



Fair Work
Commission

Implementation Report

- **Unfair deactivation, unfair termination for regulated workers**
- **Unfair contracts jurisdiction for independent contractors**



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Implementation Report – unfair deactivation, unfair termination and unfair contracts

Introduction

1. This Implementation Report discusses new functions related to regulated workers (both employee-like workers and regulated road transport contractors) and independent contractors under Part 16 by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Closing Loopholes No. 2 Act) where they have been unfairly deactivated, unfairly terminated or are a party to contract that includes an unfair contract term.
2. These functions commence on a date to be fixed by proclamation or **26 August 2024**.
3. In a [Statement](#) issued on 27 February 2024 setting out the Commission’s approach to implementation of its new functions under the Closing Loopholes No. 2 Act, the President of the Commission said:

“...the Commission remains steadfast in its commitment to implementing the changes in an open and transparent way and with the needs of our users at the heart of the design of our services.”¹

4. The President noted the significant nature of the changes relating to regulated workers and indicated an implementation report would be published. This report gives effect to that commitment and is intended to support engagement and consultation with stakeholders about implementation of these new aspects of the Commission’s jurisdictions.

¹ President’s Statement 27 February 2024 at [7]; see also President’s Statement [20 December 2023](#) in relation to implementation of functions arising from *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the President’s Statement of [8 December 2022](#) in relation to implementation of changes arising from the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.



5. A separate [implementation report](#) has been prepared for measures dealing with minimum standards for regulated workers and collective agreements between regulated workers and regulated businesses.
6. People and organisations with an interest in the Commission's new functions relating to unfair deactivation, unfair termination and unfair contracts are invited to comment on anything in this Implementation Report and the draft materials prepared by the Commission. Feedback can be sent to consultation@fwc.gov.au by **19 July 2024**.

Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024

7. The Closing Loopholes No. 2 Act received Royal Assent on 26 February 2024.
8. The Closing Loopholes No.2 Act confers several new functions on the Commission. Some of these functions relate to regulated workers. Regulated workers are:
 - Employee-like workers performing digital platform work (section 15P), and
 - Regulated road transport contractors engaged in the road transport industry (section 15Q).
9. Definitions of regulated worker, employee-like worker, regulated road transport contractor and other relevant terms are extracted at **Attachment B**.
10. This report is divided into two sections. The first outlines the key provisions of Part 3A-3 and Part 3A-5 of the FW Act that guide the exercise of the Commission's functions for unfair deactivation, unfair termination and unfair contract remedies. The second section sets out the proposed actions the Commission will take in implementing these new functions.

Section 1: Overview of the Commission's unfair deactivation, unfair termination and unfair contracts remedies functions

11. This section provides an overview of the provisions of the Closing Loopholes No. 2 Act most relevant to the Commission's implementation of its functions relating to unfair deactivation and unfair termination of regulated workers.
12. This section also addresses the new jurisdiction created for unfair contracts remedies which applies



to independent contractors under the contractor high income threshold (unfair contracts discussed from paragraph 42 below).

Unfair deactivation and unfair termination disputes

13. The new Part 3A-3 of the *Fair Work Act 2009* (FW Act) will empower a person who has been deactivated or terminated to apply to the Commission for a remedy.
14. The new provisions (sections 536LP and 536LR) will allow the Commission to grant a remedy to a person, on their application, if satisfied that:
 - the person was protected from unfair termination or unfair deactivation at the time of being terminated or deactivated; and
 - the person has been unfairly terminated or unfairly deactivated.

Who can apply

15. A person who is protected from unfair deactivation or unfair termination that has been deactivated or terminated after the commencement of the new provisions, and who earns less than the contractor high income threshold (which will be prescribed by the *Fair Work Regulations 2009* (FW Regulations)), may apply to the Commission for an order granting a remedy (section 536LU).
16. The application must be made within 21 days after the deactivation or termination, or such further period as the Commission allows if it is satisfied there are exceptional circumstances taking into account the matters specified in subsection 536LU(4).
17. The application must be accompanied by any fee prescribed by the FW Regulations.

