Centre for Future Work

Contractual distancing, insecure work and the law

Can legislation respond to changes in capitalism that are adverse for workers?

David Peetz August 2026

About the Centre for Future Work

The Centre for Future Work is an independent research and policy centre that aims to advance the understanding of issues affecting working people. We conduct and publish progressive economic and social research, and develop timely and practical policy proposals to help make the work of work better. Established in 2016, the Centre has a strong track record of producing high-quality research for policy change to improve work and working lives. We work closely with groups committed to a vision for better work.

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Some of the passages regarding the problems facing self-employed gig workers here are raised in an article with Ben French and John Minas, forthcoming in *Australian Business Law Review* (footnote 55). I thank them also.

Many of the points made in this report were first made in the Centre's submission to the Closing Loopholes Review, though this report takes account of data published since that submission was made (including the Draft Report of that Review itself).

The cover photo was taken by the author in the streets of Marseilles, France, and is of a sculpture by Bruno Catalano. More of his work can be seen at brunocatalano.com

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Summary

The last half century has witnessed significant changes in the economy and labour markets in Australia. A growing concentration of resources in the hands of a small number of firms has important implications for labour. Almost all relevant developments in the economy and the labour market over the past quarter century have reduced the power of labour.

One of the major developments in the economy has been the way in which business has sought to distance itself legally from the point of production, while still attempting to control the labour that engages in that production. The outcome is that the workers being used are not necessarily the employees of the ultimate corporate beneficiary of the production. One or more contracts are used to ensure this. This may take the form of a contractual chain between the ultimate beneficiary and the worker, or it may be a straight-out contract for services. This process can be called 'contractual distancing'. Manifestations include casualisation of labour, the growth of labour hire and the rise of gig work. We can categorise forms of distancing by reference to the number of contracts for service between the worker and the core firm that ultimately uses their labour, such that:

- in zero-order distancing, there is no contract for service, but the employment contract itself (e.g. for casual employment) reduces the obligations of the firm towards the worker
- in first-order distancing, there is one contract of service between them, either the worker is an employee of a contractor firm (e.g. in labour hire or franchising), or the worker is a contractor for the firm (e.g. in digital platform 'gig' work)
- in second-order distancing, the worker may be a contractor working for a contractor firm, while (in the case of higher order distancing) that contractor may in turn be a sub-contractor working for another contractor firm (e.g. either of these can be a situation for many owner-drivers of trucks).

These 'flexibilities' can never fully supplant wage labour – they meet resistance from labour and government and create their own contradictions for firms – so instead they often rise and stall in 'risk cycles'. Nonetheless, these cycles impose risk, insecurity and precarity on workers, and prompt a need for innovative responses by policy makers. The Closing Loopholes reforms are a response to this need, and it is in this context that they should be assessed.

Casual workers

The existence of casual employment enables over a fifth of the employee workforce to be excluded form annual and sick leave entitlements. In fact, those who are labelled 'casual' are better described as 'leave-deprived' workers as that is their defining characteristic, rather than their occupying a genuinely 'casual' employment relationship. Most 'casuals' have been with their employer for a significant time, expect to be with their employer for a lot more time, and have regular predictable hours – but they lack security and leave entitlements.

The Closing Loopholes reforms tightened the definition of casual worker and provided a clear pathway from casual to permanent employment. The effect has been a statistically significant reduction in the casual employment rate, especially amongst full-time workers. For full-timers, the casualisation rate is almost a fifth lower since Closing Loopholes took effect, while for part-timers the drop is much smaller. This is consistent with the idea that policy should reduce the insecurity and precarity of casual employment, especially for those reliant on a full-time income.

Policy should aim to ensure that all employees are entitled to the National Employment Standards (NES), including most who are presently casuals. An unpredictability loading would be more appropriate than a casual loading, and discussions should be held on how a transition to this could occur.

Labour hire

Workers employed under labour hire arrangements often have lower pay, poorer workplace health and safety (WHS) outcomes and inherently lower job security than directly hired employees doing similar work. Most are casual, full-time employees. Closing Loopholes enabled the FWC to make orders with the effect of requiring an employer to pay the same wage to labour hire workers as they pay to their own employees through enterprise bargaining agreements (EBAs), in a process known as 'Same Job, Same Pay' (SJSP).

The amounts involved in SJSP orders have been substantial. One study reported that 1500 mineworkers had or would receive an average pay increase of $31,300. Some of the gains in other sectors have been achieved through negotiation, rather than FWC processes, as SJSP alters the balance of power on this matter. By August 2025 the number of people who reported being paid by a labour hire agency was a third less than in August 2022. In some industries (mining, manufacturing and administrative and support services) the numbers reportedly paid this way fell substantially.

Regression analysis shows that the total number of people employed in 'labour supply services' fell by about a fifth as a result of the Closing Loopholes reforms. A reduction such as this would be expected if many firms were no longer able to gain a cost advantage by using labour hire instead of directly employed labour.

It is likely that Closing Loopholes reforms in both the casual employment and the SJSP areas have acted in combination to reduce the reliance on labour hire and full-time casuals.

'Self-employed' gig workers

Digital platform workers and road transport owner-drivers are collectively called 'regulated workers' in the Closing Loopholes legislation. Both have low power related to the use of contractual distancing by firms. Closing Loopholes opened access for these independent contractors to the FWC, enacting procedures by which these 'regulated workers' could access certain FWC protections, including the establishment of standards on matters like payment terms, deductions, working time, record-keeping, consultation, representation and union delegates' rights.

These provisions regarding regulated workers are yet to lead to a minimum standards order in circumstances envisaged by the Parliament, as the procedures set up through Closing Loopholes take considerable time. That said, 2 things can be pointed to as significant effects. The 'unfair deactivation' provisions have already led to outcomes (reactivations) for several workers, and changes in procedures by several gig firms. A road transport contractual chain order (RTCCO) has recently been made in relation to a specific aspect of costs in the sector: a major surge in fuel costs, arising from the 2026 war in the Middle East. That this contractual chain order was made was a major recognition of the imbalance of power in contractual chains in road freight transport.

Despite the fact of this being 'early days', there are several other important matters that warrant comment. Contractual chains designed to minimise costs take many forms, such as franchising, holding companies, use of labour hire and sub-contracting. The FWC should have the power to make orders in any 'contractual chains', not just in road transport, where decisions within those contractual chains adversely and unreasonably affect the ability of employers to meet their obligations under the Fair Work Act. There are other limitations in terms of the clarity of objectives, the definition and coverage of employee-like workers, the availability of non-binding guidelines, the coverage of topics, and workers compensation, that warrant attention.

Conclusions

Overall, Closing Loopholes is succeeding in rebalancing power in the face of contractual distancing, but it is best seen as an important first step, due to the existence of some inadequacies that have become evident. The casual employment and labour hire provisions appear to be reducing insecurity, by reducing the incidence of casual employment and lower-paying labour hire work, but it seems likely that many casuals who want permanency will still lack it and that too many Australian workers will continue to be unable to access leave entitlements. In addition, there are questions as to the adequacy of the SJSP provisions in female-dominated industries.

The RTCCO augurs well for the likelihood that the Closing Loopholes amendments can provide effective counters to the income-depressing effects of 'not-there employment' on the incomes of less powerful groups in society. Still, the task of addressing insecure work is far from over, despite the major steps forward that Closing Loopholes has enabled. Further actions need to be taken in relation to the 'regulated worker' provisions in the Fair Work Act, the Object and Dictionary of the Act, and the National Employment Standards. There are also some problems relevant to the logic of Closing Loopholes that are outside of the capacity of federal industrial relations legislation to solve – in particular, in the area of workers' compensation – that require co-ordinated action by the states and the federal Government.

Contractual distancing, insecure work and the law

Introduction

The Closing Loopholes amendments (technically, the Fair Work Legislation Amendment [Closing Loopholes] Act 2023), which received Royal Assent on 14 December 2023, and the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024, which received Royal Assent on 26 February 2024, affected many aspects of the Fair Work Act. However, the most important amendments had a common theme: addressing the imbalance of power that had emerged between workers and firms in recent decades. Those aspects of Closing Loopholes that are most relevant to this imbalance are the focus of this report. Several sets of amendments (concerning casual employment, labour hire, and regulated workers) address imbalances related to contractual distancing (explained below) and insecure work. Before considering each of those, however, we first explain a key part of the labour market and economic context that has brought about this imbalance in workplace power.

The economic context

The last half century has witnessed significant changes in the economy and labour markets in Australia. Three important aspects are: the mounting concentration of resources in the hands of a small number of firms, giving them growing monopoly and monopsony power; the constant search, by business, for new means of minimising labour costs and minimising the risks from accountability while attempting to maintain control over labour; and the cyclical way in which business is made to go about this latter process.

That growing concentration of resources in the hands of a small number of firms is important for labour. A list of major changes in the economy or the labour market that have affected or reflected the power of workers over the last half century is in Table 1 below (published in an earlier Centre for Future Work research report).[1] Almost all these changes have weakened the power of labour and increased that of business. As business's power increased, wages stagnated.

[1] D. Peetz, *The Curious Incident of Low Wages Growth* (Canberra: Centre for Future Work, 2025).

Table 1 Factors influencing or indicating workers' power in recent decades

Indicator	Broad movement in indicator (period)	Influence on or indication of workers' power
Collective organisation of workers		
1. Trade union density	Declined (1975-2024)[2]	Reduction in worker power
2. Collective bargaining coverage	Declined (2000-2024) [3]	Reduction in worker power
3. Industrial conflict	Declined (1975-2007), low but broadly stable since then[4]	Reduction in worker power
Contractual distancing and insecure work		
4. 'Gig' economy	Expanded since 2014 (but still small) [5]	Reduction in worker power
5. Labour hire	Gradually expanded since 1990s[6]	Gradual reduction in worker power since 1990s
6. Casual employment	Significantly increased from 1980s to 2000s, relatively stable since then[7]	Reduction in worker power from 1980s to 2000s
7. Use of contracting out and outsourcing	Increase (mainly qualitative observations)[8]	Reduction in worker power
8. Use of temporary visa holders	Increase[9]	Reduction in worker power
9. Franchising	Small traders increasingly are outlets for products of large (franchisor) firms	Reduction in worker power
Gender		
10. Gender pay gap	Gradual decline (with variation) 1975-2024[10]	Gradual increase in (female) worker power
Monopsony		
11. Job switching	Gradual decline identified by Treasury to 2020[11]	Reduction in worker power

[2] Australian Bureau of Statistics, *Characteristics of Employment, https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/characteristics-employment-australia/latest-release*; Australian Bureau of Statistics, *Trade Union Members*, https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/trade-union-membership/latest-release

[3] Department of Employment and Workplace Relations, *Trends in Federal Enterprise Bargaining*, https://www.dewr.gov.au/resources/enterprise-agreements-data; Australian Bureau of Statistics, *Employee Earnings and Hours,* https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release

[4] Australian Bureau of Statistics, *Industrial Disputes, Australia*, https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/industrial-disputes-australia/latest-release

[5] Australian Bureau of Statistics, *Digital Platform Workers in Australia*, https://www.abs.gov.au/articles/digital-platform-workers-australia

[6] G. Gilfillan, *Use of Labour Hire and Contract Workers in Australia* (Canberra: Parliamentary Library, 31 May 2024), https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/9770735/upload_binary/9770735.pdf

[7] Australian Bureau of Statistics, *Labour Market Statistics and Characteristics of Employment*, https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/characteristics-employment-australia/latest-release

[8] Power Retail and VirtualStaff365, 'Outsourcing Trends 2024', https://www.virtualstaff365.com.au

[9] B. Coates, T. Wiltshire & T. Reysenbach, *Short-Changed: How to Stop the Exploitation of Migrant Workers in Australia* (Melbourne: Grattan Institute, 2023).

[10] Workplace Gender Equity Agency, 'The ABS Data Gender Pay Gap' (2025), https://www.wgea.gov.au

[11] Australian Bureau of Statistics, *Labour Mobility*; M. Quinn, 'What's Driving Low Wages Growth in Australia?' (speech to the Australian Conference of Economists, Melbourne, 16 July 2019).

12. Impact of concentration amongst employers	Increase[12]	Reduction in worker power
13. Non-compete clauses	Probably growing[13]	Reduction in worker power
Macroeconomic conditions		
14. Supply of and demand for labour	Unemployment increased from 1975, high (and variable) through to 2010, mostly declined from then to 2023[14]	Reduction in worker power for most of the period since 1975, but increase in worker power from 2010 to 2023, slightly decreased 2024-5
Financial and product markets		
15. Share markets	Increased importance of finance capital in corporate decision making from 1980s	Significant reduction in worker power
16. Trade	Increased competition from low-wage imports	Reduction in worker power

Source: Peetz, D, The Curious Incident of Low Wages Growth, Centre for Future Work, Canberra, April 2025.

The one major thing that has gone in the opposite direction, but only relatively recently, and somewhat haltingly, was the reduction in unemployment over much the past decade (setting aside the temporary spike in unemployment during the pandemic). Of 16 developments in the labour market in recent times, 14 signalled a deterioration in worker power, one an improvement in power only for female workers, and one an improvement since 2010 (lower unemployment until 2023).

Some items on that list are about collective worker agency, such as union organisation or strike action. Some of the items are about the employer search for new forms of numerical flexibility, associated with insecure work. These 2 sets of issues are the focus of Closing Loopholes. The latter is the focus of this report. Gender relations issues also can be addressed through industrial relations legislation, but this mainly happened through the first 2 tranches of industrial relations reform after 2022, and so is not the subject of Closing Loopholes or this report.[15]

Other matters on the list in Table 1 do not lend themselves well to reform through industrial relations legislation. They are about monopsony in labour markets, or changes in financial or product markets.

