was last time. I think that's reasonable. We've got time to be able to do it and so, rather than just focus on the non-controversial areas that we're dealing with the Bill in the first half of the year, I thought it's right and proper; let's start the consultation now on what the Parliament won't be dealing with until the second half of the year. That won't change the fact that we – consultation doesn't mean what it meant for the previous government, I'm not asking for confirmation. If people disagree with me, they're not going to suddenly discover they've got confrontation.

What will happen though is different issues will be put where there will be a case where we think, "Yeah, we can make that adjustment and it will work better." For example, from the first draft of the legislation to what happened becoming law on Secure Jobs, Better Pay, a lot was changed to make sure we kept a primacy of single-enterprise agreements. That's part of why we're now seeing people come to the table in ways that they didn't used to. The push for that primacy of single enterprise agreement came from the business organisations. It improved the bill. It caused me to move amendments in the House and there were further amendments to do exactly that in the Senate. So, I think you've certainly got three stages. You've got the lack of consultation that used to happen under the previous mob, you've got the Jobs and Skills Summit and the genuine changes that did happen last year and you've had a

higher level of consultation and engagement which business have requested for this year and they'll get it.

TINGLE: If I can pick up that point about consultation and higher wages, what's happening with the implementation of the aged care Fair Work decision and what role is the Government playing in that?

BURKE: So, the Government has made – the Fair Work Commission came out initially with an interim report, with a 15 per cent pay rise concept there. They have then asked the parties to come back on how that might be timed. The Government's submission has been made on that and is public in terms of 10 per cent and five. That will be sorted through in the Fair Work Commission, as to what the commission determines on that timing. Then the Fair Work Commission will do more work in terms of – particularly for other people, ancillary staff in aged care, who weren't necessarily assisted by that first decision – and where they land on that I don't know obviously, but that's the further process that will happen.

TINGLE: So, what sort of timetable are you looking at for people who are still just sort of hanging out for some more money?

BURKE: Yeah, it is reasonable to presume that this year – normally pay increases come around 1 July so normal time that these things happen, but it's in the hands of the commission when they take the next round of evidence to be able to set exact dates on that. There is no doubt that aged care workers will during the course of this year end up being paid significantly more than they otherwise would have had, because there's been a change of Government and a Government that was willing to advocate a pay rise with the commission.

TINGLE: Catie McLeod.

CATIE McLEOD: Hi, Minister. Thanks for your speech. Catie McLeod from the NCA NewsWire. You spoke today about how your Government is changing Parliament and delivering a decent workplace for the people in the building. How is it then that the Commonwealth is facing legal action along with an Independent MP from a member of staff who claims that her boss tried to sack her for allegedly working unreasonable hours? Does the fact that this has arisen six months from the election reflect the fact that there's more work to be done to improve conditions for workers in Parliament? And just on this particular case, could it have been avoided if the Albanese Government hadn't cut the number of staff that Independents are allowed to have?

BURKE: Thank you for the question. First of all, no one in the room, me included, knows the facts on this particular case. None of us do, and so it's

difficult for me to really offer much other than there's a system to be able to deal with it. Secondly, we have followed through on the recommendations from Kate Jenkins. We've established, as I said in the speech, the Parliamentary Workplace Support Service, so various changes have been made. There is no level of changes that anyone can make that will eliminate all disputes. There will be occasions where there are disputes so I don't think zero disputes should ever be the test as to whether or not a system has improved. There's no doubt a lot has been done and when you hear the speeches on Wednesday from the party leaders, I think it will be pretty clear some of the changes that have been made. But that said, I don't think any of us can comment on in any detail, really, on that particular case because none of us know the facts.

On the final part of what you've asked in terms of number of staff, I don't think there is a single office Government backbencher, Opposition backbencher, Minister, frontbencher or crossbencher office where all the staff aren't working incredibly hard. But certainly we made a decision on the number of staff for the crossbenchers based on the original ask was that the crossbenchers would receive more additional staff than the Assistant Treasurer would have, and certainly that was something that was viewed as simply not tenable.

McLEOD: Thank you.

TINGLE: Paul Karp.

PAUL KARP: Thanks very much for your speech. In answer to Ron's question, you said that bargaining fees are not on the list for the Industrial Relations Bill this year. Can I please ask why? Is it because you don't think free riding is a problem or this is the right solution or you don't want to imperil a bill to pass your election commitments but you could come back to it alert?

BURKE: All my focus and all the Government's focus has been about getting people better job security and about delivering on getting wages moving, and that's been what our focus has been. There's been no discussion within Government on this issue at all and we will be flat out on the different issues that we'll have to deal with to be able to get wages moving. Be in no doubt; after we put through the closing loopholes bill, which, hopefully, makes its way through both houses of Parliament this year, someone will try something new. Someone will go to the courts and try to find a new way of undercutting wages. Someone will come up with a new model to try to see wages run down. We'll come back trying to close further loopholes.

