Australian Meat Industry Council

Review of the Closing Loopholes Acts

3 March 2026

About AMIC

The Australian Meat Industry Council (**AMIC**) is the peak industry body representing the red meat and pork supply chains. AMIC members include independent retail butchers, wholesalers, smallgoods manufacturers, meat processors and exporters.

AMIC is registered with the Fair Work Commission under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**), is a member of the Red Meat Advisory Council, and is a signatory to the Australian Red Meat Industry Memorandum of Understanding, which sets roles and responsibilities between industry and Commonwealth Government.

The meat industry is often the single largest employer in rural and regional areas, underpinning the vitality and sustainability of Australia's agricultural sector and rural communities. The meat industry makes a significant contribution to the Australian economy and meat processing is now the largest manufacturing employer in Australia, directly employing 38,500 people and supporting a further 25,000 people in meat wholesaling and retailing and 9,600 in smallgoods manufacturing[1].

In 2024-25, Australian red meat, pork and smallgoods consumption equated to 52kg per person, and meat and offal exports were valued at $21 billion. In 2023-24, household income from people employed by the red meat processing sector was $17.8 billion[3].

AMIC is a trusted partner to government, a source of insight and support for industry, and a strong national voice for our members.

Introduction

AMIC is pleased to contribute to the statutory review of the Closing Loopholes Acts; per the Terms of Reference, these are the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (**Closing Loopholes Act**) and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (**Closing Loopholes No. 2 Act**) (together, **Closing Loopholes Acts**).

In principle, AMIC does not object to making amendments directed to the 'improve[ment]' of 'the workplace relations system' expressed in the Explanatory Memorandum to the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.

AMIC does not, however, agree that the Closing Loopholes Acts have resulted in such improvements, including for the reason that the identified areas for improvement are improperly characterised as giving rise to technical issues or other impacts inconsistent with the objects of the *Fair Work Act 2009* (**FW Act**).

It is AMIC's position that the Closing Loopholes Acts have amounted to unwelcome, material changes to the construction of the FW Act which have resulted in an increased compliance burden and significant operational uncertainty for employers. This is not merely rhetorical, but the practical effect of ambitious legislative reform. AMIC's members have taken significant steps, including engaging external legal counsel, to ensure their understanding of and conformance with the Closing Loopholes Acts; they report frustration with this further, substantive tranche of reforms and the opacity of many of the amended provisions of the FW Act.

The reintroduction of complex and opaque multifactorial tests, together with new employee and employee representative rights alongside significant changes to the bargaining regime, create an unbalanced, ambiguous and fundamentally altered workplace relations framework. In enterprises without significant organisational resources directed to legal compliance and/or workplace relations strategy, these changes amount to an existential threat.

Taken together, the changes wrought by the Closing Loopholes Acts are not amenable to Australian productivity or enterprise flexibility; nor are these changes consistent with the Australian Government's own

[1] https://amic.org.au/strategic-plan/

stated commitments to resolving Australia's productivity crisis and improving barriers to workforce participation articulated in the *Employment White Paper.* Furthermore, the Closing Loopholes Acts have amounted to a restructured workplace relations system which does not support operational flexibility and economic sustainability; in this way, these amendments are ultimately at odds with the objects of the FW Act, and can be said to create new and systemic inequities for business.

AMIC's position is that the Closing Loopholes Acts give rise to innumerable, significant, and far-reaching, unintended consequences. It is probable that these consequences will continue to unfold subsequent to this Review. On that basis, we encourage the Independent Reviewer to consider a recommendation for mechanisms appropriate to the review, statutory or otherwise, of the Closing Loopholes legislation in another two years.

It is in light of the above observations that AMIC offers the following submissions on some, but not all, of the measures introduced by the Closing Loopholes Acts. Consistent with the outcome of our consultation with AMIC members, these attend to reforms to the regulation of the employment relationship.

Employment relationships and standards

(a) Meaning of 'employee' and 'employer' (s15AA Fair Work Act)

The introduction of s15AA to the FW Act expands the Act's purpose and effect, and amounts to unwelcome regulatory overreach. This is anomalous in the context of employment regulation in Australia and deserves close consideration by the Review.

There is no basis for the proposition that the absence of a definition of 'employee' in the precedent legislation gives rise to a loophole; even if such a loophole were to exist, s15AA does not amount to a proportionate or operable response to it. The provisions set out at s15AA provide a statutory guideline ("the real substance, the practical reality and the true nature of the relationship"), rather than a determinative definition; for this reason, they serve little purpose other than to introduce ambiguity and uncertainty.

The difficulty of applying multiple indicia, results in a subjective test which creates a significant and unacceptable burden for employers (especially those without in-house subject matter experts) and is likely to increase contestation and legal burden for employers. This is an unfortunate turning back of the clock to the common law multi-factorial test as exemplified in *Hollis v Vabu* Pty Ltd [2001] HCA 44 and *Stevens v Brodribb Sawmilling Co Pty Ltd (1986) 160 CLR* 16.