Contractual distancing and insecure work

One of the major developments in the economy has been the way in which business has sought to distance itself legally from the point of production, while trying as much as possible to control the labour that engages in that production. The outcome is that the workers being used are not necessarily

[12] J. Hambur, 'Did Labour Market Concentration Lower Wages Growth Pre-COVID?', Australian Treasury Working Paper No. 2023-01 (Canberra: Australian Treasury, 2023).

[13] D. Andrews & B. Jarvis, *The Ghosts of Employers Past: How Prevalent Are Non-Compete Clauses in Australia*, e61 Micro Note (e61 Institute, 19 June 2023); J. Thrower, 'New Data Shows Many Businesses Are Now Using Non-Compete Clauses – And That's Bad for Workers', Australia Institute (21 February 2024), https://australiainstitute.org.au/post/new-data-shows-many-businesses-are-now-using-non-compete-clauses-and-thats-bad-for-workers

[14] Australian Bureau of Statistics, Labour Force, https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release

[15] Some aspects of the reforms that were progressed through Closing Loopholes have gender dimensions. For example, a majority of casual workers are, as are a majority of digital platform workers in some (care) sectors.

the employees of the ultimate corporate beneficiary of the production. One or more contracts are used to ensure this. This may take the form of a contractual chain between the ultimate beneficiary and the worker, or it may be a single contract. The outcome is what David Weil refers to as the ‘fissured workplace’.[16]

The process of deploying contracts for services to distance the beneficiary from its responsibilities can be called ‘contractual distancing’.[17] In the context of industrial relations, contractual distancing is the use of contracts to distance the beneficiary from the labour used in the production process. Contractual distancing may also be used in other contexts, for different but related purposes. Probably most well-known is the use of contractual distancing for tax avoidance purposes. In both taxation and industrial relations, contractual distancing is used to evade accountability and avoid obligations. The focus here, however, is on its use in an industrial relations context to escape responsibility for the consequences of one’s actions.

We can categorise forms of contractual distancing by their ‘order’ which is, broadly speaking, the number of contracts for service between the worker and the core firm or what Weil[18] calls the ‘mothership’ firm. A ‘contract of service’ is an employment contract, whereas a ‘contract for service’ is a contract between, say, a firm and a contractor worker or contractor firm. A person in a contract of service is an employee, whereas an individual worker in a contract for services is often referred to as an ‘independent contractor’ or, to use the language of Carney and Stanford,[19] they are in ‘marginal self-employment’. A contract for services, of course, can also be between two firms, with the contractor firm itself either using employees or perhaps independent contractors to do the work. The different types (and sub-types) of distancing are summarised in Table 1 and explained in the text below.

[16] D. Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press, 2017).

[17] Countouris and De Stefano use the term ‘contractual distancing’ to refer to a range of HR strategies, including increased recourse to bogus self-employment and on-demand arrangements, that thin down the responsibilities and obligations employers typically take on when hiring labour under standard contracts of employment. While all of that is encompassed within what is referred to here, a broader meaning is attached to the term in this paper, as the processes discussed here encompass not just HR strategies but seemingly purely commercial strategies in which the hiring of labour is not made explicit. N. Countouris & V. De Stefano, ‘Out of Sight, Out of Mind? Remote Work and Contractual Distancing’, in N. Countouris, V. De Stefano, S. Rainone & A. Piasna, eds, *The Future of Remote Work* (Brussels: European Trade Union Institute, May 2023).

[18] Weil, *The Fissured Workplace*, n16 above.

[19] T. Carney & J. Stanford, *The Dimensions of Insecure Work: A Factbook* (Melbourne: Centre for Future Work, Australia Institute, 2018).

Table 1 Types of Distancing

Order of distancing	No. of contracts of service between labour & core capital	Is labour usually classed as an employee?	Sub-type	Examples	Is this ***contractual*** distancing?
Zero-order	0	Yes		Casual employment	No
First-order	1	Yes	Employee-based	Labour hire Franchising Contracting out	Yes
First-order	1	No	Contractor-based	Owner-drivers Digital platform workers	Yes
Second-order & above	2	Maybe		Some workers in road transport, construction, franchising	Yes
Third-order and above	3+	Maybe		Some workers in road transport, construction, franchising	Yes

In *zero-order distancing*, the worker is still an employee of the core firm, but their contract of employment removes some of the responsibilities and obligations that employer has. There is distancing, but it is not genuinely contractual distancing because it does not preclude some type of direct employment relationship with the core firm. In Australia, zero-order distancing principally occurs via casualisation of labour. Through casual employment, a firm has a contract with the employee that removes rights and entitlements of the employee, making dismissal easier. Most casual employees are not used for short-term fluctuations in work; rather, most casuals either have been with the employer for a long period, and/or expect to be with the employer for a long period, and/or have stable hours from week to week[20]. But through the casual employment contract, the employer can avoid obligations that would normally be expected from having potentially long-serving, stable employees.

In *first-order distancing*, the worker might still be an employee, but not an employee of the core firm. Instead, they can be an employee of a firm that in turn has a contract of service with the core firm. We call this *employee-based first-order distancing*: the workers are employees, but there is a contract of service that separates them from the core firm. The main instances of this in Australia are labour hire, franchising and contracting out.

Through labour hire, a core firm has a contract with another firm (a labour hire company), that in turn employs the workers. Those workers nonetheless perform work for the benefit of the first (core) firm, often on their premises alongside direct employees of the core firm. The firm creates a triangular relationship with the worker, so that they are not even an employee of the core firm but technically work for the labour hire company – as an employee. This enables the core firm to (indirectly) pay the worker substantially less than they would if they were its own employee. The core firm pays the labour

[20] D. Peetz & R. May, 'Casual Truths: What Do the Data on Casual Employment Really Mean?', *Journal of Industrial Relations* 64/5 (2022), 734–758.

hire firm a fee that is often linked to and on top of the wage of the employee (as commonly occurs in mining and manufacturing).

Through franchising, a core firm has a contract with a franchise firm, that in turn employs the workers who are branded as if they are working for the core firm, even though they are actually employees of the 'franchisee'. The core firm (the 'franchisor') receives a regular payment (typically a proportion of revenue or profits) from the franchisee (as commonly occurs in retail and hospitality).

Through contracting out, a core firm has a contract with another firm (a 'contractor') to provide a particular service (such as cleaning) that in turn hires employees to do the work. The core firm pays the contractor a fee that is based on the service and not explicitly a function of the wage of the employee or the profit of the contractor. In apparel manufacture, for example, the labour is provided by contractors in Australia or, across Asia, employees of firms that are subcontracted to firms that in turn supply well-known label brands in North America and Europe. Sometimes the activity might be a 'non-core' function[21], but firms may also contract out functions that were previously unambiguously done in-house.

Another form of first-order distancing occurs when the worker concerned is not an employee of the core firm but instead is a dependent contractor – though most commonly the term 'independent contractor' is officially used to describe such workers, to imply more separation than really exists. They have a contract for service with the core firm and typically receive a piece rate payment for each service performed. We call this *contractor-based first-order distancing*: the workers are contractors, and there is a single contract of service that separates them from the core firm. The main instances of this include owner-drivers, who transport goods using their own trucks in the road freight transport industry; and digital platform workers, who perform 'gig' work on demand, often through an 'app' (software application on a smartphone or computer) – often seen in food and parcel delivery, passenger transport and care work. Either way, with first order contractual distancing there is one contract of service between a worker and the core firm.

Second-order distancing occurs when the worker concerned is neither an employee of a firm contracting with the core firm, nor are they contractors themselves possessing a contract with the core firm. Instead, they are either employees of a firm that has a contract of service with a firm that in turn has a contract of service with the core firm; or contractors themselves who have a contract of service with a firm that in turn has a contract of service with the core firm. There are thus two contracts of service between the workers and the core firm. The links from the core firm to the workers, comprising two or more contracts for service, constitute a contractual chain.

While franchises are commonly engaged in first-order distancing, franchise workers may also be caught up in second-order distancing if, for example, they are employed by a firm that in turn is contracted to a firm that contracts to the franchisee. Owner-drivers of trucks are frequently involved in second-order distancing, as they are often contracted to firms that are in turn contracted to the freight owner[22].

[21] G. Rees & S. Fielder, 'The Services Economy, Subcontracting and the New Employment Relations: Contract Catering and Cleaning', *Work, Employment and Society*, 6/3 (1992), 73–94.

[22] C. Mayhew & M. Quinlan, 'Economic Pressure, Multi-Tiered Subcontracting and Occupational Health and Safety in Australian Long-Haul Trucking', *Employee Relations* (2006).

Similarly, third-order and other *higher order forms of distancing* occur when there are three or more contracts of service between the workers and the core firm. These higher order forms of distancing are especially common in road freight transport.

In all these contractual distancing arrangements, the relationship between the ultimate beneficiary and the worker can be referred to as 'not-there employment' (since the beneficiary of the labour is 'not there' in a traditional legal sense, even though they may be the 'ultimate employer' of the labour in a practical sense). 'Not-there employment' is the pattern of labour relations that exists when large firms (the 'core' capital in an industry) avoid employment responsibilities by use of contractual distancing, through contracting out work to individuals, franchises or sub-contracting firms[23]. The details and form of contractual distancing vary between industries and institutional frameworks.

A feature of contractual distancing is that it often means that the workers concerned have very little power compared to the usually large platform businesses that engage them. They therefore have little say over their income or conditions. For example, most digital platform workers are underemployed, and receive low incomes that, after expenses are taken into account, are below the relevant award wage they would receive if they were employees. Outside Australia, many receive incomes equivalent to amounts below the minimum wage in the relevant country. They usually have little or no training opportunities.

There are also adverse health and safety implications for many gig workers. In food and parcel delivery, several have died on or because of the job. In long distance road transport, the effects for owner-drivers have included: poor driver safety, a high occupational fatality rate; long working hours, low incomes, high debt and insolvencies; and incentives to drive fast, skip breaks, overload and engage in other risk-taking behaviours. This also has damaging effects on other road users.

In some industries, contractual distancing and the not-there employment model go back to centuries past. In some, it is a recent phenomenon enabled by new technology. However, it is also not very stable. Like all attempts by firms to cut labour costs and achieve maximum flexibility in its control of labour, it contains contradictions. Gig work, casual work, contractor work, and labour hire all achieve savings but undermine control. This is because nothing gives a firm as much control over labour as an employment relationship with a worker whose full-time hours are devoted to it on an ongoing basis. Weakness of control ultimately undermines profitability. Meanwhile, workers resist, through overt or covert conflict. They leave, they organise, they try to strike, their representatives protest or successfully lobby politicians to regulate what business does. So, the firm must always find new forms of flexibility. This dialectic happens in cycles. A new form of risk for workers is created by the firm, that form varies between industries and initially grows rapidly, then hits a roadblock caused by its contradictions, and as its expansion declines the firm seeks new ways of transferring risk to workers that, again, vary between industries.

Implications

Almost all relevant developments in the economy and the labour market over the past quarter century have reduced the power of labour. One of the major developments in the economy has been the way in which business has sought to distance itself legally from the point of production, while still attempting to control the labour that engages in that production. The outcome is that the workers being used are not necessarily the employees of the ultimate corporate beneficiary of the production. One or more contracts are used to ensure this. This 'contractual distancing' may take the form of a contractual

[23] D. Peetz, *The Realities and Futures of Work* (Canberra: The Australian National University Press, 2019).

chain between the ultimate beneficiary and the worker, or it may be a straight-out contract for services. Manifestations include casualisation of labour, the growth of labour hire and the rise of gig work. None of these 'flexibilities' can ever fully supplant wage labour – they meet resistance from labour and government and create their own contradictions for firms – so instead they rise and stall in 'risk cycles'. Nonetheless, these cycles impose risk, insecurity and precarity on workers, and prompt a need for innovative responses by policy makers.

The first round of legislative reforms by the government elected in 2022 mostly increased workers' power, acting against the trend in the economy and labour market (and in previous legislation) of declining worker power.[24] However, it was limited to what could conventionally be done within employment law. Contractual distancing also has major implications for the efficacy of employment law. With zero-order distancing, the workers concerned are still employees of the core firm. Employment law typically deals with the employment relationship, and so addressing the problems of casualisation is something that fits well within an existing legal framework.

With first-order distancing, though, the existence of an intervening contract of service creates complexities. When the issue is contractor-based first-order distancing, payments to workers are typically in the form of piece rates, whereas employment law has commonly regulated time-based payments, so some means has to be found for reconciling those two. When the issue is employee-based first-order distancing, employment law covers the pay and conditions of the workers, but it cannot influence the product market factors that shape the treatment employees receive at the hands of their immediate employers, including their security of employment and the extent to which they are pressured to cut corners or accept sub-legal conditions in order to keep their jobs. So, some means needs to be found to influence those product market pressures. Ultimately, some means needs to be found to make the core firms accountable for the conditions of the workers under their influence through first-order distancing.

With second-order distancing, the conditions of workers are potentially more perilous and yet the complexities of regulation are much greater than under first-order distancing. A pre-requisite for any public policy aiming to protect workers in second- or higher-order distancing is the existence of contractual chain regulation – that is, regulation that imposes obligations on the core firms relating to the pay and conditions of workers at the other end of the contractual chain.