Getting wages moving and delivering job security in a country where you have an extraordinary number of people without any access to leave is a huge task,

and so in terms of priority it simply isn't on this year's list; it's not on any list that I have.

KARP: Is it a loophole that employees get the benefit of union-negotiated pay rises if they are not union members and don't make any contribution?

BURKE: No, no, I hear your point. I'm not critical of the unions for making the argument. I'm simply saying there is no Government policy about to happen, happening, that goes down this path.

KARP: You rule it out then?

BURKE: I've said there's no Government policy that's about to happen or happening here.

TINGLE: Julie Hare.

JULIE HARE: Mr Burke, thank you for your speech. Julie Hare from the Australian Financial Review. Labor frontbenchers, including yourself, have some of the most multicultural electorates in the country. Is the Voice among the top issues raised by your constituents and are you confident the people of Watson will vote yes?

BURKE: First of all, I'm not going to presume on the people of my electorate. They will make their own decisions. I will be encouraging them to vote yes. And, you know, there's been some occasions when there's been national votes where they've voted yes. There's been occasions when they voted no in my part of Sydney. As a multicultural nation, though, people have – particularly when you consider some of the places that people have fled, in my part of Sydney they have a very good understanding of how there should be occasions where the first peoples of the land end up doing really badly and if they were consulted and respected and spoken and listened to, then the outcomes might have been different. Certainly, the lived experience of many people in my part of Sydney is the lived experience that exactly points to why we would want to vote yes.

HARE: When you talk to your constituents, what's the feeling you get?

BURKE: In terms of you asked, "Is this the number one issue?", no, it's people's wages not keeping up with their bills.

HARE: Is it on the –

BURKE: That's the number one issue. But I can also say I have had people raise this with me. I wouldn't pretend it's a scientific poll. Maybe the people

who disagree are avoiding the conversation. But certainly, I'm yet to have somebody come up to me and complain about it. I've had plenty of people coming up saying how important it is, some of whom have linked it back to experiences in countries they might have been born in.

TINGLE: Maurice Reilly.

MAURICE REILLY: I'm asking this question on behalf of our director Tim Shaw who's out there watching. Minister, can you rule in or out 20 per cent of streaming quota plans are new Australian stories and not – and doesn't include reruns of Skippy the Bush Kangaroo and Number 96?

BURKE: If I were to – well, the answer was in the speech is the answer to the question. There is a whole lot of moving parts here. One is the percentage, which is what most people have focused on, but the other, as this question focuses on, is what do you include in the Australian content. Is it all new? Is it not? Of what's new, how Australian does it have to be? These are all principles which have been dealt with in a different way with respect to free to air. Now, with free to air, you've got a different way of doing things because you have it got set broadcast times. You can say at this time of day, as we used to, this time of day has to be children's, this time of day you've got various Australian content. You used to have a guarantee of scripted drama that the previous government got rid of it. With free to air, you can do it that way.

With streaming, we have no control over what time people watch or, ultimately, what they choose to watch so you have to approach it in a different way. I know that the Shadow Minister said, "This will mean we'll end up having three different systems." We already have three different systems. We have a system on free to air TV of particular quotas. We have a system on Foxtel of a dollar amount and we have no system at all on streaming. Complete free for all. That can't go on. So, what we announced on Monday is from 1 July next year there will be Australian content obligations for the streaming services. First half of this year, Michelle Rowland and I will be working out exactly what the formula, exactly how you cut it, what that is, with genuine consultation, with all three stakeholders. You know, there's three groups that have a lot at stake here. You've got people who produce the content and the actors and all the people in the industry, you've got the streaming companies themselves and you have got the Australian audience that is a right to make sure that they see stories that reflect them on their own screen in their own home. Second half of the year we'll have the legislation.

TINGLE: Tom Connell.

CONNELL: Second go at it. There's been a few warnings over the past few years around domestic gas supply in Australia. Since coming to power the one

decisive action Labor has taken is to make domestic gas supply less profitable. What has the Government done to increase domestic gas supply?

BURKE: On this one, as part of a Cabinet Government, I'm just going to refer to the relevant Minister. I'm not going to give a half-answer on that.

CONNELL: Nothing at all?

BURKE: We've got the appropriate Minister. It's a serious issue. It's a very serious issue. And I'm just not going to offer it.

LAURA TINGLE: Rosie Lewis.

