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New FWC powers over businesses

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· Burke's workplace laws would entrench red tape

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The Albanese government's next wave of workplace changes will put the onus on businesses to prove they are not caught by the tough wide-ranging laws, which bosses say remain "unworkable" and will push up prices.

Minimum conditions for gig workers, which extend to online marketplaces like Airtasker, and pay rules for labour hire, expected to target BHP and Qantas, will require employers, contractors or digital platforms to litigate to avoid being caught.

A new test for employment focused on the "practical reality" of the relationship will reopen litigation over whether gig workers and other contractors are employees and entitled to backpay.

Business claimed the bill represented some of the most radical changes to the workplace system in decades. Business Council of Australia chief executive Jennifer Westacott said the legislation, introduced yesterday, was "a lengthy set of measures that no business or worker will be able to interpret or apply without the benefit of lawyers or other expert advisers".

"What we are seeing through this legislation is a massive increase in power back to an outdated centralised model of wage setting," she said.

"Many of the decisions will now be out of the hands of businesses, employees, and the legislature, and in the hands of over-stretched, unelected officials at the Fair Work Commission leading to delay, cost and confusion."

Minerals Council of Australia chief executive Tania Constable said the changes "are some of the most

extreme, interventionist workplace changes that have ever been proposed in Australia".

"While the direct cost implications for businesses are stark, the additional complexity being introduced by the **Continued p4**

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government threatens to drown companies in red tape, legal considerations and a merry-go-round of compliance.

"The changes will inflict immense harm to the economy, the weight of which will fall on the shoulders of the most vulnerable Australians who will pay more for groceries, housing, and energy."

But Workplace Relations Minister Tony Burke said the legislation was about closing specific corporate loopholes. "Most workers will be unaffected by what happens this year, but for those who are affected – this will be life-changing," he said.

The bill's most controversial section will ensure labour hire workers are paid at least the same full rate of pay – including base rates, penalty rates, bonuses, overtime and allowances – as a host company's direct workforce gets in the enterprise agreement.

However, the government has limited its initial proposal, so unions will have to first apply for a labour hire pay order and have introduced a fair and reasonable test.

Service contractors like Downer and

CIMIC could also be exempted, but they would first have to prove so through a six-factor test, which includes how much their work is of an expert nature and the extent to which they supervise the work.

Corporate groups' related entities, or internal labour hire as used by BHP,

would also be covered under the bill. While there is a three-month exemption for "surge workforces", unions can apply to shorten this exemption and employers can apply to lengthen it based on exceptional circumstances.

Australian Industry Group chief executive Innes Willox said the government had not gone far enough in ensuring the law "isn't able to be used by unions to challenge and interfere with a raft of other commercial arrangements between businesses that haven't traditionally been considered 'labour hire'."

Australian Resources and Energy Employers Association chief executive Steve Knott, who pushed for the services contractor test, welcomed the changes but said it would push for changes to make it unambiguous they are "expressly exempted".

He said the inclusion of bonuses and other payments to calculate "same pay" was "unreasonable and will kill off competitive and flexible labour hire services".

The bill's broad gig economy laws will mean independent contractors on digital platforms will be deemed "employee like" and subject to minimum pay and conditions – possibly including penalty rates, superannu-



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ation or portable leave – simply if they are paid at or less than an employee doing comparable work.

Gig workers will also have the power to negotiate “consent-based” collective agreements for digital platforms.

Bosses who deliberately underpay staff will face up to 10 years’ jail and \$7.8 million fines or three times the amount of underpayment if the maximum fine exceeds the underpayment.

The bill will also elevate reckless underpayments, an offence that caught the Commonwealth Bank in a \$16 million underpayment case, to serious contraventions under significantly higher civil penalties.

Union delegates will get industry-tailored rights to engage workers under awards as well as paid leave for delegate training. Union officials will have the power to apply for inspections of employers’ payroll records without notice to investigate underpayments.

As part of previously announced laws, regular casuals can apply to convert to permanent every six months. They can also claim backpay for paid leave and other entitlements, but this will be offset by their casual loading.

The Australian Chamber of Commerce and Industry chief executive Andrew McKellar said government consultation had produced some improvements but “the changes made do not go far enough. This is a continuation of a radical industrial relations agenda, and we are again bracing ourselves for further risky changes to our workplace system. “The bill is unworkable, and ACCI opposes the legislation in its current form.”

Work to rule

The six key reforms in the Closing Loopholes Bill

<p>‘Same job, same pay’ laws</p> <ul style="list-style-type: none"> Labour hire workers must be paid at least the same as what a site’s direct workforce gets paid in their enterprise agreement Laws will have a three-month ‘surge exemption’ A multi-factor test aims to exempt specialist services contractors 	<p>Casual reforms</p> <ul style="list-style-type: none"> Regular casuals will have a right to convert from casual to permanent every six months 	
<p>Gig economy laws</p> <ul style="list-style-type: none"> Gig workers to get minimum pay and conditions on apps and online marketplaces if ‘employee-like’ Gig workers can be ‘employee-like’ if paid at or less than what an employee would get New test to allow contractors and gig workers to relitigate whether they are really employees 	<p>Wage theft</p> <ul style="list-style-type: none"> Employers who deliberately underpay staff will face up to 10 years jail and fines of up to \$7.8m or three times the amount of underpayment  <p>Truck drivers</p> <ul style="list-style-type: none"> The FWC would set minimum rates and conditions for owner-drivers, guided by an industry advisory body 	<p>Union rights</p> <ul style="list-style-type: none"> Powers for union officials to talk to workers & conduct snap inspections of members’ pay records without notice if they suspect underpayments Industry-tailored rights for union delegates and protections against employers refusing to deal with them 

SOURCE: FINANCIAL REVIEW



Tony Burke yesterday: “This will be life-changing.” PHOTO: ALEX ELLINGHAUSEN