



Small Business

These amendments build on the recent *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*. Previous amendments of particular interest to small business are available on the [Department of Employment and Workplace Relations' website](#).

What has changed?

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Closing Loopholes No. 2 Act) amends the *Fair Work Act 2009* (the Act) to provide a range of measures that apply to businesses of all sizes.

Fact sheets covering all amendments can be found on the [Department of Employment and Workplace Relations' website](#). Amendments of particular interest to small business are summarised below.

Small businesses can also seek information and advice from the Fair Work Ombudsman including through the [Small Business Showcase](#), and the [Employer Advisory Service](#).

As part of these changes, the Government has committed to enhancing and ensuring ongoing funding for the [Employer Advisory Service](#). This service provides eligible small business employers free tailored written advice about pay and conditions to help them meet their obligations under the Act.

What do these changes mean?

Casual employment

- Casual employees in small businesses will be able to access the new 'employee choice pathway' of seeking permanency after 12 months (that is, from 26 August 2025), while employees of medium and large business are eligible six months after commencement (that is, 26 February 2025).
- The obligation for all employers to provide the Casual Employment Information Statement (Statement) as soon as practicable after a casual employee starts work will remain.
 - Small business employers will also need to provide the Statement to casual employees after 12 months of employment, to remind them of their rights and ability to change to permanent work.

Civil penalties, sham contracting and compliance notices

- These reforms do not create any additional burden for small businesses that are already complying with workplace laws. For individuals and small business employers, the maximum penalties for most provisions will not change.
- The defence to sham contracting will change from a test of 'recklessness' to one of 'reasonableness'. Employers who have allegedly misrepresented employment as an independent contractor arrangement will now need to show that they reasonably believed they were correct in classifying a worker as an independent contractor.

Right to disconnect

- From 26 August 2025, employees of small business employers will have a new workplace right to 'disconnect', meaning they are not required to monitor, read, or respond to employer or work-related contact (or attempted contact) outside of their working hours, unless refusing to do so is *unreasonable*.
- This does not prevent employers from contacting or attempting to contact employees outside of their normal working hours – it simply provides protection from adverse action for employees who *reasonably* switch off.

Meaning of 'employee' and 'employer' in the Act

- If they engage independent contractors, small businesses will need to be aware of the new interpretive principle for determining whether an individual is an 'employee'. It means the question of whether an individual is an independent contractor is to be determined taking into consideration the totality of the relationship, not just the terms of the contract. This is how Australian workplace laws worked prior to 2022 – just two years ago.
- This reform does not stop small business owners from running their own businesses and does not in any way prevent genuine independent contracting relationships. It means that a fairer test will apply when determining if a person is an independent contractor or an employee.
- Individuals earning above a high-income threshold (to be set by regulation) can 'opt out' of the new interpretive principle. The effect of 'opting out' is that the new interpretive principle would not apply to the relationship between the individual and the person who engages them for work. A decision to 'opt out' can later be revoked, in which case the new interpretive principle will apply to the relationship.

Unfair contract terms

- Small businesses that are independent contractors, and who earn below a contractor high income threshold to be set by regulation, now have the ability to settle disputes about unfair contract terms through the Fair Work Commission. This change will ensure those disputes can be resolved quickly, cheaply and fairly, compared to an application to a court. Those earning above the contractor high income threshold will continue to have access to remedies for unfair or harsh contract terms under the *Independent Contractors Act 2006*.

Allowing multiple franchisees to bargain for single-enterprise agreements

- Franchisees of a common franchisor will be able to voluntarily bargain together for a single-enterprise agreement, allowing their employees to vote together as a single cohort. This will ensure a consistent outcome across the franchisees.
- Franchisees will still be able to make a single-enterprise agreement on their own, or a multi-enterprise agreement if they satisfy the necessary requirements.

When will these changes come into effect?

Casual employment: 26 August 2024.

Civil penalties, sham contracting and compliance notices: The changes to maximum civil penalty units for underpayment-related provisions, the threshold for a serious contravention, and the defence to sham contracting commenced the day after the Closing Loopholes No. 2 Act received Royal Assent, being 27 February 2024.

Right to disconnect: 26 August 2025 for employees of small business employers (and 26 August 2024 for other employees and employers).

Meaning of 'employee' and 'employer' in the Act: The interpretive principle will commence on 26 August 2024, or earlier by proclamation.

Unfair contract terms: The measure will commence on 26 August 2024, or earlier by proclamation.

Franchisee access to single-enterprise agreement scheme: The measure commenced on 27 February 2024.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>