



Electrical Trades Union

Closing Loopholes Review

3 March 2026

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About the ETU

The Electrical Trades Union of Australia (**ETU**) is a division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing over 70,000 workers nationwide.

The ETU's membership has significant concentrations in the resources, construction and power industries, although it is spread throughout the economy including the manufacturing, tourism, entertainment, business equipment and defence support industries.

Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

The ETU welcomes the opportunity to make submissions into the statutory review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (together, the **Closing Loopholes Acts**).

While the reforms remain in the early stages of operation and have not yet been fully tested through litigation and Fair Work **Commission** proceedings, the ETU submits that it is too early to draw firm conclusions about the overall effectiveness of these reforms and that a further statutory review should be conducted in approximately two years to allow for meaningful application and interpretation by the Courts and the Commission.

However, the ETU has identified a significant issue arising from the operation of the Regulated Labour Hire Arrangement Orders (**RLHAO**) and the Same Job Same Pay (**SJSP**) provisions (Part 2-7A of the *Fair Work Act* (**FW Act**)), namely, the exclusion of apprentices from their scope.

A central objective of the Closing the Loopholes reforms for the ETU was to address labour hire arrangements and sham structures that undermine job security, wages and conditions. In particular, the ETU strongly supported SJSP reforms, as mechanisms to prevent workers doing the same work as direct hire employees being paid less simply because they are engaged indirectly.

However, the ETU submits that the effectiveness of these measures is significantly undermined by the exclusion of apprentices and Group Training Organisations (**GTOs**) from their operation.¹ This exclusion was a deliberate policy choice. The Explanatory Memorandum states that training arrangements were carved out on the basis that applying the protected rate of pay to apprentices and trainees might “reduce barriers to employers providing training pathways to meet future skills demands”.²

In practice, this exclusion has not facilitated training pathways. Instead, it has enabled labour hire and GTO models to be used to keep apprentices on structurally lower wages, even where they are performing the same work as directly employed apprentices covered by enterprise agreements.

GTOs are specialist labour hire businesses: they engage employees under training contracts, often, but not exclusively apprenticeships and then hire those apprentices out to a range of host employers. In practice, GTOs typically pay only award, or close to award, rates of pay. They can therefore become a vehicle for the host employer to avoid paying for the labour of apprentices at the rate negotiated under the host employer’s enterprise agreement.

Apprentices engaged through GTOs are locked into low pay structures, deprived of the bargaining power that comes with direct employment, and excluded from the equal pay mechanisms that the SJSP regime was designed to provide.

Apprentices Are Low Paid

Apprentices and trainees are among the lowest-paid cohort of workers in Australia. Many apprentices are paid at the minimum award rates, even in industries in which tradespeople are paid at rates higher than the award, pursuant to an enterprise agreement or contract. That minimum rate can be less than the

¹ *Fair Work Act 2009*, s306G.

² [Explanatory Memorandum to the *Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023* at \[612-613\]](#).

national minimum wage.

For example, in the electrical contracting industry, the prevailing market rate for electricians sits far above the award rate, yet electrical apprentices often have their wages set at a percentage of the award rate for an electrical tradesperson. As a result, apprentices report significant cost of living pressure. Such low prevailing rates of pay for apprentices, in absolute and in relative terms, is a key factor driving down enrolment and completion rates for apprenticeships even in industries where there is high demand for new tradespeople.

A 2022 Essential Media survey of electrical apprentices found that:³

- 40% of electrical apprentices did not believe their wages were sufficient to cover 'bare necessities'.
- Among those electrical apprentices who considered quitting, 30% cited cost-of-living and/or insufficient wages, compared to just 4% who cited disliking the work.
- Just 25% of respondents were paid at award rates, with the remaining 75% paid according to an enterprise agreement.

Apprentice members are now frequently reporting to the ETU that they are taking on a second job or doing more overtime than they would prefer, just to meet basic living expenses.

Aggravating this situation has been the failure of the past three minimum wage outcomes to take into account the impact on apprentices. As the apprentice wage rate is based on a percentage of a tradesperson's award wage, they were simply overlooked in the minimum uplift decisions for low paid workers. This has resulted in apprentices' pay rates falling further and further behind the minimum wage. While the current minimum wage sits at \$948.00 per week, the minimum wage of a 1st year adult electrical apprentice is a mere \$652.84 per week. Minimum award rates for electrical apprentices do not meet the national minimum wage until an apprentice reaches their 4th year. The same pattern is replicated across the modern award system, wherever apprentice and trainee wages are set at a proportion of the minimum wage of a tradesperson.