LEWIS: Minister, just following up on your earlier response to wage theft, you made clear that only the most egregious cases would attract a criminal penalty. Could you confirm – I understand consultation will get underway shortly – that the criminal penalty would include jail time? And do you foresee that there would be people captured and jailed under such laws or do you think such laws would be enough to prevent that behaviour?

BURKE: The objective – well, first of all, in terms of the way I described it, I said for that worse category, that's where they would have to apply.

LEWIS: So, they could apply to the earlier categories?

BURKE: That's something we haven't made a decision on. But certainly, if you're going to talk about criminalising, you have to talk about the worst category. That's part of the consultation we'll work our way through. I don't want to imply I ruled it out, but certainly for that third category it would have to be there.

The hope with criminalising anything is the law doesn't get used because it has a behavioural effect. That's always the hope. Reality often is that sadly you have a couple of high-profile uses of law before the behavioural effect takes place. I hope that's not the case.

You sort of have two worlds. One world is where people continue to be ripped off and people get jailed, while that's bad for the people getting ripped off and it's not so great for the person who suffers a criminal penalty. The alternative world is one where the mere fact of criminalising gives a behavioural change. Think of it in these terms. People say, "Oh, it's too complicated." People are used to the fact you have to comply with tax law. You make sure you get your tax return right and you get some advice to make sure you're getting it right. People are used to the fact that you have to comply with planning law. If you're undergoing a major build, you get some advice to get your planning law

right. There's been an attitude for too long that you can second guess your employment law.

That's part of the story of the underpayment scams that we've seen over the last few years, that there's been a view that, "Oh, yeah, we don't have to take this as seriously paying our workers as we do paying the Commonwealth or as we do complying with Local Government." I want to see that behaviour change and I have no joy, to be honest; of all the things that we will be dealing with, I'm least excited about criminalising wage theft. I have no joy in doing it or that we have to do it. But from what I saw, particularly during the last term, I have no doubt whatsoever that it will take something like this to deliver behavioural change.

TINGLE: David Crowe.

CROWE: Thank you, again, on arts policy, Minister, a quick question on one of the things you spoke about last year that there's been some reaction to this week. Setting perhaps in legislation a minimum pay for performers. I know the Greens want that in law. Do you think you would put that into law and while we're on laws, you want a poet laureate. Who do you think should get the job? Could it be Paul Kelly, could it be Sia, could it be Nick Cave? You're a muso. I personally don't think Bob Dylan should have got the Nobel Prize, but do you think a muso could be the poet laureate?

BURKE: Let me deal with the poet laureate. What was the first one?

CROWE: The first one was about minimum pay for performers.

BURKE: I'll deal with that first because the second part is fun.

[Laughter]

BURKE: On minimum pay, I have not ruled out that we ever get there. I wasn't able to get there in the seven months that we were consulting on National Cultural Policy because you want to make sure that you don't end up with perverse outcomes. For example, if we think of the volunteers at various festivals, if someone's getting their tickets and they're performing as part of getting their tickets and their accommodation, to what extent are they a volunteer? To what extent is that a payment? How do you deal with that? What should the rate be? What does that mean in terms of smaller venues? Working all that through is complex and it's not something I would rush through.

I am deeply frustrated and always have been at the presumption that every artist when they're asked to help with something it's presumed that they'll do it for free or that exposure is their payment. They're workers – on many

occasions, musicians – who have put this request put on them; some of them have been training in their craft since the age of three or four. We talk about how long doctors train. Musicians and the work and discipline that's gone into their craft is extraordinary. To have them on such low rates of pay is horrific. Exactly how you fix it, I wasn't confident that we had landed on the right answer yet. Establishing the Centre for Arts and Entertainment Workplaces, a lot of its work will be about delivering safe workplaces, but there will be questions of remuneration that the centre works through as well.

On the poet laureate, I think everyone was really moved by Sarah Holland Batt at the launch on Monday. Her poems – I've listened online to quite a few of her poems about her father and they're just beautiful, elegant works of poetry. I read a poem out loud every day. I've done so since I was 18. Today was Peter Carey. Typewriter Music. Sorry, David Malouf, Typewriter Music. But great poetry – you mentioned musicians. Great poetry already has great music to it. It already does. I've been very determined with the cultural policy that there's never a decision about artistic merit taken by the Minister so you've named a whole lot that I love.

CROWE: So, you won't get a say?

BURKE: No, I won't get a say. But as the member for Watson, I'll remind people of the Bankstown Poetry Slam being the largest poetry gathering in Australia and let's not just think of the famous published poets. There is a culture out there of young people putting their words to paper and then to the microphone with the audience clicking in time when they hear something they like that's become one of the most wonderful ways that words are using used in Australia. It's going to be exciting. I don't know who they'll pick, but I won't be the one doing the selecting.

