

29 May 2026



Ms Susan Booth  
Department of Employment and Workplace Relations  
GPO Box 9828  
Canberra ACT 2601

*Via email: ClosingLoopholesReview@dewr.gov.au*

Dear Ms Booth

### **Response to Draft Closing Loopholes Review Report**

CCIWA is the peak business chamber in Western Australia representing businesses spanning every sector of the economy, every size of business, and every region across our State. We are committed to developing positions on public policy that make WA the best place to live and do business, for the benefit of the entire WA community.

We welcome the opportunity to provide comments on the Closing Loopholes Review Draft Report (**Draft Report**).

In what follows, we first provide some overarching comments in response to the Draft Report. Further comments on select draft recommendations are outlined in **Appendix 1**.

#### **Overarching Comments**

Firstly, we are deeply concerned by the 11-day consultation period for a 461-page Draft Report, particularly amid other major Fair Work Commission (**FWC**) matters. This timeframe has materially limited meaningful industry engagement on what is such a significant piece of legislation. Accordingly, the comments in **Appendix 1** set out our principal concerns, but they are far from exhaustive.

We are also concerned that the Review did not assess the policy context or merits of the legislative provisions. This is a significant omission. Workplace laws shape the economy and labour market, influencing productivity, real wages and minimum standards. The Review Panel should, therefore, not only assess whether these provisions achieve their legislative intent, but whether they are appropriate within a well-functioning industrial relations system.

A further critical issue is timing. As noted in our original submission, and acknowledged throughout the Draft Report, many of these changes have not yet taken full effect and have not been tested in practice. This makes it difficult for employers, employees and their representative bodies to provide the evidence needed for a rigorous review.

For these reasons, we continue to suggest that the Productivity Commission should be directed to undertake a more comprehensive review of the regime and each of its components.

Given the importance of the industrial relations framework to productivity, economic growth and real wages, the regime must be reviewed rigorously. This gap in the recommendations must be addressed.

Without a well-functioning industrial relations system, the opposite outcome is likely: weaker wage growth, slower economic growth and less prosperity for Australians.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Dr Daniel Kiely, CCIWA Chief Economist via email at

Yours sincerely

Will Golsby  
**Chief Executive Officer**

**Appendix 1: Comments to select Draft Recommendations/ additional comments**

<b>Draft Recommendation</b>	<b>CCIWA's Comments</b>
<p><b>Recommendation 4:</b> Changing of definitions across Commonwealth with respect to employees.</p>	<p>CCIWA supports greater consistency in how employee status is defined across dealings with government. However, any change must not impose additional compliance burdens or mischaracterise the underlying relationship.</p> <p>A better approach would give employee status under the Fair Work Act substantial weight when determining employee status under other legislation such as the <i>Income Tax Assessment Act 1997</i> (Cth).</p>
<p><b>Recommendation 12:</b> Operation of employee-like in care and disability sectors.</p>	<p>CCIWA opposes any consideration of supposed barriers to access. Low uptake does not, by itself, show the regime is failing or inaccessible. Many workers in these sectors choose independent contracting because it offers greater autonomy and financial benefit.</p>
<p><b>Recommendation 13:</b> Expansion of employee-like framework.</p>	<p>The employee-like framework should not be expanded to other forms of independent contractors.</p> <p>Independent contractors often choose this model to manage their work and run their own business. Expanding the framework would ignore that choice and further erode the distinction between contracting and employment.</p>
<p><b>Recommendation 18:</b> Contractor High Income Threshold excluding contractor operating costs.</p>	<p>CCIWA opposes this recommendation. It adds complexity without resolving existing compliance concerns. A contractor's operating costs reflects business decisions and can vary significantly from year to year. Allowing those costs to reduce income for threshold purposes could cause contractors to move in and out of coverage based on discretionary spending, creating an unstable and unclear system and shifting additional obligations on to sub-contractors.</p>
<p><b>Recommendation 20:</b> Further access to regulated labour hire orders.</p>	<p>Labour hire orders have had a large uptake. The lack of additional uptake among key equity groups does not necessarily indicate barriers to access, it may equally indicate that employees are satisfied with current terms and conditions of employment. Further expansion also risks reducing opportunities for some equity groups if the cost of engagement rises above their assessed utility. This recommendation should not be included in the final report.</p>
<p><b>Recommendation 23:</b> No less favourable test extension in Intractable bargaining regime.</p>	<p>Any further extension of this test would deepen the bargaining distortion created by the intractable bargaining regime. This recommendation should be removed as it further removes incentives to bargain, even with the</p>

	recommendations present in Recommendation 22. It ultimately goes against the purposes of agreement making, and further entrenches arbitration as a default rather than a genuine last resort
<b>Recommendation 25:</b> Review of Wage theft provisions, with the inclusion of union "cooperation" with FWO to "identify criminal wage theft and underpayment.	CCIWA strongly opposes any role for unions in prosecuting criminal wage theft or underpayment matters. Such prosecutions should be brought only at the direction of the State (via the Fair Work Ombudsman or other appropriate regulator in conjunction with the Director of Public Prosecutions).
<b>Recommendation 36:</b> Allowing award delegates' rights term to displace less-favourable terms in an Enterprise Agreement.	This recommendation is not supported because it would further limit the ability of employers, employees and their representatives to bargain for arrangements that suit their workplace. It would also undermine any holistic assessment of the agreement and revive an overly prescriptive approach to enterprise bargaining.
<b>Request for information:</b> Unfair deactivation process.	<p>CCIWA supports a model where a deactivation is not unfair, if the operator reasonably believed there was a valid reason, rather than having to prove that reason to a judicial standard.</p> <p>The Fair Work Commission is intended to operate as an informal, flexible tribunal and is not bound by the rules of evidence. Requiring proof to a judicial standard is therefore inappropriate. It may also put community safety at risk and is unlikely to be trauma-informed. This is because, by continuing the current standard, a driver on a platform may be able to be re-instated despite severe allegations because of the unwillingness of the person/s who made the complaint wanting to be involved in the process beyond their complaint to the platform.</p> <p>In practice, platforms may face repeated allegations of misconduct, including serious misconduct, but have limited ability to obtain further information beyond the initial complaint. If a complainant does not wish to remain involved, the current approach can make deactivation unnecessarily difficult and undermine that person's agency.</p> <p>A reasonable-grounds test strikes the appropriate balance, notwithstanding CCIWA's broader concerns with the regime itself.</p>