It is in this context that the effectiveness of changes to laws affecting vulnerable or precarious workers must be assessed. The operation of the economy and the labour market have changed in the past few decades, and labour law needs to change with it. The simple accountabilities that existed between employer and employee have been complicated and muddied by greater distancing and the rise of not-there employment, as firms constantly search for new forms of flexibility that transfer risk to workers. The most important response in Australia has been the passage of the Closing Loopholes laws, with particular reference to the implications for casual workers, labour hire workers, and self-employed gig workers. As the Draft Closing Loopholes Review Report noted, new work arrangements 'continue to evolve' (as exemplified by the gig economy among others),[25] and it is important to continually monitor regulatory needs – that Draft Report recommended a standing tripartite

[24] See Peetz, *Curious Incident*, n1 above, especially Table 2, 35–7.

[25] S. Booth, 'Closing Loopholes: An Independent Statutory Review – Draft Report', Department of Employment and Workplace Relations (Canberra, May 2026), 51.

committee do precisely that.[26] In the rest of this report, we turn to the groups mentioned above and how they are affected by Closing Loopholes.

Casual Workers

The problem of casual employment[27]

Casual work is widely recognised as insecure and, despite the existence of a casual loading supposedly paid to casual workers, low-paid. At a fundamental level, however, the existence of casual employment enables over a fifth of the employee workforce to be excluded form annual and sick leave entitlements. Those who are labelled 'casual' are better described as 'leave-deprived' workers as that is their defining characteristic, rather than their occupying a genuinely 'casual' employment relationship. This point is explained below.

Analysis of the data on casuals shows that the majority of leave-deprived workers have been with their employer for over a year. The majority expect to be with the same employer over a year into the future. Around half have stable hours from one week to the next and are not on standby. The features of leave-deprived employees do not, on the surface, appear to be the characteristics of flexible, unpredictable employment relationships.[28]

These workers do have some other characteristics that are relevant. A majority have no guaranteed minimum hours. A majority cannot choose the days on which they work. Only around half of them knowingly receive the casual loading. And all of them, by definition, have no annual or sick leave. The common feature appears to be low power. Employers may have the ability to deploy them in all sorts of flexible ways but often do not need to utilise that flexibility. The low use of these flexibilities is indicated by the seeming stability of employment for many leave-deprived workers, stability which by its nature suits the employer. The implicit threat of having their hours cut, or being dismissed, enhances the potential power of the employer to exercise discipline. So 'casual' employment reduces employee power and reduces employee entitlements (often without any offsetting 'loading') under the guise of providing necessary flexibility.

The data suggest, then, that 'casual' employment is something of a chimera. For one thing, only about half of leave-deprived employees, the group popularly depicted as casuals, knowingly receive the casual loading.[29] Some may be illegally underpaid by employers – something that evidence from audits and cases undertaken by the Fair Work Ombudsman suggests happens. Even amongst those who do receive the casual loading, an apparent wage penalty for low-paid casuals, identified through the work of Laß and Wooden,[30] suggests that some (perhaps many) casuals are paid less than they otherwise would be if they were not casuals. The casual loading becomes part of their weekly pay that

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[26] Draft Closing Loopholes Review, n25 above, recommendation 3, 53.

[27] Most of the text in this sub-section comes from D. Peetz & R. May, 'Casual Truths: What Do the Data on Casual Employment Really Mean?', *Journal of Industrial Relations* 64/5 (2022), 734–758, (2022), https://doi.org/10.1177/00221856221097474

[28] Ibid. This is also the relevant reference for succeeding paragraphs.

[29] Unpublished ABS data from November 2006, 2009 and 2012 (Working Time Arrangements surveys, cat. no. 6342.0), the April–July 2007 Survey of Employment Arrangements and Superannuation, and the August 2009–2013 Employee Earnings, Benefits and Trade Union Membership survey, reported in Peetz & May, 'Casual Truths', n27 above.

[30] Based on the difference between the casual loading and what initially appears to be a wage premium for low-paid casuals. I. Laß & M. Wooden, 'The Structure of the Wage Gap for Temporary Workers: Evidence from Australian Panel Data', *British Journal of Industrial Relations* (2019), https://doi.org/10.1111/bjir.12458

they depend upon, and their weekly pay is frequently no higher than the legal minimum. This is not just the case for people in genuinely unpredictable jobs; it is a problem for all leave-deprived employees.

In addition, many leave-deprived workers are not 'genuinely flexible' casuals, since they have been with the employer for a long period, or expect to be in, or have, regular, predictable work hours that do not suggest anything casual about the relationship with the employer. While casual employees do not receive leave, not all employees without leave are genuinely flexible casuals. At least half of leave-deprived employees have neither variable hours nor a requirement to be on standby. Most leave-deprived employees could choose when they take holidays (though still less than leave-entitled employees). It is true that the majority have no control over the days on which they work, but that does seem at odds with the idea that casual work provides flexibility for the employee to work when it suits them. A majority did not have guaranteed minimum hours, reflecting their low power, something associated with their precarity more than any variable hours.

Only 6% of leave-deprived workers are workers in 'unpredictable' jobs – that is, they have been with their employer for less than a year, expect to be with the employer for less than a year, and have variable hours or are on standby.[31] That thousands of 'casual' employees can be with the employer for 5, 10 or 20 years indicates that this is not a casual employment relationship.

This does not mean that the employment of leave-deprived employees is secure, or that the problem of precarity in employment is exaggerated by the common labelling of leave-deprived employees as 'casuals'. Their precarity is real. Most leave-deprived workers are in an employment relationship that can be terminated without notice at the end of a shift. The popular term 'permanent casual' – itself an oxymoron – is more accurately phrased as 'permanently insecure'. Employment in these situations is not 'casual', but it is casualised, in that the features of it are shaped to make it look like casual employment. The commonly cited statistic that around 25% of employees are casuals, based on the incidence of leave-deprived employment, is indeed a depiction of the proportion of employees in this form of insecure work, but it is not remotely a depiction of the proportion of employees in genuinely flexible, unpredictable employment relationships.

Overall, we can picture the group that is normally described as 'casual' as having one defining characteristic and 2 broad elements: they all are deprived of certain core worker entitlements; and for most (especially those on lower incomes), the work is insecure and they lack power. For a small sub-group of that, flexibility in working hours or tenure is a requirement the employer faces (and their power is lower still). But for the majority of leave-deprived workers (popularly described as 'casuals'), this need for flexibility is more a rationale than a genuine explanation for their status and lack of entitlements.

Rather than seeing what is described in Australia as 'casual' employment as a source of flexibility for employer and employee, enabling short-term business needs to be met in the most efficient way, it may be more accurate to view it (for the majority of cases) as simply a means of depriving employees of their leave entitlements and promoting insecure work and hence dependence on the employer's prerogative. The high rate of 'casual' employment enables Australia to have a level of leave coverage with a magnitude almost as low as that in the USA, a country with no legal obligations on employers to provide leave entitlements.

These data have some important policy implications. Establishing or solidifying a right to convert from casual to permanent employment, as per the 2021 legislative changes (mentioned below), is not one

[31] These are referred to as 'narrowly defined casuals' in Peetz & May, *Casual Truths*, n27 above.

of them. For one thing, the stronger the right, the stronger the incentive for employers to cut casuals' hours, or sack them, before the designated date. This has been evidenced in Korea, where 'temporary' and 'dispatched' workers (mostly women), who had access to additional rights after twelve months' employment, would often be sacked after eleven months, or swapped between employers.[32] Second, and perhaps fearing this fate, some casuals may decide not to take their chances by asking to change status. The concept of 'choice' can be problematic when it is constrained, especially for leave-deprived employees.

A third, probably bigger, issue is that many leave-deprived workers become financially dependent on the casual loading (if they get it). This 25 per cent premium on their ordinary pay is intended to compensate for their lack of entitlements or security. When a worker is on a low income, that extra amount can make a large difference. Yet that loading could well be a mirage, given that total pay appears lower, other things being equal, for workers receiving the loading. If total pay (not base pay) is what matters to employers, then it is plausible that the loading would simply allow base wages to be pushed down. As many recipients of the loading are on award rates, it is possible that this constrains the growth of award minimums generally (given the interconnections between Modern Awards). Conversely, it may be that the award system prevents pay for leave-deprived workers being pushed down even further. The 2 possibilities are not mutually exclusive.

The problem for many casuals is twofold. First, the default position is casual employment, and they would be rocking the boat, and potentially risking their relationship with their employer and even job, if they were to seek permanency. Second, many rely on the casual loading financially, to supplement meagre earnings in low-paid jobs. So, a solution is needed that would default workers to eligibility for annual leave, and remove the financial incentive to retain casual status, while also minimising the financial incentive on firms to prefer to hire employees as casuals; yet it needs to compensate workers where unpredictability in their work creates difficulties, especially for making use of the benefits from National Employment Standards.

The Closing Loopholes reforms

Closing Loopholes is the later, and arguably the more important, of 2 recent changes to the treatment of casual employees. With effect from March 2021, a conversion pathway was created for casual employees, while the definition of casuals was amended. Then, with effect from 26 August 2024, the Closing Loopholes amendments changed again the definition of casual employee and clarified a pathway from casual to permanent employment.

The Closing Loopholes reforms (re)established a definition of 'casual' that took account of the practical reality of the employment relationship, not just what was in the employment contract when the employee started working.

Employees who have worked for at least 6 months (or 12 months in a small business) can choose to notify their employer where their circumstances have changed and, at that point in time, they believe they no longer meet the definition of 'casual employee' (perhaps because of the regularity of work). Employers have 21 days to respond, and if they do not change the status of the employee, the FWC can arbitrate. Casuals have a right to a casual loading but lose that if their employment status is changed.

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[32] D. Peetz & N. Ollett, 'Union Growth and Reversal in Newly Industrialised Countries: The Case of South Korea and Peripheral Workers', in G. Wood & M. Harcourt, eds, *Trade Unions and the Crisis of Democracy: Strategies and Perspectives* (Manchester: Manchester University Press, 2004), 211–40.

These Closing Loopholes reforms are an attempt to regulate the zero-order distancing that occurs through casualisation.

Conversion data

ABS data do not enable us to assess how many workers have sought and achieved casual conversion, as they are incomplete. While the ABS in 2024 asked casual employees about whether they had had a conversation with their employer about conversion to permanent status, and then about the outcome including whether they had actually converted to permanent, that question was not asked of permanent employees. The only people who said 'yes' to conversion were those who had been casuals, had converted to permanent through this process, and were now casuals again (presumably after changing jobs). So, the data as collected would make it appear as if almost no-one had successfully converted. Better data should be collected, with the question asked of all employees who had been casuals within the previous year.

Changes in casualisation rates

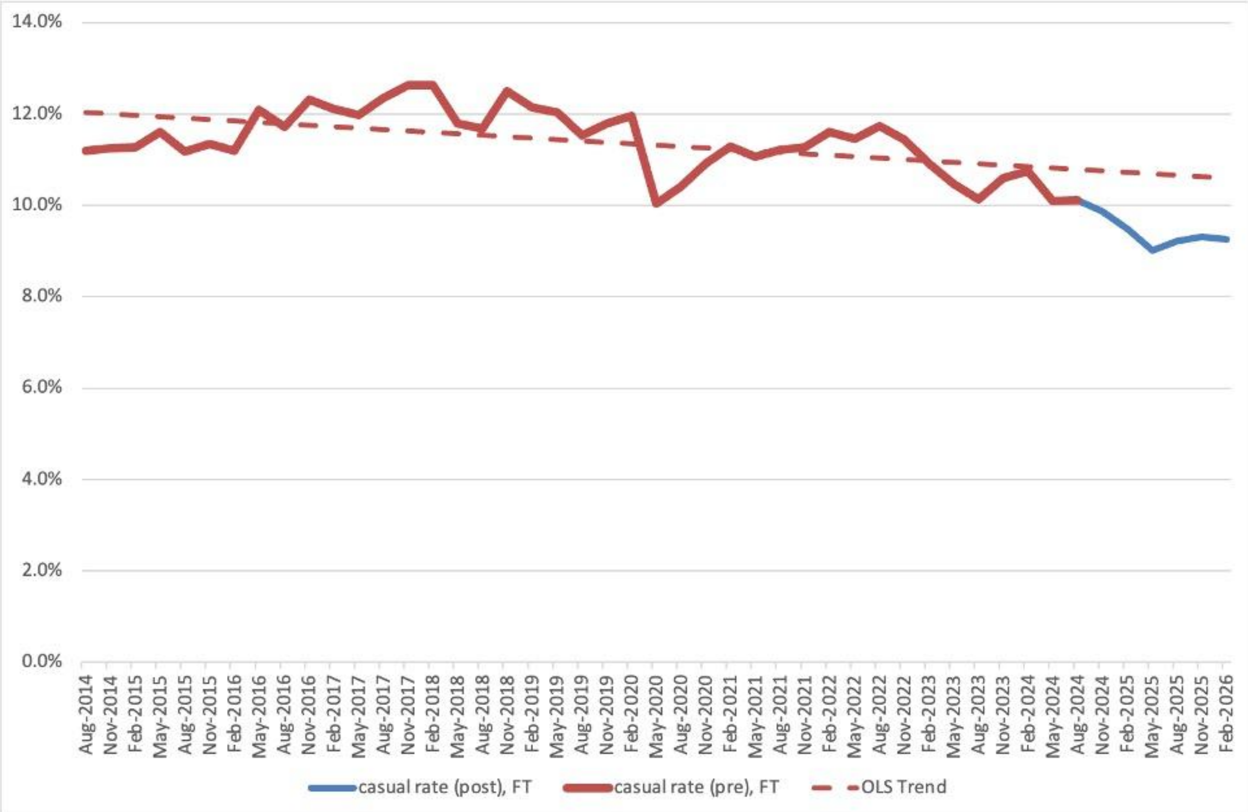
We can estimate changes in the casual employment rates ('casualisation rates') before and after the introduction of Closing Loopholes. If employers reduce their reliance on casuals, or casual employees convert to permanent status, we should see some reduction in casual employment rates.

