

Livestock SA Update February 2024

Industrial Relations Changes

By now you will have heard of several changes by the Federal Government's Closing the Loop Legislation.

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* is changing laws relevant to our work, including family and domestic violence and workplace delegates protections, changes for labour hire workers and changes to protected action ballot order conferences. The Australian Government has passed new workplace laws as part of its 'Closing Loopholes' legislation.

Employers, employees, and others should stay across these changes as they may impact their workplace.

The information below has been isolated to cover the issues that will most likely impact on family farms which employ.

The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 received Royal Assent on 14 December 2023.

Some of the changes are relevant to the work of the Commission, including:

1. empowering the Commission to consider applications relating to some labour hire workers .
2. amendments to the general protections' provisions to:
3. strengthen protection for employees who have been, or are being, subjected to family and domestic violence from discrimination in the workplace.
4. introduce a general protection for workplace delegates when carrying out their role at a workplace.
5. empowering the Commission to make a model term for modern awards relating to delegate rights.
6. increase workplace delegates rights.
7. disconnection from work after hours.
8. making amendments to provisions regarding protected action ballot order conferences.

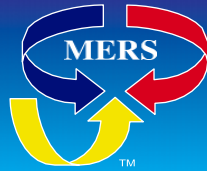
Federal Government's Industrial Relations Timetable Changes

There have been several changes, in fact quite many changes that have been legislated but at the time of preparing this update, Royal Assent hadn't occurred. This means some of the dates listed below may change.

The changes take effect at different times between now and 2025 and two time tables appear at the end of this Update. The Fair Work Ombudsman has created a snap shot of these changes which also appear at the end of this Update.

1 Issues for Small Employers and family farms.

As there is a lot happening, this Member Update will focus on the issues most likely to impact on farmers who employ.

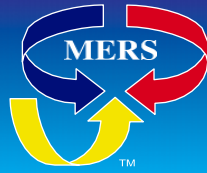


A brief overview of the above is as follows:

1.1 Casual Employment

This is the area most likely to affect the farming community.

- 1.1.1 The new definition of casual employment inserted into the Fair Work Act provides a clear definition of a casual employee as someone who 'accepts a job offer, knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work. The new definition states that a person is a casual employee if they accept a job offer from an employer knowing that there is no firm advance commitment to ongoing work with an agreed pattern.
- 1.1.2 This definition of casual is likely to come into effect later this year.
- 1.1.3 The new definition of a casual will mean that that employee can NOT be given *"a firm, advanced commitment to continue an indefinite work"*. This means engaging someone on a casual basis, on an ongoing basis, or than for peak periods, seasonal work, "one-offs", can be challenged. For example, if a casual employee is engaged for shearing, crutching, calving, seeding, harvesting, and the like and is only engaged for that time, they will fall within the definition of a casual employee. If however, employee(s) are engaged for those seasons and continue to work as a casual, they will most likely fall into the definition outside of the new definition of casual.
- 1.1.4 Often those ongoing casual arrangements settle into a regular pattern of shifts later and the employee may then request to become part time or fulltime.
- 1.1.5 Most significantly what all employers must do with casuals is issue the Casual Employment Information Statement to ALL casual staff every 12 months, even if they have been employed for less than 12 months.
- 1.1.6 To put it simply, a casual employee is one without a firm commitment of regular work and who does not have a regular pattern must be paid 25% casual loading and the test will be applied on the date of commencement of employment.
- 1.1.7 Don't forget Clause 8 of the Pastoral Award 2020 which states "At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual." If you haven't with existing staff, at least put on the payslips for all employees.
- 1.1.8 In future make sure employees are provided with this written advice prior to commencement or no later than on commencement and issue,
 - (a) the [Fair Work Information Statement](#) to ALL employees and
 - (b) to casual employees [Casual Employment Information Statement - Fair Work Ombudsman](#)



2. Underpayment of wages

As part of these changes, intentional underpayment of wages by employers will become a criminal offence. Employers will commit an offence if:

- (a) they're required to pay an amount to an employee (such as wages), or on behalf of or for the benefit of an employee (such as superannuation) under the Fair Work Act, or an industrial instrument.
- (b) they intentionally engage in conduct that results in their failure to pay those amounts to or for the employee on or before the day they're due to be paid.

3. Voluntary Small Business Wage Compliance Code

A Voluntary Small Business Wage Compliance Code (Voluntary Code) will be established.

Compliance with the Voluntary Code means a small business won't be criminally prosecuted if they underpay their employees.

The Voluntary Code is in the process of being developed. There will be more information about the Voluntary Code and how it will operate when it's available.

4. Definition of Small Business

The definition of a small business is unchanged and is one which employs less than 15 employees.

5. **Small business redundancy exemptions** will remain, and employers with fewer than fifteen employees will continue to be exempt. A small business is one which employs less than 15 employees on the date the decision for redundancy is made. This includes full time, part time and casuals as equals, and are not converted to full time equivalents.

The test on the size of the business is made immediately before the time of the termination of the employee, or at the time when the person was given notice of the termination - whichever happened first.

