

Industrial Relations

Next Set of Reforms

- Last week (6 September) the Government moved to legislate the next stage of its industrial relations reforms through the introduction of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023. These reforms build on the changes to Australia's enterprise bargaining system legislated late last year.
- The more controversial reform measures relate to employment conditions for labour hire, gig economy and road transport workers, as well as changes to the definition and conversion rules for casual employees.
- Under the changes, labour hire workers would have the right to be employed under the same conditions as existing employees where an enterprise agreement exists. Furthermore, the Fair Work Commission (FWC) will be able to set minimum employment conditions for workers in the gig economy (such as Uber drivers) and transport industry (such as truckies).
- Finally, the definition of a casual employee has been expanded to include aspects of the employment relationship outside the contract. Further, conversion provisions have been updated which provide casual workers with a greater ability to make a choice about their employment status.
- There are carve outs for small businesses and labour hire workers employed for under three months. There are also safeguards with the Fair Work Commission required to consult and consider commercial factors when setting minimum employment conditions.
- Government modelling suggest that the reforms have the potential to increase wages across the economy by \$9 billion over the next decade.
- It's difficult to determine the ultimate impact of large multi-faceted changes to the industrial relations framework. Some employer groups are suggesting that these changes will increase rigidities in the market, reduce employment and increase costs that will be passed on to consumers. Their argument is that labour hire workers and casual employees allow them to meet seasonal demand without having to expand their permanent capacity – in the absence of this flexibility, the economics of taking on new workers may not stack up.
- Overall, it's too early to tell what the comprehensive macroeconomic impacts will be. Assuming passage, the changes would take effect on 1 July 2024 (with the labour hire changes from 1 November 2024). At that point the labour market could look different – we're expecting the unemployment rate to be 4.7% by the end of 2024. Additionally, the Bill gives the FWC powers to develop minimum standards within the confines of the new legislation – it remains to be seen how the FWC will use its new powers.
- One thing to note is that these changes, coupled with the reforms legislated last year, are moving us toward a more centralised industrial relations system.

Last week (6 September) the Government moved to legislate the next stage of its industrial relations reforms through the introduction of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the “Bill”). These reforms build on the changes to Australia’s enterprise bargaining system legislated late last year (for more information see [Why IR reforms won’t knock the RBA off course | Westpac](#)).

The Bill has now been referred to the Education and Employment Legislation Committee, which will conduct an inquiry and report back by 1 February 2024. As with other pieces of legislation referred to Committees, the report could recommend amendments based on consultation with stakeholders.

Policy Overview

Labour Hire

The Bill states that if an employer already has a collective pay deal in its workplace, then employees, unions or host companies can apply to the Fair Work Commission (FWC) to ensure that temporary workers brought in from labour hire companies are paid the same rates.

There are conditions: small businesses (with 15 or less employees) and labour hire engagements of less than three months are exempt. These exemptions help ensure businesses can bring workers in for surge capacity. If legislated, the changes would take effect from 1 November 2024.

According to the Government’s Regulatory Impact Statement (RIS) accompanying the Bill, the requirement to pay labour hire workers the same rates of pay as those who are directly employed on enterprise agreements could add \$511 million to businesses costs per annum. Labour hire workers represent around 2.3% of employed people in Australia (around 319,900 of 13,852,900) – these are mainly in the Manufacturing, Construction, Transport, Postal and Warehousing, and Administrative and Support Services industries. The RIS estimates that 66,446 labour hire employees could be covered by FWC orders.

Gig Economy and Transport Workers

The Bill proposes a mechanism for providing certain non-employee gig economy workers (such as delivery drivers) and transport workers on independent contracts with minimum terms and conditions and an avenue to challenge unfair deactivation or dismissal. The FWC will be empowered to determine minimum standards for what are termed ‘employee-like’ workers. Orders can be made by the FWC on its own initiative or on application by an organisation that represents an ‘employee-like’ worker, or by a minister.

The minimum terms which the FWC may determine include:

- Payment terms
- Deductions
- Working time
- Record-keeping
- Insurance
- Cost recovery
- Representation

The Bill also includes provisions to provide an equivalent regulation to unfair dismissal for employee-like workers who have been employed for at least six months and are ‘unfairly

deactivated', that is, their access to a digital labour platform has been modified, suspended, or terminated and they can no-longer perform work.

The final component of the gig-economy regulations includes an arrangement for digital platform operators to negotiate collective agreements with an organisation that represents employee-like workers in relation to the terms and conditions that workers are engaged on.

The Government's RIS estimates that the change would benefit 255k workers on independent contracts in the gig economy and transport industry. This change is estimated to deliver \$4.1 billion dollars in increased wages for workers over ten years.

Casual Employees

The legislation proposes two key changes for casual employment. The first is broadening the definition of casual employment to include the holistic relationship between employer and employee, rather than relying solely on the contractual terms set out between the employer and employee. This broadens the definition to include the way in which the employee works, including for example:

- How often the employee works
- The pattern of work (i.e. does the employee have a regular schedule of work?)
- The way the employer engages the employee to work (i.e. does the employer request the employee to work and does the employee have the right to accept or deny work?)
- Any representations the employer has made about the future of the employee's employment (i.e. has the employer made any commitments to ongoing and indefinite work?)

The second key change relates to the conversion of casual employees to part-time or full-time employment terms. The proposed updated definition of employment opens the risk that businesses could misclassify casual employees for a period in between when they no-longer meet the casual definition and when they officially convert to permanent employment. To address this, the legislation sets out several specific events that must occur before a casual employee officially converts to permanent employment. Up until one of these events, casual employees that may meet the definition of permanent employment are to remain as casual.

The Government's RIS estimates that there are 851k regular casual employees (32.1% of all 2.7 million casual employees) who are likely to be eligible to change status under the reforms. This number is calculated based on casual employees who are guaranteed to work a minimum number of hours each week, and earnings/income do not vary from one pay period to the next and/or usually worked the same number of hours each week.

Economic Implications/Takeaways

It's difficult to determine the ultimate impact of large multi-faceted changes to the industrial relations framework. Some employer groups suggests that these changes will increase rigidities in the market, reduce employment and increase costs that will be passed on to consumers. Their argument is that labour hire workers and casual employees allow them to meet seasonal demand without having to expand their permanent capacity.

Government modelling suggest that the reforms have the potential to increases wages across the economy by \$9 billion over the next decade. There are also increased compliance costs for businesses given the need to comply with new minimum standards.

Overall, it's too early to tell what the macroeconomic impacts will be. They are expected to come in play on late 2024. At that point the labour market could look different. Additionally, the Bill

gives the FWC powers to develop minimum standards within the confines of the new legislation – it remains to be seen how the FWC will use its new powers.

One thing to note is that these changes, coupled with the changes legislated last year, are moving us toward a more centralised industrial relations system.

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