In figure 1, such a comparison is made using ABS data from the quarterly labour force survey (which, since 2014, has collected information on casual employment status). For this purpose, 'casual' is defined as an employee who is not entitled to annual or sick leave. Although this is not the same as how casual employees define themselves, it correlates highly with it. (Recall also that most 'casual' employees are not genuinely used flexibly by employers: they are often employed for quite long periods of time, have expectations of ongoing employment, or generally work the same hours from week to week. So, it is dubious as to whether most casuals are in employment arrangements that are genuinely flexible and 'casual').

Figure 1 compares the estimated rate of casualisation among full-time employees (the blue line) with the trend line that would be extrapolated from the observations during the decade leading up to Closing Loopholes (the dashed red line).

The chart suggests that, for full-time employees, the rate of casualisation has fallen below the long-term trend since (and a little before) the casual provisions in Closing Loopholes came into effect. However, it is not obvious from the chart that this is not just random error at work, and that further observations would just see a reversion to the mean. To test whether this is a significant effect, we need to use more sophisticated analysis. We also need to separately account for the impact of the COVID-19 pandemic, which led to a temporary collapse in employment amongst casual employees (as they were the group most easily and quickly laid off at the start of the shutdowns), and see whether the fall is simply due to the earlier, narrower reforms passed in 2021.

Figure 1: Casual employment rates among full-time employees, August 2014-February 2026



Source: ABS, Labour Force, Detailed, 6291.0.55.001 – Table EQ04 - Employed persons by Hours actually worked in all jobs, Sex and Status in employment of main job, February 1991 onwards.
Note: The 'OLS trend' (red dashed line) refers to the trend established in the 2014-2024 period (red solid line) before the Closing Loopholes reforms had effect.

Detailed analysis

Table 2 performs a controlled analysis, showing the results from ordinary least squared equations. The dependent variables are casual employment rates for all employees, as well as for part-time and for full-time employees (the different columns show the results for different dependent variables). The data come from the quarterly ABS labour force survey, which contains information regarding 'casual' employment status (absence of a leave entitlement) from the third quarter of 2014. The explanatory variables are: (a) a time trend; (b) a dummy variable for the COVID-19 pandemic, covering the period from the closure of borders on 20 March to the end of lockdowns on 21 October 2021; (c) a dummy variable for the reforms that took effect on 27 March 2021, which provided a limited pathway for casual transition to permanent employment; and (d) a dummy variable for the Closing Loopholes reforms, which took effect on 26 August 2024. The 2 policy variables (for the 2021 reforms and Closing Loopholes) were both lagged one quarter, to allow time for the policies to take effect. The lagging did not render the coefficient on the Closing Loopholes variable non-significant in the full-time or total equation, but rendered the part-time coefficient non-significant.[33] The value of the policy variable for

[33] With no lags, the values (and standard errors) of the coefficients on the Closing Loopholes variable in the three equations would be -1.99*** (0.49), -1.44* (0.62) and 0.42 (0.84) respectively.

the 2021 reforms is set to zero when Closing Loopholes comes into effect.[34] Thus the coefficient on the Closing Loopholes variable measures its impact compared to the situation prior to 2021, and to measure the impact of Closing Loopholes *on top* of the impact of the 2021 reforms, the reader can subtract one from the other.

Table 2: OLS equations predicting casual employment rates, 2014-2025

	casual rate – all employees [1]	casual rate – full-time employees [2]	casual rate – part-time employees [3]
Constant	24.89 *** (0.25)	11.87 *** (0.21)	53.90*** (0.36)
Time (quarters)	-0.025 (0.02)	-0.006 (0.01)	-0.076** (0.02)
COVID-19	-1.52*** (0.33)	-0.76* (0.28)	-3.11*** (0.50)
2021 reforms	-1.21** (0.42)	-0.76* (0.36)	-0.79 (0.63)
Closing Loopholes	-2.48*** (0.62)	-2.33*** (0.53)	-1.62# (0.92)
adjusted r^2	0.78	0.67	0.78
F significance	<.001	<.001	<.001
N	47	47	47

*Standard errors in brackets. Key: ***significant at 0.1% level;*
*** significant at 1% level; * significant at 5% level; # significant at 10% level.*

The results in equation 1 show that, over time, the casual rate amongst all employees drops by 0.025 percentage points per quarter (about 0.1 percentage points a year), but this estimate is not statistically significant. The COVID-19 pandemic led to an average drop of 1.5 percentage points in the casual rate during the quarters shown (this is only an average effect, as a glance at Figure 1 shows that the drop was much higher at its maximum, in May 2020). The impact of COVID-19 on casual employment was about 4 times greater for part-time workers than for full-time workers, possibly a reflection of the high impact of COVID-19 on the retail and hospitality sectors that had higher reliance on casual, part-time work.

The 2021 casual reforms were associated with a drop of about 1.2 percentage points in the casual rate. Most importantly, the Closing Loopholes reforms led to a drop of a 2.5 percentage points in the casual rate, which was a further 1.3 percentage points (also a statistically significant amount) on top of the fall that could be explained by the 2021 reforms. The Closing Loopholes reforms reduced the overall casual employment rate by about double the impact of the 2021 reforms.

That 1.3 percentage point *additional* drop in the casualisation rate is equivalent to roughly 5% of casuals, and the total drop of 2.5 points is roughly one tenth of the total number of casuals. Yet ABS data show that 27% of casuals do not prefer casual employment. A valid interpretation is that the

[34] The value of the 2021 reforms variable dummy was 1 from August 2021, and for Closing Loopholes from February 2025.

Closing Loopholes reforms have not given 'permanency' to the majority of those 'casuals' who want it. Of course, it is possible (indeed, likely) that the casual rate will drop further over time, and there is still a long way to go. However, the flattening of the decline in the most recent couple of observations seen in Figure 1 does not encourage us to think that the casual rate will eventually drop by 27%.

There were important differences between casuals employed full-time and part-time. Equation 2 shows that the effect of Closing Loopholes on the casual rate was strongly significant for full-time employees, and much greater than the impact on part-time employees. The casualisation rate for full-time workers appears almost a fifth lower than the trend would have been, whereas for part-time workers the fall is less than a thirtieth.[35] Indeed, for part-time employees, the impact of Closing Loopholes on the casual rate was only weakly significant. With a weakly significant coefficient (and some sensitivity to time periods), more observations will be needed to assess whether the impact on the part-time casual rate is real. Still, the Closing Loopholes reforms appear considerably more important than the 2021 reforms to the casual employment rate.

Implications of the data

The apparent effect on the casual rate amongst full-timers was large enough for us to be confident it was not due to sampling error. The effect amongst part-timers was less than that size, and only large enough for us to be weakly confident it was sustainable. Such a difference makes sense in the context of the quite different labour markets for full-time and part-time casuals. Intuitively, one would expect a full-time casual to be more concerned about converting to permanent employment status (and obtaining, for example, job security and eligibility for home loans) than a part-time casual who might only ever intend to stay part-time. That said, there is also no shortage of evidence about many part-time casuals wanting greater security. There are a lot of workers needing part-time work who are only in casual employment because that is what most part-time jobs are. Hence, it makes sense that there would be some reduction in the casualisation rate amongst part-timers, as the regressions suggest.

Note also that, while the casual rate amongst part-timers is in structural decline (by about 0.08 percentage points per quarter), the casual rate amongst full-timers is relatively stable over the long term (declining at only one tenth of that rate, a non-significant amount). The decline in part-time casuals can be seen in the aggregate data over at least 2 decades and probably reflects the shift in employer preference from casual part-time to permanent part-time, as the problems with hiring casuals become apparent to large retailers and other users of part-time labour, and as they can gain flexible, on-demand workforces using part-time employees.[36] Amongst full-time employees, however, the casual rate has probably been held up by the growth of labour hire. It may be difficult to disentangle the effects on full-time employees of the provisions in the Closing Loopholes legislation affecting casual status from those affecting labour hire workers' pay, discussed shortly.

Overall, the casual conversion provisions appear to be having the intended effect, at least to the extent that they are leading to a reduction in the rate of casualisation, particularly for full-time workers. The Draft Closing Loopholes Review mainly recommended changes to ensure that university employees can access the full benefit of the provisions, and to increase awareness of them.[37] The effects are

[35] The 2.3 percentage point drop in the proportion of full-time employees who were casuals, shown in Table 2, was almost 50% greater than the 1.6 percentage point drop amongst part-times. Because far fewer full-timers were casual to begin with, these drops were equivalent to almost a 20% fall in full-time casuals compared to a fall of about 3% amongst part-timers.

[36] I. Campbell, F. Macdonald & S. Charlesworth, 'On-Demand Work in Australia', in *Zero Hours and On-Call Work in Anglo-Saxon Countries* (Singapore: Springer, 2019), 67–90.

[37] Draft Closing Loopholes Review, n25 above, recommendations 7 & 8, 80.

consistent with the idea that policy should aim to reduce the insecurity and precarity of casual employment, especially for those reliant on a full-time income.

On the other hand, to the extent that the aim is to reduce job insecurity, it might not be leading to as large a reduction in the overall casualisation rate as would be hoped, at least not yet, especially amongst part-time workers. A more ambitious policy would appear to be called for.

Australia has one of the lowest rates of leave entitlement coverage in the OECD. At present around 22% of Australian employees do not have leave entitlements. This is a very high number by international standards. In most OECD countries, there is a legislated entitlement to annual ('recreation') leave and/or to sick leave, and typically it is only genuinely temporary workers in quite specific circumstances who do not have access to leave. Globally, most countries (130 out of 163, including 88% of high-income countries) require that temporary workers generally have the same leave entitlements as permanent workers.[38] Such a standard is so common that the OECD does not, as a matter of course, publish comparative data on the proportion of the workforce with leave. Rather, comparative data focus on the number of weeks in that leave entitlement. Amongst OECD countries, the USA and Korea lack a legislated leave standard. Nonetheless, many employers provide some form of leave entitlement anyway. In the USA, for 23% of workers in 2018, the employer did not pay vacation leave (though where they paid leave, it was normally for fewer weeks than Australian employers).[39]

Towards genuine national employment standards

The aim of policy should be to have all employees entitled to the National Employment Standards (NES), including most people who are presently casuals. The National Employment Standards cannot be considered to be genuinely national if over a fifth of employees are not entitled to them. Very few casuals are in genuinely unpredictable work, that is work so unpredictable it doesn't make sense for them to accrue annual leave etc for such short-term, variable work. Australia should not be behind the rest of the world on this matter.

In the end, if we reached a stage where all were entitled to the NES, there could be an unpredictability loading for everyone who was in such an unpredictable job that they could not benefit from the NES (and which would represent not much more than 1% of the workforce). The rest would be entitled to the NES and would therefore not receive a casual bonus.

The government should state this as the intention of policy and convene a national consultative committee to decide on the best way to transition to this outcome. Options for the consultative committee to consider would include the date of effect of the move, the criteria for the unpredictability loading, the entitlements of existing casuals (do they continue and, if, so, until when?), and the desirability or otherwise of phasing changes to entitlements.

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[38] A. Kuddo, *Labor Regulations Throughout the World: An Overview* (Washington, DC: World Bank, 2018).

[39] A. Maye, *No-Vacation Nation*, rev. edn (Washington, DC: Center for Economic and Policy Research, 2019), https://cepr.net/images/stories/reports/no-vacation-nation-2019-05.pdf

Labour hire

The problem of labour hire

While all types of insecure or precarious work are associated with heightened workplace health and safety risks and poorer outcomes, the risks are particularly acute for workers hired under labour hire arrangements. This is because they not only face the economic pressures common to other insecure workers, but also regulation failures attributable to the 'triangular' employment relationship and related 'disorganization' risks, including mismatched placements, lack of familiarity with host workplaces; and fractured communication.[40] Most relevant to the Closing Loopholes reforms, firms could, and increasingly did, use the practice to pay labour hire workers substantially less than they paid equivalent workers who were direct employees of the firm, even though they were undertaking the same work. This was particularly salient where firms were forced, through collective agreements, to pay their own employees a rate that was higher than they preferred: labour hire enabled them to circumvent workers' collective bargaining power and undercut the agreed rate. Thus, in mining, it became almost impossible for a worker to get a job in as an employee without spending some time, often many years, as a labour hire worker.[41] Overall, labour hire workers employed often have lower pay, poorer workplace health and safety (WHS) outcomes and inherently lower job security than directly hired employees doing similar work. Most are casual, full-time employees.

The Closing Loopholes reforms

Closing Loopholes enabled the FWC to make orders with the effect of requiring an employer to pay the same wage to labour hire workers as they pay to their own employees through enterprise bargaining agreements (EBAs). This process was known as 'Same Job, Same Pay' (SJSP), and came into effect in December 2023, though it took several months for orders to be made and orders themselves could not come into force until November 2024.

Employees or unions can apply to the Commission for an order that labour hire employees must be paid at least what they would receive under a host's enterprise agreement or equivalent public sector determination. An order can only be made if: the host's enterprise agreement would apply to the labour hire worker if they were directly employed; the work is a supply of labour (not the provision of a service); where the work is not a training arrangement; and where the host has 15 or more employees. They entitle the labour hire workers to the same termination payments as direct employees. The provisions are designed to not affect labour hire for surge work or short-term replacement workers.

While several State governments have been engaged in labour hire licensing in recent years, these Closing Loopholes reforms are the first national attempt at regulating this form of employee-based first-order distancing and the first to do so through direct regulation of pay of labour hire workers.