Large employers are bound by the National Employment Standards for Redundancy/Severance payments.

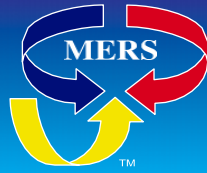
6. Unfair Dismissal Claims

Small employers are exempt from Unfair Dismissal Claims if the employee has worked for them for less than 12 months. Larger employers are exempt for six months for such claims.

7. Right to disconnect after hours.

This topic has been very popular in the media.

Farmers have animal husbandry issues that arise unexpectedly. This provision seeks to stop employers from not paying employees for contact after hours.



Employees now have the right not to be contacted outside of office hours or set shift hours.

Clearly this may be impractical with Managers and higher paid employees. So be sure to include in the contract of employment, that there maybe REASONABLE contact after hours so that the requirements of the position are fulfilled. Other employees who are paid above the Award may need similar wording in their contracts of employment.

Our suggestion is to seek advice PRIOR to entering such arrangements.

8. Workplace Delegates

Workplace delegates now have new rights and protections under the Fair Work Act.

A workplace delegate is an employee:

- (a) appointed or elected under the rules of an employee organisation.
- (b) who represent members of the organisation in the workplace.

The changes mean that delegates are entitled to:

- (a) represent the industrial interests of members and potential members of the employee organisation (including in disputes with their employer)
- (b) reasonable communication with members and potential members about their industrial interests
- (c) reasonable access to the workplace and its facilities to represent those industrial interests.

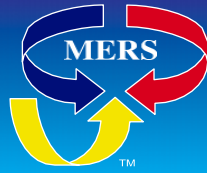
Delegates employed by non-small businesses are also entitled to have reasonable access to paid time during normal working hours for workplace delegate training.

9. Applications for additional benefits for Casual Employees

9.1 The ACTU is seeking to have the current casual loading of 25% increased. It is also seeking that there be additional or improved forms of paid leave and other conditions to improve job security including restoring greater predictability and security for permanent work.

9.2 The Department of Employment and Workplace Relations has asked the Senate Committee to start consulting on a 2022 Labour Election pledge to establish a scheme for portable employee entitlements for those in insecure work. This is seeking to improve the chances of a casual to apply for such benefits as long service leave or long service leave in the industry rather than being with one employer.

9.3 The SA Government is planning to introduce similar legislation later this year for the aged care industry.



10. Fair Work Ombudsman's Office ("FWO") investigations in Farming Employment

If the above changes aren't enough, the FWO has conducted audits within the industry interstate – so far.

In the November 2023 Member Update we advised that the Fair Work Ombudsman paid surprise visits to farms in Western Australia, several horticulture plantations in the Sunshine Coast and Lockyer Valley in Queensland, and the Riverina and Sunraysia areas. Fifteen "hot spots" were identified. Those audits netted \$316,860 in fines and \$72,301 in underpayments across 447 business in its agriculture strategy plan which began in December 2021.

The Fair Work Ombudsman recently made surprise inspections of agriculture businesses in Tasmania's north and northwest to check workers are getting the right pay.

Fair Work Inspectors have been targeting about 20 farms and labour hire companies ranging from in and around Devonport through to East Launceston and Cressy.

Make sure all employees are eligible to work in Australia and obtain and copy their Visas.

To minimise your risk we recommend that you start with the following checks and visiting these links:

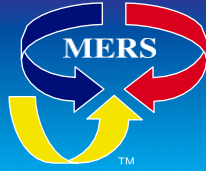
- 10.1 [Starting-a-New-Job-Checklist.docx \(live.com\)](#)
- 10.2 [Template-induction-checklist.docx \(live.com\)](#)
- 10.3 [Pay slips - Fair Work Ombudsman](#) – make sure that the employer's name and ABN are correct.
- 10.4 [Pastoral Award 2020 \[MA000035\] | Fair Work Commission \(fwc.gov.au\)](#) make sure you are not only paying wages correctly but also check for allowances, meal breaks, and overtime.
- 10.5 Issue the [Fair Work Information Statement](#) to ALL employees and
- 10.6 [Casual Employment Information Statement - Fair Work Ombudsman](#) to casual employees

As you can see there is a lot happening and mor happening in the coming months around employment. If in doubt seek advice and review your current practices for compliance.