When a person is protected from unfair deactivation or unfair termination

18. A person is protected from **unfair deactivation** (section 536LD) if:
 - the person is an employee-like worker; and
 - the person:
 - performs work through or by means of a digital labour platform operated by a digital labour platform operator; or
 - performs work under a services contract arranged or facilitated through or by means of a digital labour platform operated by a digital labour platform operator; and



- the person has been performing that work on a regular basis for a period of at least 6 months.²
 - **Note:** Periods of work *before commencement* are not counted in determining whether an employee-like worker has been performing work on a regular basis for at least 6 months.

19. Similarly, a person is protected from **unfair termination** (section 536LE) if:

- the person is a regulated road transport contractor; and
- a road transport business receives services under a services contract under which the person performs work in the road transport industry, and
- the person has been performing work in the road transport industry under a services contract or a series of services contracts for a period of at least 6 months.
 - **Note:** Periods of work *before commencement* are not counted in determining whether a road transport contractor has been performing work for at least 6 months.

When a person has been unfairly deactivated

20. A person has been unfairly deactivated if the Commission is satisfied that (section 536LF):

- the person has been deactivated from a digital labour platform; and
- the deactivation was unfair; and
- the deactivation was not consistent with the Digital Labour Platform Deactivation Code.

When a person has been deactivated

21. A person has been deactivated from a digital labour platform if (section 536LG):

- the person performed digital platform work through or by means of the digital labour platform; and
- the digital labour platform operator modified, suspended, or terminated the person's access to the digital labour platform; and
- the person is no longer able to perform work under an existing or prospective services contract.

² Section 536LD requires that the "...person has been performing work through or by means of that digital labour platform, or under a contract, or a series of contracts, arranged or facilitated through or by means of that digital labour platform, on a regular basis for a period of at least 6 months.



When a deactivation is unfair

22. In considering whether it is satisfied that a person's deactivation was unfair, the Commission must take into account (section 536LH):

- whether there was a valid reason for the deactivation related to the person's capacity or conduct; and
- whether any processes set out in the Digital Labour Platform Deactivation Code were followed; and
- any other matters that the Commission considers relevant.

23. Deactivation that occurs because of serious misconduct is not unfair (subsection 536LH(2)).

24. Deactivation is not unfair if it is a modification or suspension of the person's access to the digital labour platform for 7 business days or less and the Commission is satisfied that one of the matters in subsection 536LH(4) applies (including that the modification/suspension was for health and safety reasons, as a result of the person's fraudulent or dishonest conduct, or that the person had not complied with relevant licensing or accreditation laws).

Digital Labour Platform Deactivation Code

25. Section 536LJ provides that the Minister must, by legislative instrument, make a Digital Labour Platform Deactivation Code. As at the time of publication of this implementation report, no such Code has been made.

26. Section 536LJ provides that a person's deactivation was consistent with the Code if, at the time of the deactivation, the digital labour platform operator complied with the Code in relation to the deactivation.

When a person has been unfairly terminated

27. A person has been unfairly terminated if (section 536KL):

- the person was performing work in the road transport industry; and
- the person was terminated; and
- the termination was unfair; and
- the termination was not consistent with the Road Transport Industry Termination Code.



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When a person is performing work in the road transport industry

28. The road transport industry is defined in section 15S.

When a person has been terminated

29. A person has been terminated if (section 536LL):

- the person performed work as a regulated road transport contractor under a services contract;
and
- the road transport business received services under the services contract; and
- the services contract was terminated by, or as a result of conduct of, the road transport business.

When a termination is unfair

30. In considering whether it is satisfied that a termination was unfair, the Commission must take into account (section 536LM):

- whether there was a valid reason for the termination related to the person's capacity or conduct; and
- whether any processes in the Road Transport Industry Termination Code were followed; and
- any other matters that the Commission considers relevant.

31. Termination that occurs because of serious misconduct of the person who was terminated is not unfair (subsection 536LM(2)).