Impact on pay

The amounts involved in SJSP orders have been substantial. In April 2025, the McKell Institute published a study reporting that 1500 workers in mining were expected to receive, or had received, an average pay increase of $31,300. Many other mines transferred workers from labour hire to direct

[40] E. Underhill & M. Quinlan, 'How Precarious Employment Affects Health and Safety at Work: The Case of Temporary Agency Workers', *Relations Industrielles/Industrial Relations*, 66/3 (2011).

[41] G. Murray & D. Peetz, *Women of the Coal Rushes* (Sydney: University of NSW Press, 2010).

employment, to avoid the cost and time associated with SJSP orders.[42] While mining has long been recognised as a sector with heavy usage of lower-paid labour hire workers,[43] the report also referred to major increases to workers in other sectors. In retailing, one SJSP order delivered increases of 32%.

Some of the gains in other sectors have been achieved through negotiation between the parties, rather than through the processes of the FWC, as clearly the SJSP powers alter the balance of power on this matter and some employers recognise there is no point in spending money on legal expenses to fight a losing battle. In aviation, some cabin crew saw their pay increase by $20,000 per annum and certain casual employees by 32-42%. This was achieved not through SJSP orders but through enterprise bargaining, in which the threat of an SJSP case was an obvious lever for equalising pay.

It appears that the value of SJSP orders and pre-emptive pay increases will be considerably greater than had been estimated by the Department of Employment and Workplace Relations before the legislation was passed.[44] Unfortunately, the earnings data published from the ABS *Jobs in Australia* series for labour hire workers do not extend beyond 2022-23.

Impact on the mix between labour hire and direct employment

With a large gap between the earnings of ordinary employees and the earnings of labour hire workers subject to SJSP orders, we would expect that many employers using labour hire would shift away from labour hire to direct employment, reducing the share of labour hire in the workforce and increasing the share of directly hired employees.

Accurately estimating the number of labour hire workers is one of the most difficult things for the ABS to do in the labour area. This is because 'people who work for a labour hire firm are likely to incorrectly identify their employer and the activity undertaken at their workplace as the business they are providing labour to (rather than who they are actually employed and paid by - the labour hire firm)'.[45] Nonetheless, the ABS collects data, typically once every 2 years, on whether employed people describe themselves as being 'paid by a labour hire firm or employment agency' and hence as 'employed as a labour hire workers' in their main job. (Also fortunately, they collected that information both in 2024 and 2025).

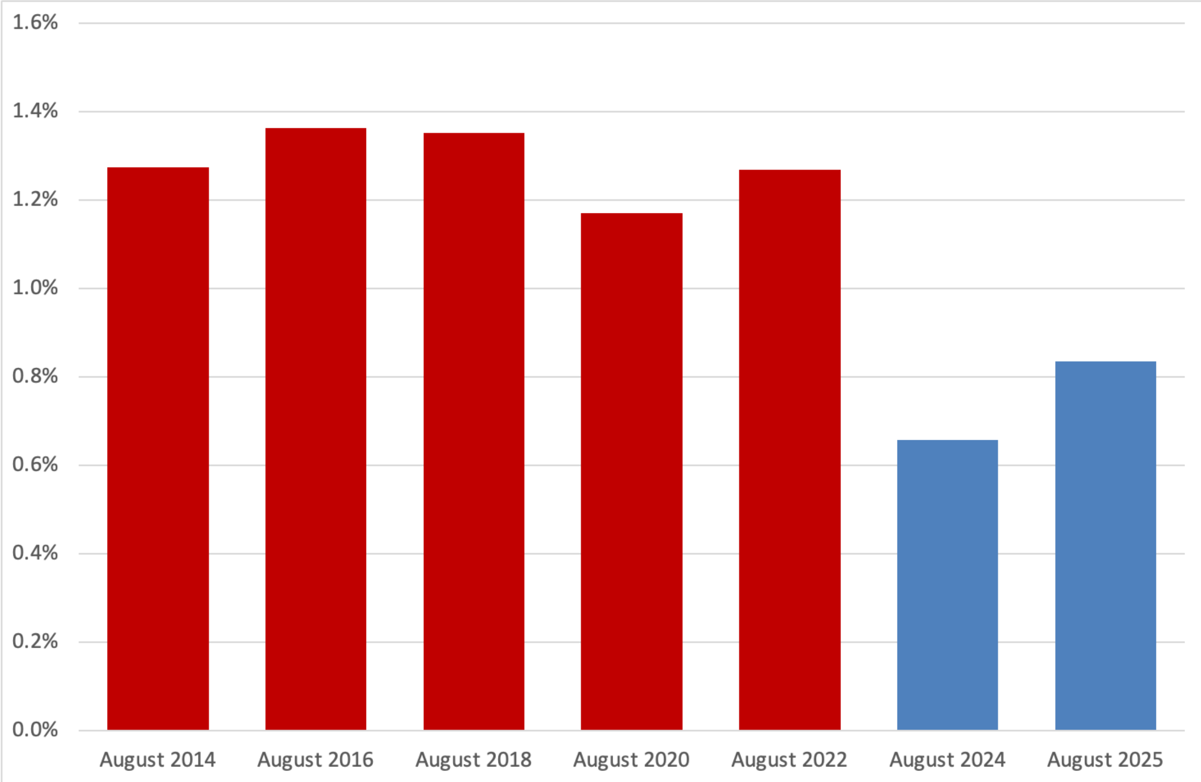
[42] E. Cavanough & M. Douglass, *Closing Loopholes, Opening Opportunities* (Melbourne: McKell Institute, April 2025), 17.

[43] S. Whelan, *Wage Cutting Strategies in the Mining Sector* (Sydney: McKell Institute, May 2022).

[44] Cavanough & Douglass, Closing Loopholes, n42 above.

[45] Australian Bureau of Statistics, *Industry Employment Guide: Guide to Labour Statistics* (Canberra, 7 November 2022), https://www.abs.gov.au/statistics/understanding-statistics/guide-labour-statistics/industry-employment-guide

Figure 2: Proportion of self-described labour hire workers amongst all employees, 2014-2025.



Source: ABS Characteristics of Employment, via TableBuilder

Figure 2 suggests a marked decline in the number of people who reported being paid by a labour hire agency by August 2024, with only a partial recovery by August 2025. All up, by August 2025 the number of labour hire workers, by this measure, was a third less than in August 2022.

Comprehensive data at the industry level are not available, due to the small number of observations for each industry. In a few cases, however, the movements at industry level are large enough to be worthy of some attention. In mining, the proportion of the workforce in 2024 and 2025 that described itself as being in labour hire was roughly half the level that it had been, when averaged over 2014-2022. Similar observations could be made about manufacturing and administrative and support services (the industry within which the industry 'labour supply services' is itself located). These 3 industries were 3 of the 4 biggest users of labour hire over the period 2014-2024 – the other such industry was transport, postal and warehousing, in which no major shift in labour hire use was observed.[46] Of course, one needs to be very careful about drawing inferences from data with such large standard errors.[47] Nonetheless, the decline in usage in mining is what would be expected if firms lost the cost

[46] At the industry level, the largest users of labour hire (as measured by the average over the seven ABC Characteristics of Employment surveys between 2014 and 2024) were: Administrative and Support Services (6.9%); Mining (2.7%); Transport, Postal and Warehousing (2.2%); Manufacturing (2.1%); Wholesale Trade (1.6%); Financial and Insurance Services (1.4%); Public Administration and Safety (1.3%); Electricity, Gas and Water (1.3%); Construction (1.2%); Information Media and Telecommunications (1.0%); and Agriculture, Forestry and Fishing (1.0%). All other industries were below 1.0%. Note though that these numbers will all understate the significance of labour hire in an industry, as the number of self-described labour hire workers identified this way is well below half the number of Labour Hire workers estimated in the ABS publication of that name. The extent of understatement may vary between industries; for example, in mining, labour hire workers are commonly referred to as 'contractors' (even though most are employees) and may not recognise the term 'labour hire'.

[47] These estimates are all taken from the ABS TableBuilder function for the Characteristics of Employment survey. It is noteworthy that, despite the high relative standard errors, the declines in use of labour hire in manufacturing between any of the 5 years before 2023 and either year after 2023 (that is, in all 10 possible pairwise comparisons) were statistically significant. This was also the case in administrative and support services, except for the 2020–2025 pair; for the 9 other pairwise comparisons, the declines were statistically significant at the

advantage from using labour hire, at least where some employees were on EBAs. (The reforms would not directly affect the financial benefits of labour hire in mines where individual contracts dominated and there were no EBAs.) That said, it should not be inferred that the Closing Loopholes reforms will be as effective in all industries or occupations. There is evidence, when applying a gender lens to the way the SJSP provisions are designed and are operating, that vulnerable workers and those employed in historically female-dominated areas of work (outside of flight attendants) are less likely to access and benefit from the provisions,[48] and this concern led the Draft Closing Loopholes Review to recommend that the government 'improve access to regulated labour hire arrangement orders for cohorts of labour hire workers who may not otherwise access the framework', specifically mentioning women.[49]

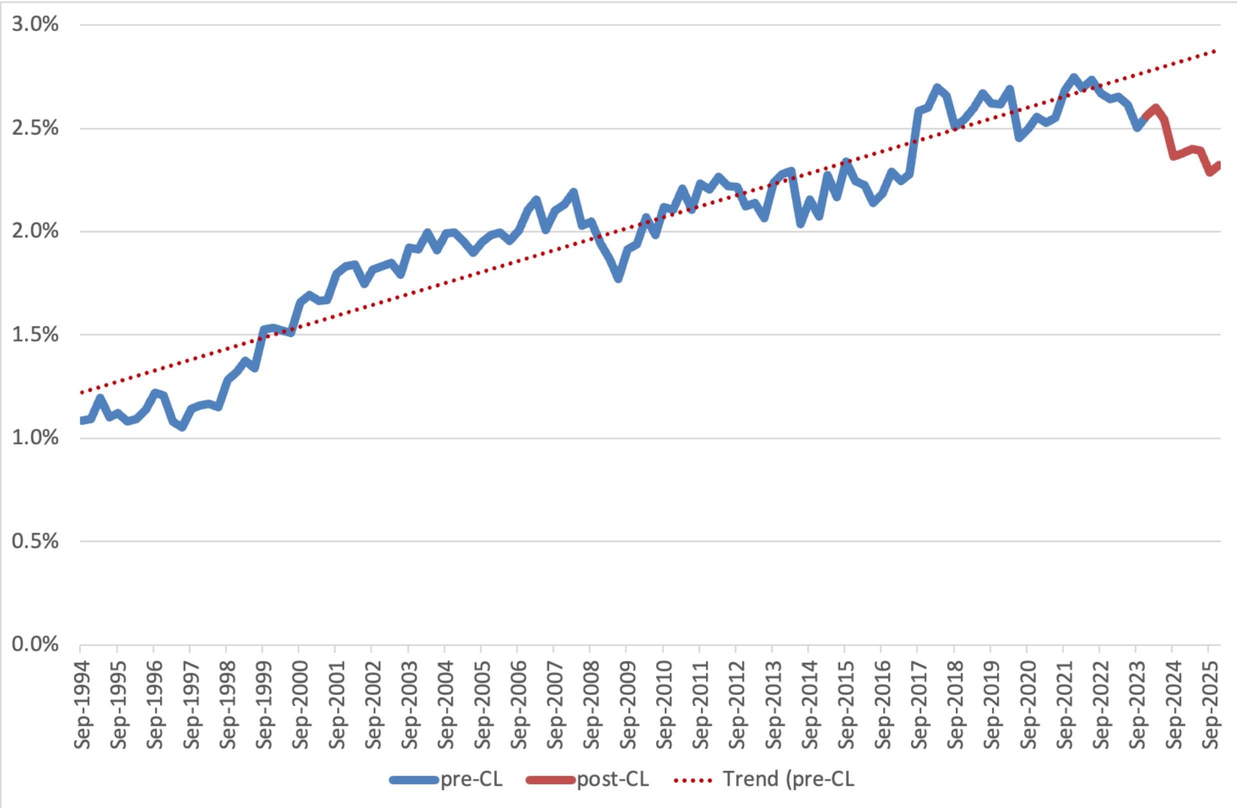
Because of the difficulty the ABS has in collecting data about labour hire workers, it relies on several data sources to estimate labour hire numbers and brings them together in its publication *Labour Hire Workers*. The most recent issue of the *Labour Hire Workers* publication was published in April 2026 and contains data up to December 2025. Figure 3 shows estimated employment in labour hire taken from that publication.

1% level or better. In mining, which has far fewer employees and therefore much larger standard errors, three of the pairwise declines were statistically significant: 2020–2024, 2020–2025 and 2018–2024.

[48] See research forthcoming in L. Heap, *Applying a Gender Lens to Same Job Same Pay Provisions of the Fair Work Act* (Centre for Future Work, 2026).

[49] Draft Closing Loopholes Review, n25 above, recommendation 20, 189.

Figure 3: Share of all people employed in Labour supply services, Australia, 1994-2025



Source: ABS, Labour Hire Workers, Canberra, 2024, [*https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release*](https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release)

Although more comprehensive than the data in Figure 2, the results (shown in Figure 3) are consistent with the trend shown there. The number of people employed in labour supply services (the blue unbroken line) grew fairly consistently from 1994 to early 2024 – to be 2 ½ times the share of the labour force in mid-2024 than it had been in 1994. It then appeared to fall (the red line) in the last 6 quarters of 2025, to end up 9% less that the level before this short period and 16% less than the peak in December 2021. This fall took it well below the trend (the red dotted line) that had been established over the previous 3 decades. By December 2025, the proportion of people working in labour hire was very similar to the proportion who had been working in that sector a decade earlier.