The primary purpose of the SJSP framework is to provide relief to employee cohorts who are engaged at arms-length from the principal employer in the workplace and who, because of that indirect engagement, cannot effectively organise at the enterprise level. The SJSP framework recognises that despite the many advantages of enterprise-level bargaining, that foundational level of the fair work bargaining system does not work for labour hire and other third-party employees. Third-party employees are often spread across multiple worksites and host employers and have more common interest with the direct-hire employees of their host employer than with other employees of their third-party employer. The geographical and operational distinction between labour hire employees of the same employer, engaged in different work with different host employers, makes it difficult, if not impossible for those employees to negotiate for fair market rates of pay for the work that they perform. That limitation is reflected in the higher rates of pay awarded to direct-hire employees in the same workplace for the same work. The indirect nature of the employment relationship also dampens the effect of industrial action on the third-party employer, as those impacts are spread among multiple clients – the host employers – in whose operations the labour

³ Essential Media, 2022, *ETU Apprentices Survey* (Final Report)

hire employees are usually a minority of workers. The SJSP framework is intended to arrest that imbalance of bargaining power, by leveraging the prevailing minimum wage for substantially the same work performed in the same workplace by direct-hire employees.

All of the same policy objectives that recommend the introduction of the SJSP framework apply to apprentices employed through GTOs who are engaged at arm's length from the host employer and are typically in the minority at any given workplace. As a cohort, they are dispersed across numerous host employers, each operating distinct workplaces and systems of work, making collective organisation and bargaining extremely difficult. As we deal with in this paper, the preponderance of GTO enterprise agreements that set wages at or near the award minimum in industries where labour demand is high and higher-than-award wages are the norm, is compelling evidence of the challenge apprentices face to organise and effectively bargain within GTO structures.

Demand For Apprentices

The ETU is a staunch supporter of industry-led GTOs in the electrical contracting industry. The GTO model done well, with sensitivity to labour demands, licensing standards and training needs of a particular industry, can be instrumental in growing apprenticeship commencements and supporting higher completion rates. The GTO industry is, relevantly, affected by two market forces, first the general demand for apprentices and second the relative demand for insourcing.

Demand for apprentices is influenced by economic factors, industry needs, and government policies. At the policy level, the Australian Government supports demand for apprentices through incentive payments and the Australian Skills Guarantee Procurement Connected Policy (**ASG**). The ASG requires that proponents for Commonwealth contracts valued at \$10 million or more ensure that 10% of all labour hours are worked by apprentices or trainees.⁴ The Australian Apprenticeships Incentive System (Incentive System) includes direct incentive payments to employers of apprentices in trades and professions on a priority list, and reimbursement to SMEs of some or all costs of GTO services.

Despite this, low wages remain a significant barrier to apprentices completing their apprenticeship. The National Centre for Vocational Education Research puts the average age of a starting apprentice at 21. Not for a long time has the average apprentice been an inexperienced recent school leaver. Apprentices require the same guarantee of a minimum wage to meet the costs of living as any other adult worker in Australia.

Public funding mechanisms such as the ASG should support secure and properly remunerated apprenticeships, not arrangements that entrench award-level wages in industries where enterprise bargaining has lifted standards.

Exclusion Is Not Required to Drive Demand for Apprentices

The ETU submits that the introduction of the SJSP framework has, in many respects, been a positive

⁴ Department of Employment and Workplace Relations (DEWR), 2025, *Australian Skills Guarantee: Procurement Connected Policy*, [Online] Accessed 18 February 2026: <https://www.dewr.gov.au/download/17114/australian-skills-guarantee-procurement-connected-policy-version-12/40722/australian-skills-guarantee-procurement-connected-policy-version-12/pdf>

reform in the labour hire context. In sectors where labour hire is prevalent, the availability of SJSP orders has had a real and tangible effect on bargaining dynamics. Employers now understand that if wages and conditions are not improved through enterprise bargaining, workers can seek recourse through the SJSP and RLHAO mechanisms. This has driven upward pressure on wages and reduced the capacity for labour hire models to be used to undercut direct hire employees.

However, this positive effect has not extended to apprentices because of their exclusion from the regime.

The Government's justification for excluding GTO apprentices from SJSP provisions was based on a misconception that wages must remain at their current level – often below the adult national minimum wage – to encourage employers to take on apprentices. In fact, demand for apprentices would not be impacted by labour hire arrangement orders:

- demand on government funded projects inflexible – for example, through the Australian Skills Guarantee (ASG), at least 10% of work on major government projects must be performed by apprentices; and
- for the rest of industry, the enterprise agreement rates of pay applied by a labor hire arrangement order are invariably set at a percentage of the full tradesperson rate in the relevant workplace, meaning that the financial incentive to hire an apprentice remains.

If the exemption is lifted, more apprentices would be paid at higher-than-award-rates, but they would still be cheaper to employ than tradespeople on the same site. Especially where the ASG applies, public funding should support well paid and secure apprenticeships, not arrangements that undercut attempts to raise industry standards.