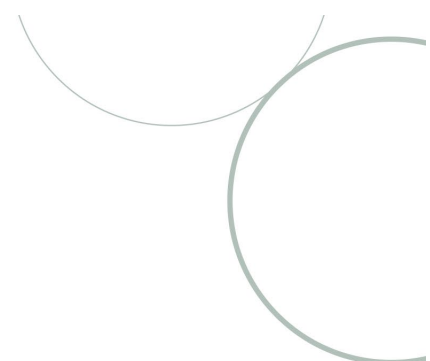
Road Transport Industry Termination Code

32. The Minister may, by legislative instrument, make a Road Transport Industry Termination Code (section 536LN). As at the time of publication of this implementation report, no such Code has been made.

33. Section 536LN provides that a person's termination was consistent with the Code if, immediately before the time of the termination, or at the time the person was given notice of the termination (whichever happened first), the relevant regulated road transport business that terminated the contract concerned or as a result of whose conduct the contract concerned was terminated, complied with the Code.



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Remedies

Unfair deactivation

34. The Commission may order the reactivation of a person protected from unfair deactivation (section 546LP). The remedy of reactivation has the effect that the person is restored to the position that person would have been in but for the deactivation, including removing any suspension, termination or modification prior to deactivation (section 536LQ).
35. If the Commission makes a reactivation order, it may also make an order requiring the digital platform operator to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the deactivation (subsection 536LQ(3)), but must not order payment of compensation as a remedy for unfair deactivation (subsection 536LP(3)).

Unfair termination

36. The Commission may order that a new contract be entered into, or the payment of compensation to a regulated road transport contractor (section 536LR).
37. The Commission must not order compensation unless satisfied that entering into a new services contract would be inappropriate (subsection 536LR(3)).
38. An order for a new services contract must be an order for a new contract in the same terms as the terms of the services contract at the time of termination, or with such variations as the Commission considers appropriate. If the Commission makes an order for a new services contract, it may also make an order to restore lost pay (subsection 536LS(3)).
39. Section 536LT includes several circumstances that the Commission must take into account in determining an amount for compensation. Compensation is capped. Section 536LT(5) provides that the amount of compensation must not exceed the lesser of:
 - remuneration received by the person or to which the person was entitled (whichever is higher) for any period during which the person performed work under the services contract during the 26 weeks immediately before the termination, and
 - half the amount of the contractor high income threshold immediately before the termination.



Other procedural matters

40. The remainder of Division 5 relates to procedural matters including appeal rights, dismissing applications, conducting conferences and hearings, and restrictions on permission to appeal. The FW Regulations may prescribe an application fee for making unfair deactivation and unfair termination applications.
41. These new measures allow the Commission to make an order for costs against a party in a matter arising under new Part 3A-3 (unfair deactivation or unfair termination of regulated workers) if:
- a party's unreasonable act or omission relating to the conduct or continuation of the matter caused the other party to incur costs. This is targeted towards litigants who pursue or defend unfair termination or unfair deactivation claims in an unreasonable manner (sections 536MB–536ME) or
 - one of the grounds for a costs order in s 611 of the FW Act is made out.³

Unfair contracts

42. The new Part 3A-5 of the FW Act provides for processes for dealing with unfair contract terms of services contracts.
43. A person who is party to a services contract, or an organisation that represents the industrial interests of a person who is party to a services contract, may apply to the Commission for an order granting a remedy on the basis that the services contract contains a term that is unfair (section 536ND).⁴
44. There is a bar for applications where the applicant's income exceeds the contractor high income threshold (section 536ND(2)). The contractor high income threshold will be prescribed by the FW Regulations.
45. The application must be accompanied by any fee prescribed by the FW Regulations.
46. Division 3 provides that the Commission can make orders relating to unfair contracts:
- if the Commission is satisfied that the services contract contains one or more unfair terms which, in an employment relationship, would relate to workplace relations matters (subsection 536NA(1)); and

³ Section 611 of the FW Act provides that a person must bear their own costs in relation to a matter before the Commission, but gives the Commission a discretion to order that costs be paid if it is satisfied that a person made an application or responded to an application vexatiously or without reasonable cause, or it should have been reasonably apparent that the application or response had no reasonable prospects of success.