It can be seen in Figure 3 that, despite the persistent growth pattern on average, there is still some quarterly variation in the number of labour hire workers. So, it is best to confirm this visual inspection with regression analysis. This is undertaken in Table 3. Three dependent variables are used: the percentage of people employed in labour supply services (as used in Figure 3); the percentage of people whose *main job* is in labour supply services; and the percentage of jobs worked in labour supply services. Data are available for a much longer period back than they are for casual employment (as examined in table 2), though the end point is not quite as recent, so there are 126 observations. The independent variables are similar to those used in Table 2, with the key difference being that there is no variable for the 2021 reforms as these did not explicitly target labour hire.[50] A COVID-19 variable

[50] The data points used by the ABS refer to the end, rather than the start, of the month so we include March 2021 as the start of the COVID period but this has no practical effect, as the COVID variable is non-significant in these equations, and excluding the COVID variable

is included but, unlike in the casual equations, it is non-significant. This is perhaps a reflection of the differences between the industries within which labour hire and casual part-time work are heavily used by employers, but it likely also reflects the likelihood, in the industries where it was most common, that labour hire was not a major source of short-term flexibility in the number of employees.

Table 3: OLS equations predicting labour hire, 1994-2025

	Percentage of people employed in labour supply services [4]	Percentage of people employed in main job in labour supply services [5]	Percentage of jobs worked in labour supply services [6]
Constant	1.21***	0.990***	1.245***
	(0.028)	(0.029)	(0.031)
Time (quarters)	0.013***	0.013***	0.014***
	(0.000)	(0.000)	(0.000)
COVID-19	-0.036	-0.075	-0.030
	(0.059)	(0.061)	(0.065)
Closing Loopholes	-0.460***	-0.516***	-0.467***
	(0.065)	(0.068)	(0.071)
adjusted r^2	0.90	0.88	0.89
F significance	<.001	<.001	<.001
N	126	126	126

*Standard errors in brackets. Key: ***significant at 0.1% level;*
*** significant at 1% level; * significant at 5% level; # significant at 10% level.*

Table 3 shows that there was a steady increase in the proportion of people employed in labour hire, by about 0.1 percentage points every 2 years, or about 0.5 percentage points per decade on average. Most importantly, the Closing Loopholes reforms reduced the proportion of people employed in labour hire by about 0.5 percentage points, or about the equivalent of a decade's worth of growth. It also shows that the effect is significant regardless of whether we measure the proportion of all people employed in labour hire, or just those whose main jobs was in labour hire, or the proportion of jobs themselves: the patterns of the coefficients are very similar across the board. The coefficient appears slightly higher for people whose 'main job' is in labour supply services than for 'all' people employed in the industry, a difference that would be expected if the main effect was on full-time labour hire workers.[51] All up, the regression analyses confirm that the number of people employed in 'labour supply services' fell by a little under a fifth[52] as a result of the Closing Loopholes reforms, as would be

altogether from the equations has a negligible impact on the Closing Loopholes coefficient which are, again, lagged but take account of the date that the labour hire measures came into force rather than the timing of the casual measures (used in Table 2).

[51] Indeed, the original data suggest that, between 2023-24 and 2024-25, there was no reduction in the number of people who worked in the industry but this was not their 'main job'. That is, all of the reduction in the number of people employed in the labour supply services industry between those two years was due to a drop in the number of people whose 'main job' was in this industry.

[52] That is, 0.5 percentage points as a proportion of slightly over 2.5%

expected if firms were no longer able to gain a cost advantage by using labour hire instead of directly employed labour.

What is difficult to know is exactly what portions of the declining share of full-time employment occupied by casuals, and the declining share of employment occupied by labour hire workers (who are disproportionately full-time workers), were due to the casual employment law changes versus to the SJSP provisions in Closing Loopholes. It appears likely that both aspects of the legislation were relevant. This can be implied from the coefficients in Tables 2 and 3. In 2022-23, the last full year before Closing Loopholes came into effect, there was an average of approximately 8.4 million full-time employees, of whom nearly 0.9 million were 'casual'. The coefficient on equation [2] in table 2 implied that the Closing Loopholes reforms probably led to something around a 0.2 million drop in the number of full-time casual employees. Also in 2022-23, an average of 14.5 million people were employed, of whom under 0.4 million were employed in labour services. The coefficient on equation [1] in table 3 implied that the number employed in labour services fell by less than 0.1 million as a result of Closing Loopholes. Thus, the impact of the casual employment provisions, even amongst full-time casuals, was substantially greater than could be explained simply by the SJSP amendments in Closing Loopholes.

So, the drop in the casual share of full-time employment was not exclusively due to the labour hire provisions. To what extent the reverse applied (that is, to what extent the reduction in labour hire was due to the casual provisions) is harder to assess. However, the way that the drop in labour hire usage appeared very high in mining, where employers had gained substantial cost savings through labour hire that were then negated by SJSP, suggested that it was very likely that the SJSP provisions had a distinct and definite impact on labour hire usage. Whatever the precise relative impacts of these 2 sets of provisions, they appear to be working together and to be having a substantial cumulative effect. It is likely that Closing Loopholes reforms in both the casual employment and the SJSP areas have acted in combination to reduce the reliance on labour hire and full-time casuals.

Implications

The data suggest that the SJSP provisions in Closing Loopholes are having their intended effect, in (strongly) increasing the pay of labour hire workers who were paid less than their equivalents in direct employment and, by reducing the possibility of 'sham' labour hire usage, changing the mix of employment between labour hire and directly employed workers. Aside from, as mentioned earlier, improving access for certain groups, the Draft Closing Loopholes Review chiefly recommended that the FWC be adequately resourced to deal with the issue.[53]

There remains the other negative implications of labour hire: in particular those for workplace health and safety (WHS). In part, reducing the number of labour hire employees would, in itself, reduce the number of people exposed to the greater risk associated with that form of work. That said, more needs to be done to address the specific WHS needs of this group. Some of this rests with the laws regarding WHS and workers compensation. Harmonised WHS laws place responsibility on all persons conducting a business or undertaking for the WHS of those workers under their control, whether an employee or a contractor. Laws in at least 3 states (Victoria, Queensland and Western Australia) require host firms to co-operate with labour hire firms in facilitating rehabilitation of injured labour hire

[53] Draft Closing Loopholes Review, n25 above, recommendation 21, 190.

workers.[54] Less has been done, but more should be done, to enable insurers to take account, in the setting of risk-related premiums, of the claims experience of labour-hire workers on host employers' sites in the same way as their own employees' are taken into account. At the heart, however, of the WHS problems facing labour hire workers is the disorganisation and regulatory failures inherent in their status as labour hire. While to some extent that these failures are in the hands of the States and hence outside of the scope of federal regulation, federal policy should be more unequivocal in removing incentives for firms to engage in labour hire. This would mean not just preventing discrimination between labour hire workers and employees *on EBAs* but preventing it between labour hire workers and all equivalent employees, *regardless* of their EBA status.

[54] G. Fisher & D. Peetz, 2023 *Review of the Operation of the Queensland Workers' Compensation Scheme, Report of the Third Five-Yearly Review* (Brisbane: Queensland Government, June 2023), 71; G. Grace, *Recommendations of the 2023 Review of the Operation of the Queensland Workers' Compensation Scheme – Queensland Government Response* (Brisbane: Queensland Government, April 2024).

‘Self-employed’ gig workers

The problem of self-employed gig workers[55]

If the rights of labour hire workers are weak compared to those of direct employees of host firms, the problem is much greater for ‘independent contractors’. These are people who are not employees and therefore do not have the rights of employees.

‘Gig work’ has been seen as a new form of self-employment, attracting much attention in recent years, though some forms of it have been around for decades and more. A prominent subset of gig work is ‘digital platform work’, in which workers undertake ‘work on-demand via apps’ or ‘location-based platform work’.[56] Another group of ‘gig’ workers (separate from the digital sphere) are road transport owner-drivers. ‘Digital platform workers’ and road transport owner-drivers are collectively called ‘regulated workers’ in the Closing Loopholes legislation. Most of this section of this report concerns these 2 groups of self-employed gig workers. An earlier Centre for Future Work report focuses on ‘gig’ workers and the self-employed and contains more detail on their vulnerabilities and the appropriateness of, conditions for and relevance of potential regulation.[57]

Both road transport owner-drivers and digitals platform workers have low power related to the use of contractual distancing by firms. In the case of digital platform workers, they are hired as contractors to do work that might otherwise be done by employees, given the degree of control exercised by the corporation; hence, the legislation refers to many of them as ‘employee-like’ workers. In the case of owner-drivers, they are at the end of contractual chains that may have 2 or more steps in them. At one end (the ‘top’) of the contractual chain might be a large retailer or other organisation, which contracts to a transport company which may in turn contract to a smaller operator who might in turn use employees or contact owner drivers or even another firm to transport products form one place to another. The pay and conditions of employee drivers are, to some extent, protected by awards and enterprise agreements (and perhaps through the internal rules businesses typically create regarding employees); no such protection has existed for owner drivers. Gig workers’ vulnerability is also inherent in the fact that their work involves short-term paid tasks as opposed to regular or long-term on-going employment, which makes hiring as contractors easier for the firm.

Digital platforms use their power, control and financial resources to structure their businesses models to regulate their workers on their own terms.[58] Black argues that these business models help thwart

[55] Some of the matters discussed here are raised in an article with B. French and J. Minas, forthcoming in *Australian Business Law Review*.

[56] V. De Stefano, *The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdwork and Labour Protection in the ‘Gig-Economy’* (Geneva: International Labour Office, 2016), 1.

[57] D. Peetz, *A Better Future for Self-Employment: How Is It Changing, and How Can ‘Gig’ Work Be Regulated?* (Canberra: Centre for Future Work, December 2023).

[58] Inquiries include: Parliament of Australia, Senate Select Committee on Job Security (2021); the New South Wales Parliament Select Committee Inquiry into the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales, ‘Select Committee on Job Security’, Parliament of Australia; Senate Select Committee on Job Security, Parliament of Australia, *On-Demand Platform Work in Australia* (First Interim Report, June 2021), 180 [1.15] (‘Interim Report’); ‘Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in New South Wales’, Parliament of New South Wales (web page); Department of Economic Development, Jobs, Transport and Resources, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Melbourne: DEDJTR, 31 August 2016).

the growth of appropriate legislative responses[59] including to date, in Australia, preventing the granting of employee rights to 'employee-like' gig workers.

Low pay rates associated with gig work can encourage workers to cut corners with potentially adverse safety effects. This is most obvious in heavy vehicle transport, a form of 'gig' work where the statistics are relatively accessible. Owner-drivers perform short-term gigs without ever being employees. Between 2016 and 2020, the road transport industry had the highest fatality rate per 100,000 workers of any Australian industry – higher even than agriculture, construction or mining.[60] Low incomes for owner-drivers[61] have contributed to the industry having the longest working hours.[62] Furthermore, long hours in the industry are linked to poor general health, severe psychological distress and near-misses.[63] Digital platforms seek to portray themselves as 'mere intermediaries' describing their main function as 'to bring people together'.[64] The 'intermediary' characterisation can be seen as an attempt to avoid legal obligations that would otherwise align with having employees; that is, status as contractors can be a mere contrivance to avoid the effects of labour law.[65] Until 2022, Australian courts commonly decided whether a worker was an employee or a contractor by reference to a 'multi-factorial test'. However, 2 High Court decisions[66] overturned prior interpretations and asserted the primacy of contract over multifactorial analysis and over issues such as vulnerability. So, it became much harder for workers, who had been defined by the firm as contractors, to satisfy the courts that they were, indeed, employees.

The Closing Loopholes reforms

The Closing Loopholes reforms dealt with the problems of purported independent contractors in 2 ways. First, they explicitly required that the determination of whether a person is an employee or contractor under the FW Act must, for most workers,[67] be based on 'ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person'[68] including 'how the contract is performed in practice.'[69] It thus mostly reversed recent decisions of the High Court of Australia, that placed heavy reliance on the formal content of the employment contract.[70]

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[59] C. Black, 'The Future of Work: The Gig Economy and Pressures on the Tax System', *Canadian Tax Journal*, 68/1 (2020), 69, 72.

[60] Safe Work Australia, *Work-Related Traumatic Injury Fatalities, Australia 2020* (Canberra: Safe Work Australia, 2021).

[61] M. Quinlan, *Report of Inquiry into Safety in the Long Haul Trucking Industry* (Sydney: Motor Accidents Authority of New South Wales, 2001) ('Long Haul Trucking Report').

[62] M. Quinlan, 'FactCheck: Do Better Pay Rates for Truck Drivers Improve Safety?', *The Conversation* (13 April 2016) ('FactCheck'); Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, cat. no. 6306.0 (Canberra: ABS, 2018); Safe Work Australia, *Notifiable Fatalities Monthly Report* (Safe Work Australia, 2015); Quinlan, *Long Haul Trucking Report*, n61 above.

[63] Monash Insurance Work and Health Group, *Driving Health Study Report No. 6: Survey of the Physical and Mental Health of Australian Professional Drivers* (Melbourne: Monash University, 2020).

[64] A. Perulli & T. Treu, eds, *The Future of Work: Labour Law and Labour Market Regulation in the Digital Era*, Studies in Employment and Social Policy, vol. 5 (Alphen aan den Rijn: Wolters Kluwer, 2021).

[65] J. Riley Munton, J. Fleming & K. Harvey, *Inquiry into Impact of Technological and Other Change on the Future of Work and Workers in New South Wales: Submission of the Australian Institute of Employment Rights* (Sydney, 2020).

[66] *CFMEU v Personnel Contracting Pty Ltd* [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.

