29 May 2026

Susan Booth
Closing Loopholes Review
Department of Employment and Workplace Relations

By email: *closingloopholesreview@dewr.gov.au*

Dear Ms Booth

RE: Closing Loopholes Review

I write on behalf of the Motor Trades Association of Australia (MTAA) in relation to the independent statutory review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the *Closing Loopholes Review*).

Having considered the Australian Chamber of Commerce and Industry's submission in response to the Draft Report, MTAA confirms its strong support for that submission and its underlying policy positions.

MTAA is concerned that the cumulative effect of the reforms is to materially increase compliance risk for small and medium-sized businesses, particularly where increased system complexity intersects with significantly higher penalties. In this context, MTAA notes the Draft Report places significant reliance on additional regulatory guidance to address these concerns; however, this is insufficient to resolve the underlying structural issues.

In particular, the combination of the criminalisation of wage underpayments and obligations to pay employees "in full on or before the day the amount is due for payment" creates substantial exposure to both civil and criminal liability in an already highly technical system, including circumstances involving a single inadvertent underpayment or late payment that is subsequently rectified. MTAA supports strong enforcement action against deliberate and systemic underpayment, consistent with the findings of the Migrant Workers' Taskforce. However, the current framework extends beyond that policy intent and may capture one-off errors or miscalculations in complex award environments, including payment timing issues that are ultimately corrected. This creates uncertainty as to where the boundary lies between inadvertent error, recklessness, and intentional conduct, and guidance alone cannot remediate the underlying legal risk created by prescriptive obligations backed by significant penalties.

These risks are compounded by the revised definition of employment and expanded sham contracting provisions, which introduce additional uncertainty for small businesses engaging contractors in good faith.

MTAA also notes that the Voluntary Small Business Wage Compliance Code, while now in effect, is of limited practical benefit. It provides protection only from criminal prosecution, does not extend to civil liability, and does not clarify the key thresholds between error, recklessness and intent. Importantly, it does not provide any additional protection to small businesses beyond what is available to larger employers. It therefore does not address the fundamental concern of disproportionate exposure for small businesses.

MTAA considers that a clear, operable safe harbour framework — providing protection from both civil and criminal liability where a business can demonstrate good faith compliance and timely rectification — is necessary to restore balance. This would better align enforcement with the original policy objective of targeting deliberate misconduct, while supporting proportionate and practical compliance outcomes for small businesses.

In MTAA's view, addressing these issues is critical to ensuring the reforms operate as intended in practice. **If not addressed, these settings risk undermining confidence and reducing voluntary compliance across SME sectors.**

MTAA appreciates the opportunity to contribute to the employer roundtable held in Melbourne on 26 May 2026 and reiterates its endorsement of the views expressed by its representative at that forum.

Yours sincerely

Peter Jones.

Peter A. Jones
Interim Executive Director