⁴ Applications to the Federal Court for an unfair contracts remedy remain available under the *Independent Contractors Act 2006* for independent contractors who earn above the contractor high income threshold.



- an application has been made under section 536ND.
47. The Commission must take into account fairness between the parties concerned in deciding whether to make an order and the kind of order to make (see subsection 536ND(3)).
48. The unfair contract term must be one which, in an employment relationship, would relate to ‘workplace relations matters’. Section 536JQ defines ‘workplace relations matters’ in substantially the same terms as section 8 of the *Independent Contractors Act 2006*.
49. The matters the Commission may take into account in deciding whether a term of a services contract is an unfair contract term are (section 536NB):
- the relative bargaining power of the parties to the services contract;
 - whether the services contract as a whole displays a significant imbalance between the rights and obligations of the parties;
 - whether the contract term under consideration is reasonably necessary to protect the legitimate interests of a party to the contract;
 - whether the contract term under consideration imposes a harsh, unjust or unreasonable requirement on a party to the contract;
 - whether the services contract as a whole provides for a total remuneration for performing work that is:
 - less than regulated workers performing the same or similar work would receive under a minimum standards order or minimum standards guidelines; or
 - less than employees performing the same or similar work would receive;
 - any other matter the FWC considers relevant.
50. The Commission may make an order under section 536NC:
- setting aside all or part of a services contract which would relate to a workplace relations matter in an employment relationship, or
 - amending or varying all or part of a services contract which would relate to a workplace relations matter in an employment relationship.
51. Division 4 sets out procedural matters such as application fees, the right to appeal, and provisions relating to conducting conferences and hearings.
52. An application can be made under section 536ND only if the services contract was entered into on or after commencement.

Section Two: Implementation of unfair remedy functions

53. This section of the report outlines the Commission’s plans to implement the unfair deactivation, unfair termination and unfair contract remedies provisions, including proposed case management



processes, information and education resources and engagement activities.

Unfair remedy case management

54. The new unfair deactivation, unfair termination and unfair contracts aspects of the Commission's jurisdiction will require new case management processes and will be supported by Commission staff. A workflow graphic has been developed and is attached to **Attachment C** for the new application types.

Practice areas and National Practice Leads

55. As outlined in the President's [Statement](#) issued 27 February 2023, Vice President Asbury has been appointed to oversee the implementation of the Closing Loopholes changes. Vice President Asbury is also the National Practice Lead for regulated workers. Commissioners Tran and Connolly are the Deputy National Practice Leads for regulated workers standards.
56. **Deputy President Saunders** has been appointed National Practice Lead for unfair deactivation, unfair termination and unfair contracts and will oversee the management of these jurisdictions. The Deputy President will also assist the Vice President and Deputy National Practice Leads with matters pertaining to the new regulated workers standards jurisdictions.

Allocation pathway for unfair deactivation and unfair termination

57. Similar to the current unfair dismissal jurisdiction for national system employees, a staff team will be responsible for receiving unfair deactivation and unfair termination applications, sending and receiving correspondence from parties and case managing files before they are allocated to a Regional Coordinator.
58. Once the file has been allocated to the Regional Coordinator the file will be on-allocated for a Member to deal with where appropriate.
59. At least initially, Members will deal with unfair deactivation and unfair termination matters from the time they are filed in the Commission in order to develop authoritative guidance on the operation of the jurisdiction. Over time the staff conciliator model may be used to conduct initial conciliation conferences in unfair deactivation and unfair termination matters.

Allocation pathway for unfair contracts

60. Unfair contracts matters will be processed through the Commission's regional allocation system, initially allocated to the applicable Regional Coordinator for triaging and on-allocation to a Member to deal with where appropriate.