[67] New s 15AA(3) of the *Fair Work Act 2009* (Cth) provides an exemption from this new definition for certain employees – mostly private sector employees of partnerships, trusts or sole traders, that is, those who are national system employers and employees by virtue of the states' referrals of industrial relations power under ss 30G and 30R of the Act. Few, if any, of such workers would be people working for digital platform firms.

[68] S15AA(1) of the *Fair Work Act 2009* (Cth) ('FW Act').

[69] s15AA(2)(b) of the FW Act.

[70] see n66.

Second, and more importantly, they opened access for some independent contractors – mostly owner drivers of trucks and 'employee-like' digital platform workers – to the FWC, by setting up ways for such workers to be defined as 'regulated workers' and then enacting procedures by which these 'regulated workers' could access certain FWC protections. The FWC can establish standards on matters like payment terms, deductions, working time, record-keeping, consultation, representation and union delegates' rights for these 'regulated workers'. The provisions focus on vulnerable workers, hence standards can only be established where 2 out of 3 criteria (the workers have low bargaining power, are being paid less than equivalent employees and/or have little authority over their work) are satisfied.[71] There are consultation processes the FWC must engage in before finalising a decision in road transport.[72] The FWC can make orders regarding participants in road transport 'contractual chains'.[73] Regulated workers can be covered by collective agreements.[74] There are exemptions from Commonwealth competition law for matters relating to orders or collective agreements.[75] The FWC must avoid unreasonable adverse impacts upon industry participants, including on sustainable competition, business viability, innovation and productivity.[76] It must tailor regulation to the circumstances of the workers and their industry,[77] and not give preference to one business model over another.[78]

These Closing Loopholes reforms both dealt with contractor-based first order distancing and made critical advances in regulation of that more difficult issue, second-order distancing, through giving the FWC the capacity to issue orders relating to contractual chains. While not the first move with the potential to regulate second order contracting – that honour belongs to the coalition government in 2017, when it passed laws regarding wage theft in franchises[79] – it is by far the most thorough effort in that area at the federal level, and indeed one of the leading efforts internationally.

Implementation to date

The provisions regarding regulated workers are yet to lead to a minimum standards order in circumstances envisaged by the Parliament, as the procedures set up through Closing Loopholes take considerable time. Progress in them has been slower than many would like, mostly driven by the requirements in the Fair Work Act for consultation and the nature of the processes required by the FWC.[80] This is reflected in the recommendations of the Draft Closing Loopholes Review that, in effect, most of the matters here be reviewed later on.[81] That said, 2 things can be pointed to as significant outcomes.

First, the 'unfair deactivation' provisions have already led to outcomes (reactivations) for several workers, and changes in procedures by several gig firms. A deactivation code has been established,

[71] s15P(1)(e).

[72] ss40E–40G, s536KA–536KD.

[73] ss40H, 40J.

[74] ss 536JJ–536JN, 536MH–536MX.

[75] s536JT.

[76] s40D, s536JX.

[77] s536JX(a)(vi)–(vii).

[78] s536JX(a)(v).

[79] See the 'contractual chains' section below and n88.

[80] Submission by C. Goods, A. Veen & T. Barratt to the Closing Loopholes Review.

[81] Draft Closing Loopholes Review, n25 above, recommendations 2, 9, 14, 15, 15–19.

and a number of cases have been determined, including reactivation of workers after the platform firm had failed to follow the deactivation code.[82] The FWC decided that unfair deactivation applications will largely follow unfair dismissal case law, because both statutes use the same language.[83] Concern about the FWC's interpretation of the evidential requirements in unfair deactivation cases was reflected in a recommendation of the Draft Closing Loopholes Review.[84]

Second, a road transport contractual chain order (RTCCO) has recently been made in relation to one specific aspect of costs in the sector: a major surge in fuel costs, arising from the 2026 war in the Middle East.[85] That this was not a circumstance envisaged by Parliament is illustrated by the fact that the Parliament passed emergency legislation to enable the FWC to circumvent normal procedural requirements in order that it could deal expeditiously with this matter. A joint application was lodged by the TWU and the Australian Road Transport Industrial Organisation – 2 organisations often at loggerheads in the FWC – to require a mechanism that would enable payments to 'secondary' parties in the sector to be adjusted for fluctuations in fuel prices.[86] The application was opposed by some peak bodies and some corporations that either were at the top of contractual chains or were part-owners of such organisations (e.g. major retailers, banks), and all were given the chance to intervene and submit evidence.[87] The decision obliged organisations at the top of contractual chains – such as large retailers – to negotiate mechanisms for compensating those lower down the contractual chain for the large and erratic fuel price rises that the war created. It is only a temporary measure – it will cease to operate when the price of diesel falls below $2 per litre, unless the FWC decides otherwise.

Despite the fact of this being 'early days', there are several other important matters that warrant comment.

Contractual chains

The provisions regarding 'contractual chains' in road transport are an important innovation in labour law and reflect the fact that many decisions affecting the pay of owner-drivers are made further up the contractual chain. At present, hearings before the FWC in relation to contractual chain orders are considering such matters as: a proposed requirement for payment within 30 days; rate reviews; and the question as to whether certain payment terms pressure operators into lowering costs over the duration of a contract.

The new road transport contractual chain provisions are not the only aspects of the FW Act to deal with contractual chain issues. In particular, sub-section 558B(1) of the existing FW Act holds a franchisor responsible for certain acts that occur within their contractual chain, even if they are not the formal employer of the workers involved, while sub-section 558B(2) makes a holding company accountable for certain acts that occur within their contractual chain, again even if they are not the

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[82] [2026] FWCFB 81 (10 April 2026); also [2026] FWC 48 (12 January 2026); [2025] FWC 3338 (6 November 2025); [2025] FWC 3176 (24 October 2025); [2025] FWCFB 214 (23 September 2025).

[83] [2025] FWC 2787 (18 September 2025).

[84] Draft Closing Loopholes Review, n25 above, recommendation 10.

[85] *Decision: Application by Transport Workers' Union of Australia and Australian Road Transport Industrial Organisation* [2026] FWCFB 95 (20 April 2026).

[86] Fair Work Commission, 'TWU & ARTIO Application for a Road Transport Contractual Chain Order – Fuel Cost Major Case (MS2026/1)', Fair Work Commission, https://www.fwc.gov.au/hearings-decisions/major-cases/twu-artio-application-road-transport-contractual-chain-order-fuel

[87] [2026] FWCFB 95 (20 April 2026).

formal employer of the workers involved. These provisions were introduced in 2017 by Minister Cash of the Liberal-National Party coalition Government.[88]

While the wording of s15RA (about the meaning of a road transport contractual chain) and chapter 3B (ss536NL to 536QX, about minimum standards for people in a road transport contractual chain) are not (and cannot be) identical to s558B, they build on the concepts embodied in s558B: that entities who control conditions of work should not be exempted from accountability, simply by virtue of contractual arrangements that mean they are not the direct employers of the workers concerned.

Contractual chains designed to minimise costs take many forms, such as franchising, holding companies, use of labour hire and sub-contracting.[89] Road transport is thus one of many areas where contractual chains of various types are used to minimise costs. Others include cleaning, petrol and food retailing, hospitality and mining.

The FWC should have the power to make orders in any 'contractual chains', not just in road transport, where decisions within those contractual chains adversely and unreasonably affect the ability of employers to meet their obligations under the Fair Work Act. This capacity would benefit both workers and employers further down the contractual chains, just as the contractual chain provisions regarding road transport contractors in Chapter 3B can benefit both workers and employers.

Relationship to Object of the Act

The National Employment Standards were written at a time when the Fair Work Act only covered employees. More recently, the coverage of the Fair Work Act has extended to 'employee-like' workers and other 'regulated workers'. This is a recognition of the fact that many workers, formally classed as 'self-employed', in practice have many of the characteristics of employees, in terms of their vulnerability, especially in relation to large organisations that make use of them. They thus warrant protection under the Fair Work Act.

Legislators have restricted the coverage of the 'regulated worker' provisions to particular workers who are considered vulnerable. The provisions in the Fair Work Act affecting 'regulated workers' also instruct the FWC to tailor regulation to the circumstances of the workers and their industry,[90] and not give preference to one business model over another.[91] A corollary of the latter is that the starting point for regulation of vulnerable employee-like workers should be the standards that apply for relevant employees.

The Act does ***not*** redefine any regulated workers as employees. Indeed, it prevents the FWC from doing this through the regulated worker processes.[92] This is consistent with the fact that many vulnerable, self-employed workers still want to remain self-employed, even though they seek protection from exploitation by large organisations.

It was clearly the intention of Parliament that employee-like and other regulated workers be afforded protections similar, but not identical to, those for equivalent employees. The wording of the Fair Work Act mentioned above suggests that, once costs and other factors are taken into account,[93] regulated

[88] Via the *Fair Work (Protecting Vulnerable Workers) Act 2017* (Cth).

[89] D. Peetz, *Realities and Futures of Work* (Canberra: Australian National University Press, 2019).

[90] s536JX(a)(vi)–(vii).

[91] s536JX(a)(v).

[92] s536JX(a)(iv), s536JX(b)(iii).

[93] s536JX(b)(i).

workers should be entitled to broadly similar minimum earnings to award-based employees performing similar work.[94]

The FWC partially recognised this concept of equalisation in its decision on the fuel price RTCCO, in observing that:

> *The RTCCO applies uniform obligations upon road transport industry participants and thus does not give preference to one business model or working arrangement over another.*[95]

It also stated that the RTCCO:

> *does take into account the business models of small fleet operators, owner-drivers and road transport employee-like workers by recognising their need to recover the increased cost of fuel, and is in that sense tailored to the type of work, working arrangements and preferences of regulated workers.*[96]

Recovering those costs is not something that employees need to do, and so satisfying that need puts employees and contractors on more of an equal footing. Still, the FWC does not yet go so far as to explicitly recognise the need to put employees and contractors on as close to an equal footing as is feasible.

Of course, employee-like and other regulated workers are not paid time-rates – they are not paid an hourly wage or a monthly salary. They are commonly paid some type of piece-rate for the job done. So, it would not always be appropriate for the FWC to set minimum hourly payments for regulated workers: sometimes it might, but at other times it would be more appropriate for the FWC to find piece-rates, or combinations of piece-rates, allowances and even time-rates, that provide similar outcomes for those workers as for equivalent employees. Those employees are subject to the minimum rates and conditions set out in awards, agreements and the National Employment Standards.

So, what is needed is a more explicit direction to ensure what could best be called 'comparable' protection for employees and for the vulnerable non-employees who are covered by the regulated worker provisions. 'Comparable' does not mean 'equal', but in this context it means protection that, after taking account of differences in costs (such as equipment, maintenance, fuel, insurance and so on) and other relevant factors, the protections are of broadly similar value to employees and to the vulnerable non-employees – or at least, the 'cost' to firms of the protections is broadly equivalent regardless of whether the workers are employees or contractors, so that neither business model (that is, an employee-based or a contractor-based model for the use of labour) is preferred over the other.

It is unlikely that an exact matching of values could ever be achieved, as the monetary equivalent of some considerations is likely too difficult to calculate, and taking precise account of the differing tax treatments of some items would be a specialist task likely outside the FWC's expertise, interest, and historical role. The important thing is that the Commission does its best to bring about broad equivalence, thereby minimising or removing the incentive for displacement of directly employed labour through contractual distancing.[97]

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[94] s536JX(b)(ii).

[95] [2026] FWCFB 95, 28, [84].

[96] Ibid.

[97] An example of how overseas jurisdictions can deal with the complexities of finding equivalence is included in D. Peetz, 'Institutional Experimentation, Directed Devolution and the Search for Policy Innovation', *Relations Industrielles/Industrial Relations*, 76/1 (2021), 69–89.

This is a fine principle and one worth following. However, it is also the case that insufficient guidance is presently provided to the FWC to ensure that this principle must be followed. It is implied, but not adequately explicit, in the legislation.

The Act should therefore be amended to guide the FWC, when assessing the appropriate remuneration for regulated workers, to ensure that the net benefits of its decisions for non-employees, covered by the 'regulated workers' provisions, are, to the maximum extent possible, equivalent to the net benefits to employees also covered by the Act.

This equivalence could only be established after taking account of all the costs faced by self-employed workers that are not faced by employees. So, they could only be established on an industry-by-industry, case-by-case basis. Thus, it would not, for example, be appropriate to set an hourly minimum wage for all regulated workers. But it would be appropriate to ensure that, when regulation through the Fair Work Act comes to affect particular classes of regulated workers, that those workers are all protected by a minimum standards orders that leave them with an expected income equivalent to that minimum wage.

By its nature, such a form of minimum-wage-equivalent regulation would not apply to self-employed workers who did not fall under the 'regulated worker' provisions of the Fair Work Act. That is, the provisions would only apply to a (small) minority of the self-employed.

It is also important to recognise that it is not just the National Minimum Wage that is relevant to the 'regulated worker' provisions of the Act. While an issue facing some digital platform workers ('employee-like' workers) is whether they are receiving something equivalent to a minimum wage,[98] the issue facing another group of regulated workers, regulated road transport contractors, is about equivalence to a considerably higher rate.

Few if any employee truck drivers receive only the minimum wage; most would be on award rates of pay that are much higher. This reflects the higher level of skill embodied in such work, and perhaps also compensates workers for the higher level of danger in the road transport industry – danger that is often exacerbated by the piece-rate nature of the payment systems and the constrained earnings arising from the operation of contractual chains in that sector.

If 'not giving preference to one business model over another' means, for *some* digital platform workers, that everyone doing that work is entitled to the equivalent of the minimum wage, then 'not giving preference to one business model over another' means, for road transport workers, that everyone doing that work is entitled to the equivalent of a much higher award rate. The law should make allowance for the fact that the regulated worker provisions are, in part, intended to provide protection above that in the National Minimum Wage.