Members' Industrial Relations Advice

LSA members are entitled to contact MERS for a free half hour consultation, per member per year. Our telephone number is 08 83312422) and email chas@mers.com.au

Recent Member Updates are included in the MERS website www.mers.com.au



Fair Work Legislation Amendment (Closing Loopholes) Act 2023

Key dates for changes affecting the Fair Work Commission

15 December

- 2023** • Small business redundancy exemption provisions commence
- Regulated labour hire arrangement jurisdiction commences
- Workplace delegates' rights provisions commence
- Protections for those **subject to family and domestic violence** commence
- Amendments to **compulsory conciliation conferences** in protected action ballot matters commence
- Amendments to **Right of entry** – assisting health and safety representatives commence

1 July

- 2024** • Determinations varying **modern awards** to include a **delegates' rights term** come into operation
- **Delegates' rights term** must be included in a **workplace determination** made on or after 1 July 2024
- **Delegates' rights term** must be included in an **enterprise agreement** approved by vote on or after 1 July 2024

1 November

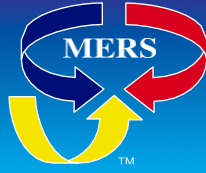
- **Regulated labour hire arrangement orders** can commence operation

1 January

- 2025** • **Wage theft** provisions apply*
- * The later of 1 January 2025; and the day after the Minister declares a Voluntary Small Business Wage Compliance Code

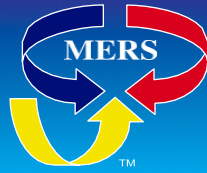
Amended 15 December 2023





Mediation and Employment Relations Services

Commencement date	Amendments
15 December 2023	<ul style="list-style-type: none"> • Small business redundancy exemption provisions • Regulated labour hire arrangement jurisdiction • Workplace delegates' rights provisions • Protections for those subject to family and domestic violence • Amendments to compulsory conciliation conferences in protected action ballot order matters.
1 July 2024	<ul style="list-style-type: none"> • Determinations varying modern awards to include a delegates' rights term. • Delegates' rights term must be included in a workplace determination made on or after 1 July 2024 • Delegates' rights term must be included in an enterprise agreement approved by vote on or after 1 July 2024
1 November 2024	Regulated labour hire arrangement orders can commence operation
1 January 2025*	<ul style="list-style-type: none"> • Wage theft provisions apply. *the later of 1 January 2025 and the day after the Minister declares a • Voluntary Small Business Wage Compliance Code



Mediation and Employment Relations Services



Fair Work
OMBUDSMAN



Closing Loopholes

Snapshot of changes

Key changes



New rules for labour hire workers

Employees, unions and host employers can now apply to the Fair Work Commission (the national workplace relations tribunal) for new types of orders relating to labour hire employees.

When an order applies, labour hire employees working for a particular host employer must be paid the same rate of pay they would receive under that employer's enterprise agreement (or other relevant workplace instrument). The orders are subject to certain rules too.



New workplace delegates' rights and protections

Workplace delegates now have new rights and protections under the Fair Work Act. This includes the right to represent the industrial interests of union members and potential members.



Criminalising intentional wage underpayments

Intentional underpayment of wages by employers will become a criminal offence.

A Voluntary Small Business Wage Compliance Code (Voluntary Code) will be established. Compliance with the Voluntary Code means a small business won't be criminally prosecuted if they underpay their employees.



Small business redundancy exemption changes

A non-small business employer can become a small business employer due to insolvency in the period leading up to (or after) becoming bankrupt or going into liquidation.

Under the new laws, employers that become a small business employer in these circumstances may still be required to pay their employees redundancy pay, even though small businesses are usually not required to pay redundancy pay.

A small business employer is an employer with less than 15 employees at a particular time.



Compulsory conciliation conferences changes in protected action ballot matters

Protected action ballot orders can be made by the Fair Work Commission (the national workplace relations tribunal) in relation to industrial action over a proposed enterprise agreement.

Where an order for industrial action is made, the bargaining representatives must attend a conciliation conference.

The new laws confirm that for this industrial action to be protected, the conciliation conference must be attended by:

- ✓ the employee bargaining representatives who applied for the ballot order (not necessarily all employee bargaining representatives for the agreement)
- ✓ the employer and their bargaining representatives



Right of entry changes

The requirement for officials assisting a state or territory work health and safety representative to hold an entry permit under the Fair Work Act has been removed. Certain rules and safeguards that apply to permit holders will still apply to those officials.



New discrimination protections

There are stronger protections against discrimination for employees experiencing family and domestic violence.



Other workplace health and safety and workers compensation changes

The changes include:

- ✓ expanding the functions of the Asbestos Safety and Eradication Agency to include silica (15 December 2023)
- ✓ streamlining the Comcare workers compensation claims process for certain first responders who sustain post-traumatic stress disorder (PTSD) (15 December 2023)
- ✓ amending the Commonwealth Work Health and Safety Act to introduce a new criminal offence for industrial manslaughter and significantly increasing penalties for other offences (1 July 2024).

Please note this is only a summary snapshot of the Closing Loopholes changes. For more detailed information, read our news article [Closing Loopholes: Fair Work Act changes](#).

Timeline

15 December 2023

- ✓ New rules and Fair Work Commission orders for labour hire workers
- ✓ Small business redundancy exemption changes
- ✓ New discrimination protections

- ✓ Right of entry changes
- ✓ New workplace delegates' rights and protections
- ✓ Compulsory conciliation conferences changes in protected action ballot matters

1 November 2024

- ✓ Labour Hire orders made by the Fair Work Commission can come into effect

1 January 2025

- ✓ Criminalising intentional wage underpayments

Last updated 24 January 2024

**The above tables are provided courtesy of the Fair Work Commission and the Fair Work Ombudsman.*