New results framework

61. A new results framework will be developed in the Commission's case management system to process applications.



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Forms and correspondence

62. The Commission will develop new forms so that applicants can lodge applications, including:
- Form F89 - Application for unfair deactivation remedy
 - Form F89A– Response to unfair deactivation application
 - Form F90 – Application for unfair termination remedy
 - Form F90A – Response to unfair termination application
 - Form F91 - Application for unfair contract terms remedy
 - Form F91A - Response to an unfair contract terms application
63. Each of these forms will be designed to reduce complexity and regulatory burden, drawing on user experience and using plain language. They will also direct parties to relevant information on the Commission’s website.
64. Correspondence to parties that is sent during the case management process will adopt plain language. The Commission takes steps to ensure that our correspondence is drafted in a way that helps parties understand our processes.

Performance measures

65. New performance measures will be developed by the Commission in due course. While the unfair deactivation, unfair termination and unfair contracts jurisdictions have some similarities to existing aspects of the Commission’s jurisdiction, the different substantive and procedural requirements that will apply mean the Commission will assess whether existing performance measures may be utilised.

Resources

Website information

66. Detailed information on the Commission’s role in dealing with applications for unfair deactivation, unfair termination and unfair contracts will be available on the Commission’s website shortly.
61. Content will include:
- What is unfair deactivation/termination/an unfair contract
 - Who can apply
 - Remedies
 - Hearings and conferences
 - Costs against parties
 - Case management



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- Commission processes and resources

Minimum Standards Benchbook

67. The Commission proposes over time to develop a new benchbook which covers unfair deactivation, unfair termination and unfair contracts jurisdictions (along with other matters relating to regulated workers) which will contain details of relevant case law as it develops for guidance for parties and their representatives. Once finalised the benchbook will be published to the Commission's website.

Amendments to the Fair Work Commission Rules 2024

68. The *Fair Work Commission Rules 2024* (Rules) will be amended to deal with the new applications for unfair deactivation, unfair termination and unfair contracts remedies. This will predominantly include changes to service requirements in Schedule 1 of the Rules for the new forms being developed.
69. The Rule amendments will be made and published as soon as possible after commencement, taking into account the need for consultation.

Engagement

70. The Commission is committed to consulting with affected persons, businesses and organisations as we implement these new functions.
71. The President has established a Regulated Worker Implementation Group. The group's views will be sought on how we are proposing to implement the new jurisdictions and on how we can best ensure our information and education materials are useful for affected individuals and businesses.
72. The National Practice Lead unfair deactivation, termination and contracts may also be involved in consultation with affected persons, businesses and organisations.
73. More information about the Regulated Worker Implementation Group and direct engagement on changes for regulated works is available on the [Commission's website](#).
74. Other actions will include:
- sharing information resources with the Fair Work Ombudsman
 - utilising the regulated worker subscription service to alert to Commission updates/events related to regulated workers.
 - public consultation measures including LinkedIn posts, website content, subscriber notices and the publication of this or other implementation reports.
75. Members of the public are invited to comment on the Commission's plans for engagement and anything else contained in this Implementation Report. Feedback can be sent to consultation@fwc.gov.au by **19 July 2024**.



ATTACHMENT A: Closing Loopholes Legislation Commencement Dates

Closing Loopholes Legislation 2023–2025

Key dates for changes affecting the Fair Work Commission

2023

15 December

- Regulated labour hire arrangements
- Workplace delegates rights for employees
- New family and domestic violence protections
- Changes to compulsory conciliation conferences in protected action ballot matters

2024

27 February

- Multiple franchisees access to single-enterprise bargaining
- Transitioning from multi-enterprise agreements
- Intractable bargaining workplace determinations
- Registered organisation withdrawal from amalgamations

1 July

- Workplace delegates rights terms for employees in modern awards, workplace determinations and enterprise agreements
- Exemption certificates for entry to investigate suspected underpayment

26 August

- Changes to definition of casual employee and pathway to full-time and part-time employment
- Right to disconnect*

26 August
(or a date by proclamation)

- Provisions for 'employee-like' workers and the road transport industry
- Collective agreements and workplace delegates rights for regulated workers
- Determining whether a relationship is employment
- Independent contractor 'unfair contracts' disputes

1 November

- Regulated labour hire arrangement orders can commence operation

2025

26 February
(or a date by proclamation)

- Model enterprise agreement flexibility, consultation and dispute terms

* Commencing 12 months later for small business

Published 27 February 2024





ATTACHMENT B: Definitions

Section 15F - Meaning of *regulated business*

A person is a *regulated business* if:

- (a) the person is a digital labour platform operator (see section 15M); or
- (b) the person is a road transport business (see subsection 15R).