TINGLE: If I could just ask finally, we've talked about video streaming. You and the Prime Minister are obviously major contemporary music tragics. What's going to happen about music streaming, things like Spotify and getting decent returns for artists from them?

BURKE: There's two issues for streamers that are principally Spotify and Apple, but there are other services as well. Dealing with video streaming is complex but easier than music. The challenge with – the reason it's easier with video is the producing of the work is – it can be done directly by the streaming service itself, whereas Spotify or Apple aren't actually involved in the producing of the music. So, it's a different mechanism. It's one of the things that by having Music Australia as very much a corporate body, not simply dealing through peer review but being able to make strategic decisions in ways that the Australia Council traditionally couldn't, will be able to provide advice to Government on this.

When people think about Spotify or Apple music, for example – I'll give you a simple example, we all think about it in terms of, "How can you have quotas there because I choose what songs I like and that's my business and I don't want the Government telling me what I choose?" Of course. But play an Australian album on one of those and have the feature on that it keeps choosing music for you after. By the third or fourth song if you haven't gone to North America in the choices that it's taken you to, then you're getting a different experience to what I get. The streaming services do not only have available what you might choose; they also push music to you. Getting inside those algorithms and getting a better deal for Australian music will make a huge difference for Australian artists. But I need the expertise and the advice of Music Australia for us to be able to take that next step.

TINGLE: Please thank Tony Burke for his time today.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001572

Senator David Pocock on 25 October 2023, Proof Hansard page 16-17

Closing-loopholes bill: Emergency services communications operators category

Question

Senator DAVID POCOCK: So it does or it doesn't include Border Force?
Ms Godden: Currently, as drafted in the closing-loopholes bill, the presumptive provision would not apply to Border Force employees.
Senator DAVID POCOCK: What about people in the call centre for the ambos?
Ms Godden: Call centre operators—I'm just trying to think of the specific definition that we used in consultation—would be covered.
Mr Jurd: To the extent that they fall within the emergency services communications operators category, they'd be captured by the bill.
Senator DAVID POCOCK: On notice, just clarity whether they do or don't as currently drafted.

Answer

Schedule 3 of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the Bill) amends section 7 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to introduce presumptive liability provisions for first responders in the Comcare scheme who suffer from post-traumatic stress disorder (PTSD).

The Bill provides that an employee will be a first responder for the purposes of the presumptive provision if the person was:

- an AFP employee (including the Commissioner and Deputy Commissioner of the AFP);
- employed as a firefighter; or
- employed as an ambulance officer (including as a paramedic); or
- employed as an emergency services communications operator; or
- a member of an emergency service (within the meaning of the *Emergencies Act 2004* (ACT)).

The term ‘emergency services communications operators’ is not defined by the Act, but instead provides a general description of the role. The wording was developed in consultation with the ACT Government and is intended to cover persons responsible for receiving emergency calls, dispatching resources and assisting incident management processes from a communications or control centre for ambulance and other emergency services.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-001203

Senator Michaelia Cash on 25 October 2023, Proof Hansard page 64

Departments awareness of the measures for the Omnibus bill

Question

Senator CASH: We'll explore that further at the committee hearing, because I know that we're unfortunately short of time today. When was the department first made aware that these measures would be included as measures in the bill?
Mr Hehir: I would need to check that. As the officers have advised, we received information back about parties to the consultation, suggesting that there could be improvements here. I would need to check the date in terms of when a decision was made, noting, of course, that I'll need to take into account the standard cabinet and other processes.
Senator CASH: Who provided that feedback?
Mr Hehir: I'll need to take that on notice.
Senator CASH: On which date did the government make a final policy decision to include these proposals in the bill?
Mr Hehir: I think you're asking the same question maybe but with slightly different phrasing.
Senator CASH: Well, I said, 'When was the department first made aware?' versus 'final policy decision'.
Mr Hehir: I did say that I would need to take that on notice.
Senator CASH: Both of them on notice

Answer

The department undertook policy development work related to these measures following feedback from the submission process that was undertaken between March and May 2023. The department received confirmation that the proposals on Delegates' Rights (Schedule 1, Part 7) and Right of Entry (Schedule 1, Part 10) would be included in the Bill when policy approval was provided for the Bill.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000657

Senator Matt O'Sullivan on 30 May 2023, Proof Hansard page 71-72

Employer groups at roundtable

Question

Senator O'SULLIVAN: Just sticking with the employee-like discussion, page 7 of the consultation paper refers to an outcome of the Jobs and Skills Summit being 'to consider allowing the Fair Work Commission to set fair minimum standards to ensure the Road Transport Industry is safe, sustainable and viable'. In relation to the people who were participating in that forum, can the department confirm which employer groups were present for that particular discussion in the roundtable?
Ms Huender: Yes, I can. Would you like me to go through them?
Senator O'SULLIVAN: Yes, the employer groups.
Mr Manning: We have a summary of those that were there. We might have to take that on notice.
Senator O'SULLIVAN: Do you have it there with you now? Were either of the two peak transport associations—the Australian Trucking Association and NatRoad—present at that meeting?
Ms Huender: I know that the Australian Trucking Association was not present at that meeting. I would need to take on notice NatRoad.
Mr Manning: We have met with them since
Senator O'SULLIVAN: But they weren't part of-
Mr Manning: We have taken it on notice to check.