AMIC's position is that this amendment should not have been made to the FW Act, including for the reason that it amounts to a significant broadening of the purpose of the legislation, creates an unwelcome compliance burden and material risk for employers who engage contractors in good faith and unfairly tasks the Fair Work Commission with matters appropriately dealt with in other jurisdictions.

AMIC submits that s15AA should be repealed and replaced with a provision which returns the High Court's decision in *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 and *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] to appropriate primacy.

In circumstances where the Review does not support this outcome, AMIC proposes that a statutory note clarifying the weighting of the relevant indicia be included in the FW Act; this should then inform deliberations by the Fair Work Commission (Commission) and/or Fair Work Ombudsman in determining matters relevant to s15AA.

(b) Meaning of 'casual employee' and the employee choice pathway (s 15A, Division 4A Part 2-2)

The EM set out grounds for the introduction of s15A, including that this introduced a purportedly 'fair and objective definition' of casual employment. It is AMIC's position that s15A does not do so; rather, the new multi-factorial test is subjective, and replaces certainty with complexity and ambiguity which can not be said to be 'fair' for either party to the employment relationship.

As with s15AA, the intention and effect of the Closing Loopholes Acts is the displacement of authorities; s15A shifts casual classification away from the certainty of the statutory definition introduced after *WorkPac Pty Ltd*

v Rossato [2021] HCA 23 (**Rossato**) and replaces it with a test requiring analysis of real substance, practical reality and the true nature of the relationship. This requires employers to measure their practices against a non-exhaustive list of factors, none of which is determinative, in the course of the relationship. This inherently creates complexity for employers because the same factual circumstances may produce different outcomes in different cases.

Taken together, these changes to the foundation and operation of the FW Act are not only at odds with the Act's objects in respect of the promotion of national economic prosperity and flexibility for business, but also result in material disruption to the efficient operation and productivity of enterprise.

AMIC submits that s15A should be considered contextually by the Review, noting the cumulative effect of successive, material changes to the FW Act as a result of both the Secure Jobs, Better Pay amendments and the Closing Loopholes Acts.

On a plain language reading, it is evident that the new definition of casual employment introduced by s15A is inoperable and subject to contestation. AMIC recommends that the Review give appropriate standing to the anecdotal evidence submitted to the Review by employer and industry bodies in this regard.

AMIC advocates for a significant re-drafting of the definition of casual employment, in order that the definition is workable, readily interpreted, and restores the primacy of an employment contract (per *Rossato*).

AMIC does not object to the employee choice pathway; however, AMIC advocates for an extended response period of 30 business days. In operational businesses, 21 days is inadequate for the purpose of employee consultation, the issuing of correspondence, and engagement with decision-makers in business.

(c) Establishment of the right to disconnect (Division 6 Part 2-9)

The right to disconnect, as with a number of measures introduced by the Closing Loopholes Acts, introduces uncertainty for employers because a new and absolute 'right' is underpinned by a reasonableness test which is inherently subjective and highly fact-dependent.

For businesses, this legal ambiguity complicates workforce planning, contact protocols, and expectations about managerial availability. Moreover, the legislation does not clearly resolve how the right intersects with Work Health and Safety duties – particularly psychosocial risk obligations – or with the National Employment Standards' framework around "reasonable additional hours," leaving employers exposed to competing or overlapping obligations.

The combined effect is a compliance environment where routine managerial decisions—such as contacting an employee to fill a shift, confirm handover information, or address an urgent safety matter—can inadvertently trigger contestation, including employment disputes. This is adverse to the exercise of managerial prerogative by employers, particularly in operational businesses with 24-7 rosters.

AMIC notes the recent Statement by the Full Bench of the Fair WorkCommission that a review of model right to disconnect terms in modern awards would not be undertaken; nor would guidance on the right to disconnect would be published[2]. The Full Bench noted that "There is a general consensus amongst the parties that a review of the model term is premature due to the lack of test cases and significant disputes, as well as the fact that the term only recently (on 26 August 2025) commenced operation in relation to small business employers."

Notwithstanding this absence of major cases, the Review should contemplate the ways in which is the right to disconnect is, or is not, operable and/or consistent with the objects of the FW Act.

AMIC advocates for improvements which would ensure the operation of the right to disconnect is aligned with the objects of the FW Act. These are –

[2] [2025] FWCFB 266 (https://www.fwc.gov.au/documents/sites/am2024-14/2025fwcfb266.pdf)

- The issue of issue binding or near-binding **presumptive guidelines** by the Fair Work Commission defining categories of contact that are ordinarily reasonable (e.g. emergencies, safety compliance, on-call arrangements) and those that are ordinarily unreasonable (e.g. minor administrative requests, non-urgent updates).
- The introduction of a **clearer proportionality framework**, by way of legislative amendment or Fair Work Commission's guidance, that equips employers with information that will enable them to satisfy the statutory standard, and enables the resolution of disputes about the right to disconnect at the workplace level.

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