Section 15G - Meaning of *regulated worker*

A person is a *regulated worker* if:

- (a) the person is an employee-like worker (see section 15P); or
- (b) the person is a regulated road transport contractor (see section 15Q).

Section 15H - Meaning of *services contract*

General meaning

(1) A *services contract* is a contract for services:

- (a) that relates to the performance of work under the contract by an individual; and
- (b) that has the requisite constitutional connection specified in subsection (2) or (3).

Note: Conditions or collateral arrangements relating to a services contract may be taken to be part of the services contract: see subsection (4).

The requisite constitutional connection

(2) A contract for services has the requisite constitutional connection if:

- (a) at least one party to the contract is:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth or a Commonwealth authority; or
 - (iii) a body corporate incorporated in a Territory in Australia; or
- (b) one or more of the following subparagraphs is satisfied:
 - (i) the work concerned is wholly or principally to be performed in a Territory in Australia;
 - (ii) the contract was entered into in a Territory in Australia;
 - (iii) at least one party to the contract is a natural person who is resident in, or a body corporate that has its principal place of business in, a Territory in Australia;



(iv) the work concerned is done in the course of constitutional trade or commerce.

Note: In this context, Australia includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of **Australia** in section 12).

(3) For the purposes of Part 3A-2 (minimum standards for regulated workers), Part 3A-3 (unfair deactivation and unfair termination) and Part 3A-4 (collective agreements) to the extent to which those Parts relate to digital platform work, a contract for services also has the requisite constitutional connection if the contract was arranged or facilitated through or by means of a digital labour platform, where the operator of the digital labour platform is:

- (a) a constitutional corporation; or
- (b) the Commonwealth or a Commonwealth authority; or
- (c) a body corporate incorporated in a Territory in Australia; or
- (d) a natural person who is resident in, or a body corporate that has its principal place of business in, a Territory in Australia.

Note: In this context, Australia includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of **Australia** in section 12).

Conditions and collateral arrangements

(4) A condition or collateral arrangement that relates to a services contract is taken to be part of that services contract if, were the condition or arrangement itself a contract for services, it would have the requisite constitutional connection.

Section 15L - Meaning of **digital labour platform**

(1) A **digital labour platform** means an online enabled application, website or system operated to arrange, allocate or facilitate the provision of labour services, where:

- (a) the operator of the application, website or system:
 - (i) engages independent contractors directly or indirectly through or by means of the application, website or system; or
 - (ii) acts as an intermediary for or on behalf of more than one distinct but interdependent sets of users who interact with the independent contractors or the operator via the application, website or system; and
- (b) any of the following processes payments referable to the work performed by the independent contractors:
 - (i) the operator of the application, website or system;
 - (ii) an associated entity of the operator;
 - (iii) a person contracted, whether directly or through one or more interposed entities, by the operator or an associated entity of the operator to process the payments.



(2) A **digital labour platform** also means an online enabled application, website or system that is prescribed by the regulations for the purposes of this subsection.

(3) A **digital labour platform** does not include an online application, website or system prescribed by the regulations for the purposes of this subsection.

(4) For the purposes of this section:

(a) an online application, website or system may be specified by name or by inclusion in a specified class or specified classes;

(b) an online application, website or system may be specified in respect of all forms of digital platform work, or in respect of specified forms of digital platform work.

Section 15M - Meaning of **digital labour platform operator**

A **digital labour platform operator** means the operator of a digital labour platform, being an operator that enters into or facilitates a services contract under which work is performed by employee-like workers.