Answer

The following employer groups attended the Road Transport Roundtable held on 29 August 2022:

- National Road Transport Association (NatRoad)
- National Road Freighters Association
- NT Road Transport Association
- Queensland Trucking Association
- Victorian Transport Association
- Australian Road Transport Industrial Organisation.

Some of these organisations represent both road transport employers/hirers and drivers.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000649

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 40

How many people are currently working on same job, same pay in the department?

Question

Senator CASH: I want to return to questions I began to ask in cross portfolio but was told this was the correct place to ask them. Again, it is in relation to the same job, same pay legislation. How many people are currently working on same job, same pay in the department?
Ms Anderson: There would be a range of policy staff. I would probably have to take it on notice, if I could. There are also a couple of people within our legal area working on it.
Senator CASH: Approximately how many?
Mr Hehir: There would also be consultation team members.
Senator CASH: Take me through the teams that are working on same job same pay. We've got legal?
Ms Anderson: Yes.
Senator CASH: Policy?
Ms Anderson: Legal policy team.
Senator CASH: Consultation?
Ms Anderson: Their consultation team is involved in the consultation side of things. We also have a policy team that is responsible for working on this measure. Like I said, there is potentially not a full-time job for all of those staff. It is approximately five to six.
Mr Tracey: Yes.
Senator CASH: In total?
Mr Hehir: No. That was policy.
Senator CASH: That was policy.
Ms James: I think we are best to take this on notice. Same job, same pay is one of a number of measures that we took you through earlier that are part of this legislative package. There is a significant multidisciplinary team working on that carrying out different functions with respect to the entire package. Some are more focused on this measure in particular. To give you an accurate number, a sort of FTE or ASL, I think we would need to take that on notice. It would take us some work. I also note that our people don't keep any sort of timesheet where they divide up their work. They are part of a broader team. It will take us a bit of work to give you something accurate. We are not talking dozens of people, I think it's fair to say.

Answer

As at 22 June 2023, there are 12 non-SES employees in the department working on the Government's 'Closing labour hire loopholes' measure:

- Safety and Industry Policy Division:
  - Headcount: 6
  - FTE: 5.8

- Workplace Relations Legal Division:
  - Head count: 6
  - FTE: 5.2

As noted by the Secretary in her answer to Senator Cash's question, these officers do not work exclusively on the 'Closing labour hire loopholes' measure.

In relation to consultation, officers in the Workplace Relations Consultation Branch progress work in relation to all measures for the next tranche of workplace relations reforms, but do not have staff dedicated to work on individual measures. For this reason, officers in that branch have not been counted in the above figures.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000645

Senator Fatima Payman on 30 May 2023, Proof Hansard page 30

2nd tranches of consultations

Question

Mrs Wallbank: As Ms Anderson mentioned, we've just finished two tranches of consultation on the 11 measures that are being considered for the second half of the year. Do you want me to read out each consultation? We've had 70.

Senator PAYMAN: No. I think I want to know if the consultation was extensive. It sounds like it was. If you can provide that on notice, that would be fantastic.

Mrs Wallbank: I would love to.

Answer

Public consultation on the 11 measures being considered for introduction to Parliament in the second half of 2023 occurred between February 2023 and May 2023. This built on earlier consultation on some measures from mid-2022.

As part of the 2023 process, the Minister for Employment and Workplace Relations, and the Department of Employment and Workplace Relations led a comprehensive consultation process.

The Minister for Employment and Workplace Relations announced the commencement of consultation at his 1 February 2023 Press Club address. This was followed by chairing a National Workplace Relations Consultative Council meeting on 8 February 2023.

The Department invited organisations and individuals to participate in consultation discussions, as well as inviting written submissions outlining their views. During the consultation period, the Department met with all stakeholders who requested meetings to discuss the measures being considered. Materials to support the consultation process were published on the Department's website including short summaries of the 11 measures being consulted on, and a number of detailed consultation papers covering the most complex measures.