GTO apprentices remain dispersed across host employers and typically lack the collective leverage available to directly employ apprentices. All of this means that they struggle to organise and bargain effectively as a group, in a way that direct hire apprentices negotiating alongside the tradespeople they work with day-to-day do not. Thus, the exemption in s 306G(1) removes what would otherwise be a statutory equal pay safeguard and leaves apprentices reliant solely on bargaining processes in which they possess limited leverage.

The ETU has encountered repeated instances during the bargaining process where employers have refused to include clauses requiring GTO-supplied apprentices to “jump up” to host employer rates in enterprise agreements. As a result, apprentices remain structurally underpaid and the ETU is prevented from achieving fair and sustainable outcomes for them through bargaining. If apprentices were covered by the RLHAO regime, the SJSP framework could operate as a genuine bargaining lever to secure equal pay outcomes and prevent GTO structures from being used to avoid enterprise agreement rates. Accordingly, the exemption in s 306G(1) of the FW Act should be removed.

Case Study – ETU South Australia GTO Multi-Employer Bargaining

The ETU commenced proceedings (B2025/1582) in 2025 in the Fair Work Commission for a supported bargaining authorisation in relation to a number of GTOs in South Australia. Supported bargaining authorisations replace the former “low-paid” bargaining scheme. They are designed to assist employees in industries where traditional bargaining has proven difficult, especially in industries where low rates of pay prevail, to bargain together with the assistance of the Commission.

In those proceedings, the ETU’s claims in bargaining include payment of apprentices at rates at least as high as apply to apprentices directly employed by the host employer. The ETU effectively seeks pay at the minimum rate that would apply to the apprentices if a RLHAO could be made for them.

In opposing the supported bargaining authorisation, employers have prefaced an argument that the exclusion of apprentices from the current RLHAO regime tells against it being in the public interest to grant the authorisation. The employers hold out that the current exclusion of apprentices from the RLHAO regime is a decisive reason for preventing the apprentices from bargaining together for higher wages.

1. The ETU’s application has not yet been determined. In the interim, the employers have refused to bargain with the apprentices as a group.

As illustrated by the ETU’s proceedings with SA GTOs, the exclusion of apprentices from SJSP provisions has normative force. It sets a national standard that equality of apprentice wages on a site is exceptional and unsupported, and weakens apprentices’ bargaining power:

1. What would otherwise operate as a statutory entitlement becomes a claim that must be bargained for, despite apprentices having limited leverage in traditional bargaining pathways.
2. The existence of the exclusion is relied on to justify refusal of apprentices’ claims for parity of wages with direct-hire apprentices in the same workplace.

The exclusion encourages the continued use of labour hire and GTO models to suppress wages for apprentices. Instead of Closing the Loopholes, the current framework creates a new loophole where apprentices can be channelled through intermediaries to avoid equal pay outcomes.

ETU Proposal:

The ETU recommends that s 306G(1) FW Act be amended by removing the exemption for regulated employees if a training arrangement applies to the employee in respect of the work performed for the regulated host.

ADDITIONAL ISSUE – RLHAO’S

Protected Rate of Pay Where & Grandfathered Wage Structures

Section 306F(4) of the FW Act defines the Protected Rate of Pay (**PROP**) as the “full rate” that would be payable to the employee if the host employment instrument were to apply to that employee.

In practice, some enterprise agreements contain two-tier or “grandfathered” wage structures. Under these arrangements, existing employees receive one rate of pay, while new employees performing identical work receive a lower rate. These structures typically arise following enterprise bargaining where higher rates are preserved for incumbents and reduced rates apply prospectively.

The Act does not expressly address how the PROP is to be calculated where such differential wage structures exist. While s 306E(4) clarifies that employment type (for example, casual or permanent status) is to be disregarded in determining the PROP, it does not address tenure-based differentials or commencement-date distinctions.

On a literal construction, a regulated employee could be characterised as a “new starter” for the purposes of applying the host instrument, thereby entitling them only to the lower, post-grandfathering rate. Such an interpretation would frustrate the policy intent of the RLHAO regime. It would allow regulated host employers to maintain or negotiate grandfathered wage structures and effectively benchmark labour hire employees against the lower tier, even where directly employed employees performing the same work receive a higher rate.

This outcome would undermine the equal pay objective underpinning the RLHAO framework and create a structural incentive for regulated hosts to entrench two-tier wage systems in order to limit the impact of PROP obligations.

ETU Proposal:

Amend s 306F of the FW Act to clarify that the PROP is the rate applicable to comparable work under the host instrument, without regard to without regard to tenure-based distinctions or hypothetical commencement dates.

