

Measures in the Closing Loopholes Bill that have passed the Parliament

Measure	Description	Impact	Commencement
Small Business Redundancy	<p>There is a small business redundancy exemption for claims under the Fair Entitlements Guarantee.</p> <p>This change amends the exemption to ensure that larger employers that downsize and become small businesses because they fall below the 15-employee threshold in the period leading up to insolvency are not exempted (s 121).</p>	<p>The change will ensure that employees of larger businesses are entitled to redundancy pay even if their employer downsizes before becoming insolvent.</p> <p>Overall, this change will not have any significant impact on most employers.</p>	15 December 2023
Labour Hire	<p>The FWC will be given new powers to make orders covering arrangements that involve the supply of labour between businesses (s 306E).</p> <p>Under these orders, the business supplying the workers will be required to pay them the same amounts to which they would be entitled were they an employee of the host business covered by their enterprise agreement (s 306F).</p> <p>Host businesses will also bear new obligations, such as needing to provide information to the labour provider (s 306H).</p>	<p>Businesses that use labour hire or similar arrangements will be at risk of an application for a labour hire order being made by a worker or union.</p> <p>Where a labour hire order is in place, businesses may face substantial additional costs in administration and labour.</p> <p>Businesses that supply labour to other businesses principally for the provision of services may be exempted from the orders, however, they may be at risk of having to demonstrate the applicability of the exemption to the FWC.</p>	<p>15 December 2023</p> <p>However, the requirement for labour providers to pay the supplied workers the same rate of pay as a host employee would receive does not commence until 1 November 2024.</p>

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Workplace Delegates Rights	<p>Union delegates will obtain a series of new workplace rights and protections (s 350A), including access to paid time off for training (s 350C).</p> <p>The FWC will insert further new rights in all modern awards on an industry-basis that must then be replicated in enterprise agreements</p>	<p>Businesses will face greater exposure to legal claims when dealing with union delegates.</p> <p>Employers will need to take care to ensure that they do not unlawfully refuse to deal with, make misleading statements to, or hinder the exercise of rights of a union delegate.</p>	15 December 2023
Anti-Discrimination	<p>A new protected attribute of “subjection to family and domestic violence” would be inserted into the Fair Work Act.</p> <p>Employers would be prohibited taking adverse action against (s 351) or terminating the employment of a person on the basis of this attribute (s 772)</p>	<p>To a large extent, much of the conduct that will be prohibited was already so under other discrimination law or Fair Work Act protections.</p> <p>The impact on most employers will be negligible.</p>	15 December 2023
Mediation and Conciliation	<p>Non-compliance with an order by the FWC to attend a mediation or conciliation conference prior to a protected action ballot will no longer make subsequent industrial action taken by employees unprotected, unless it was the bargaining representative who applied for the protected action ballot who did not comply with the order (s 409).</p>	<p>Employees will still be able to take protected industrial action even if some bargaining representatives disobey an order of the FWC to attend a conference.</p> <p>This change is likely to only affect employers in narrow and relatively uncommon circumstances.</p>	15 December 2023

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WHS Right of Entry	<p>Union officials will no longer need an entry permit or to comply with other <i>Fair Work Act 2009</i> requirements to enter a workplace to assist a health and safety representative perform their functions under state or territory WHS law (s 494).</p>	<p>Union officials will be able to enter workplaces more easily and more attention will be paid by unions to the role of health and safety representatives.</p> <p>Employers will need to be aware of this change to avoid penalties for refusing or unduly delaying the entry of union officials into workplaces who now have a right to do so.</p>	15 December 2023
Wage Theft	<p>Underpayments will be criminalised (s 327A). The new offence will apply to underpayments of wages, allowances, superannuation and other amounts employers must pay employees.</p> <p>Employers will only be criminally liable where they <i>intentionally</i> underpay employees.</p> <p>The maximum penalties for the offence will be 10 years imprisonment or the greater of 3 times the amount of the underpayment and \$1,565,000 (\$7,825,000 for body corporates), or both.</p>	<p>Employers who underpay employees will be at risk of criminal investigation.</p> <p>In some circumstances, employers who deliberately delay payments to employees (even if for good faith reasons) may be at risk of criminal liability.</p> <p>Small businesses will be able to comply with a prescribed Voluntary Small Business Wage Compliance Code that will provide them with safe harbour from criminal investigation (s 327B).</p>	<p>1 January 2025.</p> <p>However, if the Minister declares the Voluntary Small Business Wage Compliance Code on a later day, then the provisions will commence on that date.</p>