Between March and May 2023, the Department held more than **70 consultation sessions** with participation from business, industry, unions, state and territory government officials and other stakeholder groups. In addition, the Department received more than 220 written submissions from over 165 organisations and individuals.

A table of Department led consultations by organisation between March and May 2023 is included below:

Consultations – by organisation and frequency

Number	Organisation	Number of mtgs
1	Minerals Council Australia	5
2	National Farmers' Federation	2

3	Australian Small Business and Family Enterprise Ombudsman	1
4	Australian Chamber of Commerce and Industry	5
5	Australian Industry Group	11
6	Business Council of Australia	9
7	Council of Small Business Organisations Australia	7
8	Australian Council of Trade Unions	4
9	Master Builders Australia	2
10	Coles	1
11	PeopleIN	2
12	Queensland Office of Industrial Relations	3
13	New South Wales Industrial Relations, Department of Premier and Cabinet	3
14	Australian Capital Territory Chief Minister, Treasury and Economic Development Directorate	3
15	Industrial Relations Victoria, Department of Premier and Cabinet	3
16	WorkSafe Tasmania	3
17	Northern Territory Office of the Commissioner for Public Employment	3
18	South Australia Attorney-General's Department	3
19	Western Australia Department of Mines, Industry Regulation and Safety	3
20	Wesfarmers	4
21	Kmart	4
22	Academics: Anthony Forsyth, Tess Hardy, Andrew Stewart, Beth Gaze, Shae McCrystal	2
23	QANTAS	2
24	Woolworths	3
25	Pharmacy Guild	1
26	Association of Professional Staffing Companies	2
27	Cornerstone Group	2
28	National Women's Alliance - National Women's Safety Alliance - Harmony Alliance - National Rural Women's Coalition - Equality Rights Alliance Office for Women (PM&C) observed	1
29	Law Council of Australia	1
30	Australian Retailers Association	2
31	Recruitment, Consulting and Staffing Association	2
32	Housing Industry Association	2
33	Clubs Australia	2
34	Transport Workers Union	1
35	BHP	1
36	Newcrest	1
37	South32	1
38	Mitsubishi Development	1
39	Corrs Chambers Westgarth	1
40	Rio Tinto	1
41	DP world	2
42	Uber	2
43	Menulog	1
44	Doordash	1
45	Amazon	2

46	Australia Wide	1
47	Disability Advocacy Network Australia	1
48	Rideshare Drivers Network	1
49	Rail Tram and Bus Union - Victorian Locomotive Division	1
50	Equality Australia	2
51	Australian Livestock and Rural Transporters Association	2
52	WestJustice	1
53	Australian Convenience and Petroleum Marketers Association	1
54	Thiess	1
55	Virgin	1
56	RFG Staffing	1
57	Tess Hardy (academic)	1
58	Shopping Centre Council of Australia	1
59	Migrant Justice Institute	1
60	Direct Selling Australia	1
61	Australian Hairdressing Council	1
62	Aesthetic Beauty Industry Council	1
63	Australian Trucking Association	2

Standing Committees on Education and Employment

QUESTION ON NOTICE
Budget Estimates 2023 - 2024

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000664

Senator Michaelia Cash on 30 May 2023, Proof Hansard page 63

Minister's input on the workplace relations reform proposals

Question

Senator CASH: So there was to-ing and fro-ing, back and forward, in terms of the preparation of the documents. Did the minister's office do any redrafting of the documents?

Mr Hehir: I'm not sure; I'd need to check that. I think they are largely the same as when they went up, but I'd need to check that.

Senator CASH: That's fine. Could you take on notice providing any draft copies of the consultation documents? Also, did the minister's office have any input into content, such as the sources cited in the documents?
Mr Hehir: I'd definitely need to take that on notice.

Senator CASH: In the consultation paper on employee-like work—we'll go very shortly to questions on employee-like work—it includes six citations of speeches by the minister. Whose decision was it to cite the minister so often in the departmental publication?

Mr Hehir: I'd need to check the citations, but my recollection is that we're consulting on a government election commitment.

Senator CASH: Consulting on?

Mr Hehir: A government election commitment, so it wouldn't be unusual to cite the election commitment or the opposition spokesperson responsible for the policy; that would be completely normal. At the time that he was speaking, and that has been quoted, he was either the opposition spokesperson then or the current minister, just to clarify that

Answer

- The Department drafted the consultation papers.
- On 23 March 2023, drafts of consultation papers (Attachments A-D) were provided to Minister Burke's office including:
    - *Same Job, Same Pay*
    - *'Employee-like' forms of work and stronger protections for independent contractors*
    - *Updating the Fair Work Act 2009 to provide stronger protections for workers against discrimination*
    - *Criminalising wage underpayments and reforming civil penalties in the Fair Work Act 2009.*
- The Department received feedback on the papers and updated papers on 29 March 2023. Feedback from Minister Burke's office on the consultation papers related to the main content, not the sources cited in the papers. Copies of the updated papers are attached (Attachment E-G).