Section 15N - Meaning of **digital platform work**

(1) **Digital platform work** means:

(a) work performed by an independent contractor, where:

(i) the work is performed under a services contract through or by means of a digital labour platform, or the services contract under which the work is performed was arranged or facilitated through or by means of a digital labour platform; and

(ii) payment is made for that work; or

(b) work prescribed by the regulations for the purposes of this subsection.

(2) Digital platform work does not include work prescribed by the regulations for the purposes of this subsection.

(3) For the purposes of paragraph (1)(b) and subsection (2), work may be specified by name or by inclusion in a specified class or specified classes.

Section 15P - Meaning of **employee-like worker**

(1) A person is an employee-like worker if:

(a) the person is:

(i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or



(ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or

(iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or

(iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and

(b) the person performs all, or a significant majority, of the work to be performed under the services contract; and

(c) the work that the person performs under the services contract is digital platform work; and

(d) the person does not perform any work under the services contract as an employee; and

(e) the person satisfies 2 or more of the following:

(i) the person has low bargaining power in negotiations in relation to the services contract under which the work is performed;

(ii) the person receives remuneration at or below the rate of an employee performing comparable work;

(iii) the person has a low degree of authority over the performance of the work;

(iv) the person has such other characteristics as are prescribed by the regulations.

(2) In this Part, a reference to an independent contractor includes a reference to an individual who is an employee-like worker within the meaning of subsection (1).

(3) Regulations made for the purposes of subparagraph (1)(e)(iv) may specify that a person must have all or only one or some of the characteristics prescribed.

(4) For the purposes of determining whether an individual satisfies the criteria specified in paragraph (1)(e), the effect of a minimum standards order, minimum standards guidelines or a collective agreement applying to, or covering, the individual is to be disregarded.

Section 15Q - Meaning of **regulated road transport contractor**

(1) A person is a regulated road transport contractor if:

(a) the person is:

(i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or



- (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
- (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
- (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and
- (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
- (c) the person does not perform any work under the services contract as an employee; and
- (d) the work performed under the services contract is work in the road transport industry; and
- (e) the person is not an employee-like worker who performs work in the road transport industry under the services contract.

(2) In this Part, a reference to an independent contractor includes a reference to an individual who is a regulated road transport contractor within the meaning of subsection (1).

Section 15R – Meaning of **road transport business**

(1) A person is a road transport business if the person:

- (a) receives services under a services contract, where the services contract provides for the performance of work in the road transport industry; or
- (b) is a constitutional corporation, or is included in a class of constitutional corporations, prescribed by the regulations for the purposes of this paragraph.

(2) For the purposes of paragraph (1)(b), a business or undertaking may be specified by name or by inclusion in a specified class or specified classes.

Section 15S - Meaning of **road transport industry**

(1) The road transport industry means:

- (a) the road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
- (b) the long distance operations in the private road transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2020 as in force on 1 July 2024, with



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such modifications (if any) as are prescribed by regulations for the purposes of this paragraph;
and

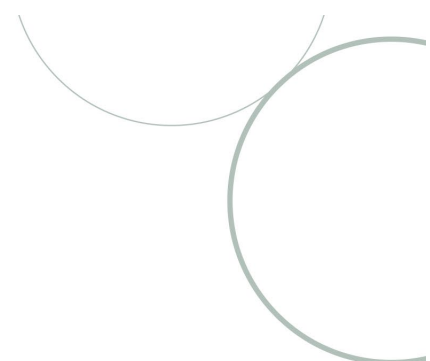
(c) the waste management industry within the meaning of the Waste Management Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and

(d) the cash in transit industry within the meaning of the Transport (Cash in Transit) Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and

(e) the passenger vehicle transportation industry within the meaning of clause 4.2 of the Passenger Vehicle Transportation Award 2020, not including paragraph 4.2(c)), as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and

(f) any other industry (however described) prescribed by the regulations for the purposes of this paragraph.

(2) For the purposes of paragraph (1)(f), the regulations may prescribe an industry by applying, adopting or incorporating any matter contained in a modern award as in force or existing from time to time.



ATTACHMENT C: Workflow

