



Australian Government

Australian Government response to the
Senate Education and Employment Legislation Committee
report:

Fair Work Amendment (Equal Pay for Equal Work) Bill 2022

APRIL 2024

Overview

The Australian Government notes the report by the Senate Education and Employment Legislation Committee (Committee) into the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022 (the Bill).

The Government committed to closing the labour hire loophole, which permitted employers to undercut agreed minimum rates of pay through the strategic use of labour hire. The Government met this commitment with the passage of the *Fair Work Amendment (Closing Loopholes) Act 2023* (Closing Loopholes Act) on 7 December 2023, which received the Royal Assent on 14 December 2023.

The Government thanks the Committee for its examination of the Bill and for the recommendations it has presented for consideration. The Government acknowledges those who participated in the inquiry and thanks them for their submissions and evidence.

Committee Recommendation 1

The committee recommends that the bill not be passed.

Response: Agreed

The Government supports the intent behind the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022.

The purpose of the Bill is to ensure that certain labour hire workers would not be paid less than workers who have been directly hired to do the same work. Under the Closing Loopholes Act, workers, unions, and host employers can apply to the Fair Work Commission for a regulated labour hire arrangement order requiring labour hire employees to be paid at least what they would receive under a host's enterprise agreement.

The Closing Loopholes Act gives the expert and independent Fair Work Commission clear guidance on the matters to consider when deciding whether to make an order, and several pathways for orders to be crafted in a way that considers the circumstances of individual cases. The changes do not apply where employees are working for a host business under a training arrangement, or where the host is a small business employer.

The reform acknowledges there is a legitimate role for labour hire such as for specialist skills by providing a specific exemption for service contracting arrangements. The reform provides that the Fair Work Commission must not make an order unless it is satisfied that the work to be performed for the host is not the provision of a service, rather than the supply of labour.

The Closing Loopholes Act also includes a default three-month exemption period from orders (if made) so as not to impact labour hire for surge work or where a short-term replacement worker is needed. This period can be shortened or lengthened in exceptional circumstances.

When orders are in operation, clear obligations are placed on employers to ensure that labour hire workers are paid at least what they would receive under a host's enterprise agreement. Complementary obligations are placed on host employers to ensure the effective and continued operation of orders where commercial arrangements and/or industrial arrangements change, such as the commencement of a new enterprise agreement, and to ensure that labour hire providers are aware of their obligations under orders.

The passage of the Closing Loopholes Act means that there is now a clear pathway to ensure that labour hire workers are not paid less than directly hired workers when doing the same work.

Coalition Senators' additional comments and recommendations

Response: Noted

The Government undertook significant, genuine and collaborative stakeholder engagement in developing its 2023 workplace relations reforms. This includes extensive consultation with industry stakeholders, unions, employers, and recruitment and labour hire peak bodies on the design and implementation of the closing the labour hire loophole measure.

In developing the closing the closing the labour loophole measure, the Department of Employment and Workplace Relations conducted consultation meetings with over 30 stakeholders in 2022, and conducted over 30 additional stakeholder meetings in 2023. The department conducted a public submission process, which included the release of an initial summary of the measure and a subsequent detailed consultation paper, and over 70 written submissions were received through this process overall.

Stakeholder engagement continued after the introduction of the legislation to the Parliament, and Government amendments were introduced to improve implementation of the proposed reforms. This included amendments to clarify the intention that arrangements for the provision of a service, rather than the supply of labour, are not captured by the measure.

The Closing Loopholes Act requires the Minister for Employment and Workplace Relations (the Minister) to cause a review to be conducted of the operation of the amendments. The review must, at least:

- Consider whether the operation of the amendments is appropriate and effective;
- Identify any unintended consequences of the amendments; and
- Consider whether further amendments are necessary to improve operation or rectify any unintended consequences.

The review must start no later than 2 years after commencement and be completed within 6 months of commencement of the review. A copy of the report of the review must be tabled in each House of Parliament within 15 sitting days of that House after the Minister receives the report.

Greens Senators' additional comments

Response: Noted

The Government notes the Greens Senators' comments relating to pay disparity between labour hire workers and directly engaged employees, especially in the care sector. The Government has undertaken extensive consultation with various stakeholders and Members of Parliament on the implementation of its election commitment to close the labour hire loophole as passed under the Closing Loopholes Act.

Senator Malcolm Roberts' dissenting report

Response: Noted

The Government supports the intent behind Senator Roberts' private members' bill.

The Government is committed to ensuring that if you are a labour hire worker doing the same job as a directly engaged employee working under an enterprise agreement, you should receive at least the same pay. Labour hire should not be used to undercut the bargained wages and conditions set out in enterprise agreements made with directly engaged employees.

The passage of the Closing Loopholes Act closes the labour hire loophole and stops bargained wages from being undercut by the use of labour hire.