- On 12 April 2023, the Department made minor editorial changes to the papers and provided these updated draft consultation papers (Attachments H-K) to Minister Burke's office in advance of publishing on the DEWR website. Copies of these drafts are attached.
- No feedback was provided by Minister Burke's office at this time. The Department made further minor editorial changes prior to publishing the papers on the website. Copies of the final papers are attached (Attachments L-O). These were published on the Department of Employment and Workplace Relations (DEWR) website on 13 April 2023.
- The 'Employee-like' forms of work and stronger protections for independent contractors consultation paper was prepared by the department. The consultation paper used past speeches made by the Minister for Employment and Workplace Relations to help articulate the Government's policy in relation to the three measures included in the paper and were footnoted accordingly.

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2022 - 2023

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000180

Senator Michaelia Cash on 15 February 2023, Proof Hansard page 44

Letter and List of Stakeholders in relation to First Tranche IR Legislation

Question

Senator CASH: Are you able to give the committee a copy of the letter that has been sent out and a list of the stakeholders that it has been sent out to? I'm happy for you to take that on notice.
Ms J Anderson: We can take that on notice.
Mrs Wallbank: Yes. So that's happening. Also, the department is meeting with several stakeholders to talk through those seven measures.
Senator CASH: Again, the same question: are you able to provide a list of the stakeholders that the department has met with and will meet with?

Answer

1. Department letters to recipients

Seventy-four individuals and organisations received a letter from the department.

No.	Name/Organisation	No.	Name/Organisation
01	Australian Council of Trade Unions (ACTU)	38	Digital Service Providers Australia New Zealand
02	Australian Chamber of Commerce and Industry (ACCI)	39	QLD – Office of Industrial Relations, Queensland Treasury
03	Australian Industry Group (Ai Group)	40	NSW – NSW Industrial Relations, Department of Premier and Cabinet
04	Master Builders Australia (MBA)	41	ACT – Chief Minister, Treasury and Economic Development Directorate
05	Business Council of Australia (BCA)	42	VIC – Industrial Relations Victoria, Department of Premier and Cabinet
06	National Farmers' Federation (NFF)	43	TAS – WorkSafe Tasmania
07	Council of Small Business Organisations of Australia (COSBOA)	44	NT – Office of the Commissioner for Public Employment
08	Minerals Council of Australia (MCA)	45	SA – SafeWork SA
09	National Aboriginal and Torres Strait Islander Women's Alliance	46	WA – Department of Mines, Industry Regulation and Safety
10	Harmony Alliance	47	Fair Work Commission
11	Equality Rights Alliance	48	Fair Work Ombudsman
12	Women with Disabilities Australia	49	Australian Government Department of the Prime Minister and Cabinet, Office for Women, on behalf of the Women's Economic Equality Taskforce
13	National Women's Safety Alliance	50	Dr Joanna Howe, University of Adelaide
14	The National Rural Women's Coalition	51	Federation of Ethnic Communities Councils Australia

No.	Name/Organisation	No.	Name/Organisation
15	Professor Andrew Stewart, University of Adelaide	52	National Electrical Contractors Association
16	Professor Shae McCrystal, University of Sydney	53	Manufacturing Skills Australia
17	Professor Anthony Forsyth, RMIT University	54	Australian Retailers Association
18	Dr Tess Hardy, University of Melbourne	55	Australian Constructors Association
19	Professor Rae Cooper AO, University of Sydney	56	Housing Industry Association
20	Professor Beth Gaze, University of Melbourne	57	Professor Jeff Borland, University of Melbourne
21	Emeritus Professor Sara Charlesworth, RMIT University	58	Chief Executive Women
22	Professor Meg Smith, Western Sydney University	59	Australian Resources and Energy Employer Association
23	Emeritus Professor Gillian Whitehouse, University of Queensland	60	People with Disability Australia
24	Ashurst, on behalf of Coal Mining Industry Employer Group	61	Live Performance Australia
25	Construction, Forestry, Mining and Energy Union	62	Law Council of Australia
26	Australian Manufacturing Workers' Union	63	Pharmacy Guild of Australia
27	Communications, Electrical and Plumbing Union	64	Migrant Justice Institute
28	Professionals Australia (formerly the Association of Professional Engineers, Scientists and Managers Australia)	65	Civil Contractors Federation
29	Recruitment, Consulting and Staffing Association	66	National Retail Association
30	CEO, Coal Mining Industry (Long Service Leave Funding) Corporation	67	Australian Hotels Association
31	Head of Government Relations, Coal Mining Industry (Long Service Leave Funding) Corporation	68	Clubs Australia
32	Australian Workers' Union	69	Australian Construction Industry Forum
33	Association of Super Funds Australia	70	Australian Road Transport Industry Organisation
34	Financial Counselling Australia	71	Approved Employers of Australia (Pacific Australia Labour Mobility)
35	Australian Institute of Superannuation Trustees	72	Australian Small Business and Family Enterprise Ombudsman
36	Industry Super Australia	73	Australian Higher Education Industrial Association
37	Financial Services Council	74	Super Consumers Australia