One way to be explicit about the need to provide 'comparable' protection for employee and regulated workers[99] would be to amend the Object of the Act[100] to include a new paragraph that requires:

[98] For example, 2 British studies suggested that many 'gig economy' workers were receiving incomes equivalent to hourly pay below the minimum wage: Chartered Institute of Personnel and Development, *To Gig or Not to Gig? Stories from the Modern Economy* (London: CIPD, 2017); K. Lepanjuuri, R. Wishart & P. Cornick, *The Characteristics of Those in the Gig Economy* (London: Department for Business, Energy & Industrial Strategy, 2018). The earnings of Uber drivers in Australia were also estimated to be below Australia's then minimum wage: J. Stanford, *Subsidising Billionaires: Simulating the Net Incomes of UberX Drivers in Australia* (Melbourne: Centre for Future Work, March 2018).

[99] The theoretical rational for this approach is provided in Peetz, 'Institutional experimentation', n. 97 above. It explains the concept of 'directed devolution', of which this proposal is an example.

[100] s3.

> providing comparable protection for employees covered by the National Employment Standards and Modern Awards, and for regulated workers.

This would also likely require a definition, in the dictionary of the Act[101]:

> ***comparable protection:*** protection that, after taking account of differences in costs (such as equipment costs, maintenance, fuel, insurance and other relevant factors), the protections are of broadly similar value (to employees and to regulated workers).

Most self-employed people would continue to not be encompassed by Fair Work regulation.

Definition and coverage of employee-like workers

Many amendments were passed in order to ensure passage of the Closing Loopholes legislation. One of the most important, relevant to this issue, concerned the definition of 'employee-like' worker. In the original form of the Bill, under proposed s15P(1)(e), to be treated as an employee-like worker, a worker would need to satisfy *one* of the following 4 criteria. This was amended to a requirement that *2* criteria be satisfied. The 4 criteria are:

(i) the person has low bargaining power in negotiations in relation to the services contract under which the work is performed;

(ii) the person receives remuneration at or below the rate of an employee performing comparable work;

(iii) the person has a low degree of authority over the performance of the work;

(iv) the person has such other characteristics as are prescribed by the regulations.

This should be reverted to a need to satisfy just *one* criterion.

Contractors outside the digital platform economy are not covered by the employee-like definition.[102] Yet the Closing Loopholes and earlier reforms recognise the vulnerability of some contractors, especially when their market situation is constrained by contractual distancing and contractual chains.

While many forms of contractual distancing involve employees (not contractors) at the 'bottom' of the chain, some involve contractors. So, it would be wise to extend the coverage of s15P (that defines 'employee-like' workers) to encompass other forms of (non-digital) gig work where contractors are vulnerable. The possibility of this is envisaged by the Draft Closing Loopholes Review.[103] As discussed in the introduction, there is a constant search by business to find new ways of minimising costs, and often this is through some form of contractual distancing. It is difficult for policy makers and Reviewers to anticipate what future particular forms this will take, but it is possible to build into public policy the flexibility to respond to such challenges when they happen.[104] One way is to allow the exercise of Ministerial discretion, through the enactment of regulations, to allow new types of work to be encompassed by the employee-like provisions of the Act.

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[101] s12.

[102] ss15G, 15P, 15Q.

[103] Draft Closing Loopholes Review, n25, recommendation 13, p102.

[104] Recommendation 3 of the Draft Closing Loopholes Review (n25) is also aimed at addressing this issue of future uncertainty.

The best way to do this would by allowing greater flexibility in the legislative definition of 'employee-like' worker. This could be achieved by amending s15P(1)(c). Existing s15P defines an 'employee-like-worker by reference to 5 requirements. One of those requirements, in paragraph (c), specifies that an employee-like worker must perform a 'digital platform work' (a term defined elsewhere in that Part of the Act). That paragraph should be amended by adding 'or work prescribed by the regulations for the purposes of this paragraph'.

The second aspect of this that is concerning is that coverage of employee-like workers is restricted to those employed by 'digital labour platforms', since the meaning of 'digital labour platform' can be interpreted very narrowly. In an April 2026 single-member decision, the FWC excluded from coverage for unfair deactivation purposes a worker who was conducting work for a platform that did not wholly rely on an algorithm to allocate work but also relied on some form of human intervention.[105] Whether this interpretation survives appeal is yet to be seen, but if not, it would seem that some amendment to the Act would be necessary. Employee-like workers need special rights not because of the number of algorithmic steps involved in allocation of their work but because of the underlying imbalance of power at play.

Availability of non-binding guidelines

The FWC can issue non-binding 'guidelines' as an alternative to enforceable standards.[106] Yet Modern Awards are not able to be treated as guidelines and nor are other aspects of labour standards regulation.

This ability of the FWC to issue non-binding 'guidelines' could dilute regulation, providing an 'easy way out' if a tribunal member is inclined to look for one as, for example, a form of compromise. Voluntarism should not be allowed any more than it is for Awards.

Either the possibility of non-binding guidelines should be removed, or the scope for non-binding guidelines be very narrowly defined and time limited.

Coverage of topics

Closing Loopholes does not allow the new minimum standards to cover several matters, including overtime pay, rostering, purely commercial issues, health and safety matters covered by other laws, or other topics prescribed by regulation.[107]

The exclusion of some of these matters, such as overtime pay, reduces the flexibility of the FWC to find the best solution to the issues it encounters. Although it would be reasonable to envisage that the dominant forms of regulation, aside from straight out compensation for expenses, would be through piece-rates rather than time rates (as occurs, for example, in New York's minimum standards for Uber drivers),[108] we should not rule out the possibility that overtime regulation would have a role.

Certainly, when matters are best covered by other laws (such as for aspects of health and safety) or are unrelated to labour income (such as purely commercial issues), it is appropriate to exclude the

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105 *Jooste v Scribefire TMS Trading as Scribefire Pty Ltd* [2026] FWC 1156 (2 April 2026).

106 Pt 3A-2, Div 4, i.e. ss 536KR–536KU.

107 s536KM.

108 International Transport Forum, *Regulating App-Based Mobility Services* (Paris: OECD, 2019).

FWC from second-guessing other regulators. But on matters where the FWC has been the traditional regulator and has expertise in the area, it should not be precluded from using that part of its repertoire.

Workers' compensation [109]

A final, inherent limitation of the Regulated Workers part of the Act concerns its coverage of topics – most obviously, the (unsurprising) absence of workers compensation and rehabilitation (WCR) from its reach. That is considered a matter for State parliaments. If gig economy workers are sufficiently 'employee-like' to warrant protection through minimum standards established by the FWC, they are certainly also deserving of coverage by workers compensation systems.

While the Act empowers the FWC to include terms about insurance in a minimum standards order, it is inconceivable that the FWC would go into the level of detail in any order about workers compensation insurance that could substitute for inclusion of those workers in the State WCR schemes. After all, the FWC is not empowered to force State parliaments to legislate the inclusion of gig workers in their own schemes, and any FWC-imposed bespoke scheme for insurance cover of a group of gig workers would likely have higher premiums and/or lower benefits, in particular less emphasis on rehabilitation, than can be provided by the State WCR schemes.

State parliaments should amend WCR laws to ensure that all gig workers are covered by their legislation. In that context, a sensible way forward would be a workers' compensation and 'gig' workers summit, involving all governments, as well as representatives of key stakeholders, to make binding decisions about how WCR systems will deal with 'gig' workers. It should be possible for all jurisdictions to agree that the *coverage of workers compensation and workplace health and safety (WHS) laws should be aligned*, and that workers compensation obligations should apply to persons conducting a business or undertaking in the same way that WHS laws do.

Implications

The provisions regarding some self-employed contractors – 'regulated workers' under the terms of the Act – appear to have been acting as intended. While the procedures are certainly taking a long time, that appears to be accepted by the parties as a trade-off for ensuring that errors of the past are not repeated. When a matter arose where acting expeditiously was essential – establishing a mechanism to enable the increased diesel costs arising from the war in Iran to be recouped – the Parliament quickly amended the Fair Work Act to enable the matter to be dealt with by the FWC.

That a contractual chain order was made in relation to fuel costs was a major recognition of the imbalance of power in contractual chains in road freight transport. It would not have been necessary, or even plausible, if the owner-drivers and small firms at the bottom of the contractual chain had the bargaining power to simply pass on the higher costs up the chain. The FWC explicitly referred to this power imbalance as the first reason for its making the order.

That said, there still appear to be areas where further progress can be made, through expanding the coverage of its contractual chain jurisdiction, constraining the potential use of non-binding guidelines, expanding the definitions of employee-like worker and digital labour platforms, and reducing or removing arbitrary constraints on what matters the FWC can issue orders.

[109] See footnote 55.

Conclusions

Overall, Closing Loopholes is succeeding in rebalancing power in the face of contractual distancing, but it is best seen as an important first step, due to the existence of some inadequacies that have become evident. It deals with zero-order distancing through casualisation, first-order distancing through labour hire, and first-order and higher order distancing through the use of self-employed digital platform workers and road transport drivers. The operation of the amendments is appropriate and likely effective, as largely reflected in many of the Draft Closing Loopholes Review findings,[110] but further amendments are necessary to ensure that the intent of the legislation is achieved, and to achieve broader aims of redressing the problems from contractual distancing.

The casual employment and labour hire provisions appear to be reducing insecurity, by reducing the incidence of casual employment and lower-paying labour hire work, but it seems likely that many casuals who want permanency will still lack it and that too many Australian workers will continue to be unable to access leave entitlements. In addition, there are questions as to the adequacy of the SJSP provisions in historically female-dominated industries.[111]

The road transport contractual chain order dealing with fuel prices was a major step in ensuring that contractual distancing could not be used to push cost increases onto the most vulnerable people in contractual chains. It augurs well for the likelihood that the Closing Loopholes amendments can provide effective counters to the income-depressing effects of 'not-there employment' on the incomes of less powerful groups in society.

All that said, too many vulnerable workers may be excluded from the protections afforded through the employee-like provisions of Closing Loopholes. All employees, not just workers in road transport, need to be able to be protected from decisions elsewhere in contractual chains that put unfair pressures on their employers to cut conditions and prevent them from meeting their obligations under industrial instruments. The information available to decision makers in some areas is deficient and needs to be improved. The guidance to the FWC needs to be more precise in ensuring that there are comparable protections for employees and for employee-like workers.

The task of addressing insecure work, then, is far from over, despite the major steps forward that Closing Loopholes has enabled. For one thing, the 'regulated workers' provisions in the Act should be amended to enable the FWC to make orders in any 'contractual chains', not just in road transport, where decisions within those contractual chains adversely and unreasonably affect the ability of employers to meet their obligations under the Fair Work Act. It should not be only in the area of road transport that second-order distancing can be addressed. Other amendments should tightly contain or remove the circumstances in which non-binding 'guidelines' can be issued.[112] The definition of employee-like worker[113] should be changed, to require that only one (rather than 2) listed criteria be met in order to enable a worker to be defined as 'employee-like', and to allow greater flexibility in the legislative definition of 'employee-like' worker by adding 'or work prescribed by the regulations for the

[110] Draft Closing Loopholes Review, n25 above.

[111] See n49 above and associated text.

[112] Pt 3A-2, Div 4, i.e. ss 536KR–536KU.

[113] s 15P(1)(e).

purposes of this paragraph'.[114] Industrial relations restrictions on the matters on which the FWC can make orders[115] should be reduced or removed.

Second, the Object and Dictionary of the Act should be amended, by including within the Object of the Act[116] the phrase "providing comparable protection for employees covered by the National Employment Standards and Modern Awards, and for regulated workers", and including within the dictionary of the Act[117] a definition that explained "comparable protection" referred to protection that, after taking account of differences in costs (such as equipment, costs maintenance, fuel, insurance and other relevant factors), the protections are of broadly similar value (to employees and to regulated workers).

Third, the Government should legislate to create a default entitlement to the National Employment Standards for all employees, even casuals, after a defined period of employment, from a date to be proclaimed. It should state that it is its intention that there be an unpredictability bonus for everyone in genuinely unpredictable, while the rest would be entitled to the NES and would therefore not receive the casual bonus. Further, it should convene a national consultative committee to decide on the best way to transition to this outcome. Options for the consultative committee to consider would include the date of effect of the move, the criteria for the unpredictability loading, the entitlements of existing casuals, and the desirability or otherwise of phasing changes to entitlements.

Finally, there are some problems relevant to the logic of Closing Loopholes that are outside of the capacity of federal industrial relations legislation to solve – in particular, in the area of workers' compensation. State parliaments should amend *their* workers compensation laws to ensure that all digital platform workers are covered by their legislation. All governments should hold a summit on the common treatment of digital platform workers for workers' compensation purposes. There also needs to be greater co-ordination in ensuring that host employers in all states and territories are required co-operate with labour hire firms in facilitating rehabilitation of injured labour hire workers, that the risks faced by labour hire workers are adequately incorporated into workers' compensation premiums paid by host employers, and that firms face no financial incentive to use labour hire workers rather than directly hired workers on individual contracts (not just EBAs) doing similar work.

Industrial relations law alone cannot produce an adequate response to the changes in capitalism that are adversely affecting workers. Trade practices and competition law, trade law, and the law governing financial markets are necessary parts of a program to redress the decline of workers power. That said, industrial relations law *can* respond to changes in capitalism as they affect workers. It is difficult and requires a willingness to experiment. Closing Loopholes is a start, and welcome for that, regardless of its being inherently restricted to industrial relations matters.

[114] s 15P(1)(c).

[115] s 536KM.

[116] s 3.

[117] s 12.

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