



QUICK GUIDE TO PROPOSED NEW IR LAWS

On 4 September 2023, the Federal Government introduced [the Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023](#) into Parliament. The Bill seeks to make significant changes to the Fair Work Act 2009. [Note: the Bill still needs to pass the Senate before it becomes law. It is unlikely that this will occur until 2024].

Here is a brief summary of proposed key changes.

Wage Theft	<p>Criminal offences to be introduced for intentional underpayments with maximum penalties to be the greater of 3 times the underpayment amount or 5000 penalty units (currently \$1,565,000) and imprisonment for a term of 10 years for individuals. Honest mistakes will be subjected to lesser penalties.</p> <p>See: Compliance and Enforcement Fact Sheet for more details.</p>
Casual Employment	<p>The Bill introduces a new definition of casual employees which requires the following conditions to be met:</p> <ul style="list-style-type: none">a) the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; andb) the employee is paid a casual loading or a specific rate of pay for casual employees (under the relevant industrial instrument). <p>This means that the totality of the employment relationship will need to be considered when determining the status of an employee. In other words, casual employment may be about to get a whole lot more complex.</p> <p>See: Casual Worker Fact Sheet for more details.</p>

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Work Health and Safety	<p>An offence of industrial manslaughter is proposed to be introduced along with an increase to all other maximum penalties under the Federal Work Health and Safety legislation. Note: this will only apply to employers who are covered by the Federal WHS Act.</p> <p>See: Work Health and Safety Reforms Fact Sheet for more details.</p>
Definition of Employment	<p>The Bill proposes a “new ordinary definition” of employer and employee. This means that the practical working relationship will be considered when deciding whether a worker is an employee or independent contractor. It aims to allow more flexibility and to be fairer, but may also lead to uncertainty and complexity for businesses.</p> <p>See: Meaning of Employee and Employer Fact Sheet for more details.</p>
Sham Contracting	<p>The Bill proposes to make it more difficult for employers to defend claims of misrepresenting employment as independent contractor arrangements. Employers will only be able to defend claims if they show that they “reasonably believed” the contract was for services.</p> <p>See: Sham Contracting Fact Sheet for more details.</p>
Challenges to Employment Contracts	<p>The Bill proposes that the Fair Work Commission will be able to hear disputes brought by independent contractors over unfair terms in services contracts.</p> <p>See: Rights to Challenge Unfair Contracts Fact Sheet for more details</p>
Gig Economy	<p>Gig economy workers are usually engaged as independent contractors. But under the new laws, if they are considered “employee like”, the FWC will be able to set minimum standards for their work conditions.</p> <p>See: Minimum Standards for Employee Like Workers Fact Sheet for more details.</p>

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More Rights for Union Delegates	<p>The Bill proposes that employers will need to allow Union delegates to communicate with other employees who are current or prospective union members at the workplace. Employers will also be required to provide delegates with access to the workplace to undertake their duties as delegates and the delegates will be entitled to paid time during normal working hours to attend training in relation to their role (except for employees of small businesses).</p> <p>See: Enhancing Delegate's Rights Fact Sheet for more details.</p>
Labour Hire	<p>The FWC will be able to make orders requiring employers who supply their employees to perform work for a 'regulated host', to pay their employees the same rate of pay as employees of the host who perform work of the same kind. Penalties will be imposed on businesses who attempt to avoid these new rules.</p> <p>See: Regulated Labour Hire Orders Fact Sheet for more details.</p>

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