A copy of a redacted letter is attached. Each letter contained an attachment with an outline of measures and questions for response. This is attached.

The attachments provided to the ACTU, ACCI, Ai Group, MBA, BCA, NFF, COSBOA and MCA also noted that they would be invited to meet with the department. This is also attached.

2. Department meeting with stakeholders

Of the seventy-four individuals and organisations who received a letter from the department, the department met with the following stakeholders in relation to the measures for consultation:

- Australian Council of Trade Unions
- Australian Chamber of Commerce and Industry
- Australian Industry Group
- Master Builders Australia
- Business Council Australian
- National Farmers Federation
- Council of Small Business Organisations Australia
- Minerals Council Australia
- Super Consumers Australia
- Financial Services Council
- Coal Mining Industry Employer Group
- Australian Resources and Energy Employer Association
- Senior state and Territory officials from QLD, NSW, ACT, VIC, TAS, NT, SA and WA

Standing Committees on Education and Employment

QUESTION ON NOTICE
Supplementary Budget Estimates 2022 - 2023

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. SQ23-000179

Senator Fatima Payman on 15 February 2023, Proof Hansard page 42-43

Consultation Feedback on IR Legislation Tranche

Question

Senator CASH: That concludes all the questions I have in relation to that. Could I now go to consultation in relation to the last tranche of industrial relations legislation that went through, and also the announcement by Minister Burke at the National Press Club—I think it was a fortnight ago—about the government's plan to consult on the upcoming tranches of IR legislation. Just going back to the original round of consultation, did the department receive any correspondence or any feedback, whether verbal or written, from any groups that were unhappy with the previous round of consultation?
Ms James: We've seen expressed publicly—and, I am sure, privately—some concerns about time frames from a number of stakeholders. This was a process where there were some imperatives around the legislative time frame. I would also note that workplace relations rarely sees universal acclaim or even comfort on the substance or form of consultation. Certainly, we've seen some concerns about time frames and a desire for more time to comment on things. I'll take on notice whether we've received anything formal. I would also note that the minister, in his Press Club speech, acknowledged the challenges of needing to provide this balance. He noted the number of amendments to the bill that he made in the House as a result of consultation. He said that we benefit from listening to people who are opposed to us, as well as those who agree with us. Certainly, in this next round, we're dealing with some more complex and structural issues, and he has stated that we will be taking more time on, and probably a more targeted approach to, the various measures that he foreshadowed in that Press Club speech.
Senator CASH: Again, on the previous round of consultation, could you take on notice to inform us of whether any correspondence was received in relation to feedback on the consultation process.
Ms James: Yes.
Senator CASH: In terms of the concerns—you are right; they have been raised publicly and we've all read them—what were they in relation to the department's consultation process? You've mentioned that it was the speed of it and the complexity of the legislation. What other concerns, if any, were raised?
Ms James: I would look to take that on notice, because a lot of different people have had a lot of different conversations with stakeholders and partners in relation to this process.
Senator CASH: Is there a general theme that's been raised?
Ms James: I think speed is probably the key one, as I've already mentioned. I also have received feedback directly from a number of stakeholders thanking us for, in what was a very intensive progress, the degree of time that the department's officials gave, the fact that they met with anyone and everyone who asked to be met with and the fact that there was a lot of follow-up. I think we should mention both sides. I would take on notice anything more than that, because I'd be going off my memory. Mr Hehir might have something to add.

Answer

The Department received verbal feedback and limited written feedback in relation to the Department's consultation process in 2022.

The Department received the following written correspondence regarding the consultation process for the Secure Jobs Better Pay legislation:

- An email on 28 November 2022 from the Manager – Workplace Relations, Minerals Council of Australia
- A letter dated 24 January 2023 from the Chief Executive Officer of the Business Council of Australia

Verbal feedback to the Department in relation to the consultation process was focused on organisations and individuals advising the Department of their interest in being involved in the consultation process and commitment to ongoing engagement on workplace reforms. Some also expressed concerns about timeframes and sought further detail about measures being discussed in some consultations.