
CIRCULAR NO. GEN/182/NAT/182/23
DATE: 27 December 2023
SUBJECT: Closing Loopholes Amendments introduced
ATTENTION: Chief Executive Officer

On 14 December 2023 the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* came into effect, amending the *Fair Work Act 2009* (Cth). It confers new functions on the Fair Work Commission and creates new rights and obligations for employees and employers respectively. The Fair Work Commission [President's Statement](#) provides detailed information on the implementation of the new provisions.

The provisions of the Amendments are being introduced across four stages:

From 15 December 2023

1. *Small business redundancy exemption*

The small business redundancy exemption no longer applies where the employer has only become a small business employer due to the employment of one or more employees being terminated in certain circumstance in the context of bankruptcy or liquidation.

2. *Regulated labour hire arrangements*

Under the new [Part 2-7A](#) provisions The Commission may now make orders relating to labour hire arrangements. The earliest an order may come into effect is 1 November 2024.

3. *Workplace delegates' rights*

Under the new [s350C](#):

A *workplace delegate* is defined as a person appointed or elected, in accordance with the rules of an employee organisation, to be a delegate or representative (however described) for members of the organisation who work in a particular enterprise.

These rights include entitlements to:

- Represent the industrial interests of members of an employee organisation, including in disputes with their employer;
- Reasonable communication with members of the employee organisation that they represent in relation to the industrial interests of these members;
- Reasonable access to workplaces to represent the industrial interests of members of an employee organisation; and
- Reasonable access to paid time for the purposes of related training during normal working hours. (Note: Small business employers are exempt from this workplace delegate right).

In determining what is reasonable in relation to these rights' consideration shall be had for the size and nature of the enterprise, the resources of the employer, and the facilities available to the enterprise.

4. *Protections for those subject to family and domestic violence*

'Subjection to family and domestic violence' to become a new protected attribute for the purposes of the anti-discrimination provisions in the FW Act.

5. Compulsory Conciliation Conferences in protected action ballot matters

Each employee bargaining representative that applied for the protected action ballot order must attend the Commission conference in relation to the protected action ballot order for the industrial action to be protected action.

From 1 July 2024

1. Modern Award variations must include a delegates' rights term

The Fair Work Commission shall be required to vary modern awards to include a delegate's rights term, which, at a minimum, must provide for the exercise of the workplace delegates' rights set out in s350C of the Fair Work Act (see above).

2. Delegates' rights term must be included in a workplace determination

In a workplace determination, such as an industrial action related or intractable bargaining determination, delegates' rights must be included as a term, which provides for the exercise of delegates' rights.

This term must not be any less favourable than the delegates' rights term that is contained in a modern award.

3. Delegates' rights term must be included in Enterprise Agreement

The new [s 205A](#) requires an enterprise agreement to include a delegates' rights term for workplace delegates to whom the agreement applies.

Such terms must provide for, at a minimum, the rights outlined in s 350C.

Where the delegates' rights term in the enterprise agreement is less favorable than the delegates' rights terms in one or more applicable modern awards then the term in the enterprise agreement shall have no effect and the most favorable term of those in the modern awards is taken to be a term of the enterprise agreement.

Furthermore, in approving an Enterprise Agreement, the FWC must specifically note that such a term is included.

From 1 November 2024

1. Regulated Labour Hire arrangement orders

Regulated labour hire arrangement orders made under the new Pt 2-7A come into effect.

From 1 January 2025 (*the later of 1 January 2025 and the day after the Minister declares a Voluntary Small Business Wage Compliance Code.)

1. Wage Theft Provisions shall apply

The Fair Work Act currently provides a civil penalty framework for the enforcement of workplace rights and entitlements under the Act. However, due to ongoing noncompliance criminal penalty provisions shall be introduced.

Pt 14 of Schedule 1 introduces a new criminal offence for wage theft, applying to intentional conduct. As outlined in the explanatory memorandum these new provisions shall serve as a further deterrent against wrongdoing and worker exploitation.



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