

Changes to the Industrial Relations Practices

At the National Press Club Address on the 31st of August, the Hon. Tony Burke MP, the Minister for Employment and Workplace Relations outlined a range of reforms to the Fair Work Legislation.

The reforms represent the second phase of Labor's industrial relations changes and are part of a larger effort to regulate labour hire, the gig economy and the criminalisation of underpayments fulfilling election commitments by the government.

The Minister will introduce the *Closing Loopholes Bill 2023* (Cth) to Parliament on Monday the 4th of September 2023. The Bill is also expected to entail comprehensive alterations to the definition of casual employment, labour hire, employee-like arrangements and safeguarding domestic violence arrangements.

The bill has undergone four months of public and private consultations, which both the Minister and his Department have been actively involved. In response to calls for a comprehensive evaluation of potential economic consequences the government's industrial relations legislation will be "accompanied by a detailed regulation impact statement".

The Government intends for the effective date for these laws is scheduled for July 1, 2024.

Casualisation

Just over a fifth of all Australian workers (approximately 2.5 million people) are casual employees.

While Australia does not have a legislated definition of *casual employment*, in two recent court cases judges have ruled that two employees who had consistent work arrangements could not be considered casual and were entitled to paid leave.

As part of the bill, the government will seek to legislate the definition of casual employment, focusing on the nature of work; casuals who meet the definition could then apply to be permanent.

Domestic Violence

The industrial relations changes will include legislation to explicitly safeguard workers who have experienced domestic violence from discriminatory actions or adverse consequences.

The proposed amendments aim to prohibit employers from taking adverse actions against employees based on their status as victims of family and domestic violence. This classification will be designated as a "protected attribute" within the Act. Additionally, the modifications will prevent the inclusion of discriminatory terms in enterprise agreements and modern awards. The responsibility of eliminating such discrimination will be assigned to the Fair Work Commission (FWC).



The concept of these protections was initially outlined in an [April government consultation paper](#) on laws concerning adverse action and discrimination. This paper also inquired about the necessity of enhanced safeguards for union delegates and industrial activity.

These revisions are built upon previous legislation that provides ten days of paid family and domestic violence leave to all national system employees, including casual workers.

Gig Economy

The proposed legislative measure will aim to establish minimum standards for independent contractors who operate within the gig economy and exhibit "employee-like" characteristics.

Employee-like workers will be defined as those who have low bargaining power, and low authority over their work or receive pay at or below the rates of comparable employees - such those who perform work through a digital labour platform in food delivery, ride share and the care economy.

The FWC will be empowered to set minimum standards for employee-like workers in the gig economy. They will have discretion to consider a range of terms that may be included in an order, such as payment terms, working time, record-keeping and insurance.

The Commission will not set minimum standards on terms such as overtime rates, rostering arrangements and terms that would change how a worker is engaged.

Additionally, gig workers will be safeguarded against unjust deactivation, and they will possess the right to seek resolution for disputes through the FWC.

The government has clarified that workers will retain their status as independent contractors and that these changes will not impact independent contractors who possess a significant degree of control and autonomy over their work, particularly those in skilled trades.

Further Information

The Employment White Paper will be released in September and will build on the themes and outcomes of the Jobs and Skills Summit. The White Paper will have an overarching focus on the objectives of full employment and productivity growth for the benefit of all Australians, along with women's economic participation and equality.

For further information, please contact Hawker Britton's director John-Paul Blandthorn at jpblandthorn@hawkerbritton.com