

6 October 2023

Committee Secretary
Senate Education and Employment Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By electronic upload

Dear Committee Secretary,

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

The Tax Institute welcomes the opportunity to make a submission to the Senate Education and Employment Committee (**Committee**) in respect of its inquiry and report on the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (**Bill**) and accompanying explanatory memorandum (**EM**).

In the development of this submission, we have closely consulted with our National Superannuation Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

The Tax Institute supports the revised workplace relations framework where the reform protects Australian workers, boosts the workforce and economic growth, and provides clarity to the stakeholders involved, including the business community, employees, and contractors.

Schedule 1 to the Bill proposes to make various amendments to the *Fair Work Act 2009* (Cth) (**FWA**). Our comments in this submission are limited to the proposed amendments contained in Part 15 (*Definition of employment*) of Schedule 1 to the Bill.

Part 15 of Schedule 1 to the Bill proposes to insert section 15AA to the FWA. Section 15AA introduces a new statutory test for determining the ordinary meaning of employee and employer. Taking a holistic view of our legal system, the proposed amendment is merely changing one of the existing tests for determining an employer/employee relationship (in this case, for the purposes of the FWA).

We note that, at the federal level, there are the following tests for characterising a working relationship for employment tax purposes:

1. the common law test for PAYG and FBT purposes;
2. the extended definition of employees under subsection 12(3) of the *Superannuation Guarantee (Administration) Act 1992* (Cth) for SG purposes; and

3. the extended definition of employees (i.e. directors and independent contractors are also treated as employees) for ESS purposes.

This number of tests increases when State laws in relation to payroll tax are taken into account.

Each of these regimes operates for a unique purpose. For example, PAYG withholding ensures that the recipient's tax liability reaches the ATO at the soonest practicable time, superannuation guarantee secures savings towards retirement for the person providing the labour, and payroll tax revenue is a source of funding for the States based on labour output in the relevant State.

However, the very existence of several tests for the purposes of determining a working relationship adds complexity to the system. A preferable approach, particularly in terms of administration, would be to streamline the various tests to the extent possible. Doing so would reduce the compliance burden on all affected parties.

We would be pleased to work with the Committee to ensure that the Bill best achieves its policy intent without resulting in inequitable outcomes for taxpayers.

The Tax Institute is committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix A** for more information about The Tax Institute.

If you would like to discuss any of the above, please contact our Senior Counsel – Tax & Legal, Julie Abdalla, at (02) 8223 0058.

Yours faithfully,



Scott Treatt
General Manager,
Tax Policy and Advocacy



Paul Banister
Council Member

APPENDIX A

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.