



3 March 2026

Ms Susan Booth
Statutory Review of the Closing Loopholes Acts

Sent via Consultation Hub

Dear Ms Booth

AHA submissions regarding the *Closing Loopholes Review*

The Australian Hotels Association (**AHA**) welcomes the opportunity to participate in the statutory review into the operation of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) and the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (Cth) (collectively, the **Closing Loopholes Acts**).

Introduction

The AHA is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009* (Cth). Its diverse membership of over 6,000 businesses includes pub-style hotels plus three, four and five-star international accommodation hotels. AHA members provide a wide range of services to the Australian public including accommodation, food, beverage, wagering, gaming, retail liquor, functions, events, live music, and entertainment.

The AHA's members employ approximately 320,000 people who play a critical role in Australia's economic success and are an essential component of the communities in which we live.

Executive summary

The AHA submits there is currently little evidentiary basis to meaningfully assess the effectiveness of the amendments introduced by the Closing Loopholes Acts or to determine whether they are operating as intended. As the amendments remain in their infancy, with limited case law developed in key areas, employers require further time to engage with the provisions in practice before additional reform is even contemplated.

A comprehensive and objective evaluation can only be achieved through sustained operation, ongoing review, consideration of productivity and economic impacts and continued stakeholder

consultation. The AHA cautions against premature legislative change in the absence of a sufficient evidentiary foundation to support a thorough assessment of the new framework.

This submission focuses on the amendments relating to casual employment, workplace delegate rights and the right to disconnect. For the avoidance of doubt, any absence of comment on other amendments should not be interpreted as support for, or endorsement of, those measures.

Casual employment

The AHA maintains the amendments to the definition of casual employment through the Closing Loopholes Act displaced what was previously a clear, simple and certain legal framework. The previous reliance on the primacy of the employment contract provided greater certainty and clarity for both employers and casual employees.

While the AHA acknowledges the current provisions are more workable than those initially proposed—following amendments secured through consultation with Government—the amendment to the definition remains a more complex regime delivering limited practical improvement to workplace operations.

The AHA's members have not seen an uptake in employee choice notifications since the new pathway was introduced. Further, the Fair Work Commission (**FWC**) has dealt with just three disputes concerning casual conversion. This limited level of disputation supports the position advanced during consultation on the Closing Loopholes Bill; there was no systemic casual employment issue requiring legislative intervention. Within the hospitality industry, casual employment remains a valued and mutually understood form of engagement.

Workplace Delegates Rights

In developing the initial model term for inclusion in all modern awards, the FWC recognised that workplace delegates are *employees* first. The FWC acknowledged delegates remain subject to their duties and obligations as employees, including compliance with policies and procedures and applicable codes of conduct. It was also recognised the exercise of delegate rights should not interfere with or unduly disrupt normal work activities.

The AHA considers these to be common sense and reasonable safeguards necessary to protect the employment relationship and maintain workplace productivity.

The AHA submits, following the Full Court's decision in *Construction, Forestry and Maritime Employees Union v Australian Industry Group*,¹ that further legislative clarification is required to restore those safeguards. Such reform would ensure delegates' obligations to their employer

¹ *Construction, Forestry and Maritime Employees Union v Australian Industry Group* [2025] FCAFC 187.

can be appropriately recognised and, where necessary, enforced, thereby ensuring the provisions operate consistently with their original intent.

Right to Disconnect

The AHA notes the right to disconnect provisions remain largely untested before the FWC. In a statement published on 21 November 2025, the FWC observed, in the absence of any test cases or significant disputes concerning the substantive operation of the right to disconnect provisions, a review of the associated modern award terms would have little to no utility.

Given the provisions have not yet been substantively considered or applied in contested matters, the AHA submits there is presently insufficient evidence to draw meaningful conclusions as to whether the framework is operating as intended. Multiple changes in a short space of time makes it unlikely that any real benefit has been assessed.

The AHA welcomes the opportunity to meet with Ms Booth to discuss these submissions in further detail.

Yours faithfully,



Stephen Ferguson

Chief Executive Officer

Australian Hotels Association