Complex Corporate Structures - Identification of the Regulated Host

Part 2-7A of the FW Act assumes that the “regulated host” will ordinarily be the entity that both benefits from the work and holds the relevant enterprise agreement.

However, complex commercial structures in industries such as mining, construction and resources frequently separate these functions. It is not uncommon for example, for Entity A to operate a site under a management or operating agreement, Entity B to hold an enterprise agreement covering employees performing the relevant work, and the site itself to be owned or controlled through a joint venture, trust, or other layered arrangement. These entities may not be participants in a joint venture or common enterprise within the meaning of s 306D(2)(c).

In those circumstances, the operator may qualify as the regulated host but have no enterprise agreement, while the enterprise agreement holder may not qualify as the regulated host. This creates uncertainty about which agreement sets the protected rate of pay and may undermine the equal pay purpose of the RLHAO regime.

Workers should not be required to litigate complex corporate structures in order to access equal pay protections. The operation of Part 2-7A of the FW Act should focus on substance, who benefits from the work and which agreement sets the benchmark rate rather than technical corporate form.

ETU Proposal:

Review whether the scope of s 306D(2)(c) to ensure it adequately captures all arrangements where the policy rationale for RLHAOs applies, including whether common enterprise extends to management arrangements, or whether amendments are required.

ADDITIONAL ISSUE – Operation of s249 in Competing Single Interest Employer Authorisation Applications

The ETU has identified a structural ambiguity in the operation of Part 2-4 of the FW Act concerning Single Interest Employer Authorisations (**SIEA**), introduced under the Secure Jobs, Better Pay reforms.

Section 249(1B)(b) provides that the Commission must not make a SIEA on application by a bargaining representative if “the employer has not made an application for a single interest employer authorisation that has not yet been decided” in relation to the relevant employees.

A question has arisen as to whether this provision operates on a “first in time” basis, or whether an employer may file a competing SIEA application after a bargaining representative application has been lodged, thereby preventing the Commission from determining the bargaining representative’s application until the employer application is resolved.

On one construction, s 249(1B)(b) permits an employer to lodge a competing application at any time before determination, with the practical effect of delaying or frustrating the bargaining representative application. The Act does not expressly clarify whether the relevant point in time is when the bargaining representative application is made, or when the Commission determines it.

If construed in the former manner, the provision risks becoming a mechanism by which employers can strategically file competing applications to fragment or delay multi-employer bargaining processes.

Further complexity arises where the Commission determines an employer application covering only some (but not all) of the employers named in a bargaining representative application. The Act does not clearly set out whether, or how, the Commission may then proceed to determine the bargaining representative application in respect of the remaining employers.

In addition, there is a related concern that employers may seek to vary expired enterprise agreements under s 207 in order to extend their nominal expiry date, thereby engaging s 249(1D) and preventing the making of a SIEA.

These issues create uncertainty in the operation of the SIEA framework and may undermine the objective of facilitating orderly multi-employer bargaining.

Case Study –Competing SIEA Applications in the Electrical Contracting Industry (NSW/ACT)

In December 2025, the ETU NSW Branch filed an application under s248 of the FW Act seeking a Single Interest Employer Authorisation (SIEA) to cover eleven electrical contracting employers in the NSW/ACT region.

Shortly thereafter, a number of those employers filed a separate SIEA application seeking authorisation for a materially narrower agreement, confined in geographic scope and type of work.

A dispute has arisen as to the operation of s 249(1B)(b), which provides that the Commission must not make a SIEA on application by a bargaining representative if the employer “*has made an application*” for a SIEA that has not yet been decided.

The employers contend that the existence of their application prevents the Commission from determining the earlier union application until the employer application is decided. Effectively using an employer application to postpone or avoid the original employee application for an SIEA.

The CEPU contends that s 249(1B)(b) should be construed by reference to the point in time at which the bargaining representative application was made, such that a later competing application cannot operate to delay or frustrate it.

As illustrated in the case above, absent a clarifying amendment, an employer may file a competing SIEA application after a union application has been lodged, thereby delaying or fragmenting the bargaining process. If it is supported by the Commission, the employer’s position in that case would introduce uncertainty to:

- the Commission’s ability to determine a bargaining representative application in respect of employers not named in a separately determined employer SIEA; and
- the interaction between s249(1D) and variations to expired agreements under s207 that may prevent the making of a SIEA.

Unless priority is given to resolution of the earlier application in time, the beneficial intention of SIEA will be routinely defeated by employer applications made cynically to frustrate employee applications and split cohort of employees with common interest in the proposed agreement along lines that minimise employee bargaining power.

ETU Proposal:

Amend the FW Act to:

1. clarify that the operation of s249(1B)(b) is assessed ‘*at the time the bargaining representative application is made*’, so as to prevent subsequent competing applications being used to delay or defeat that application; and
2. provide the Commission with express power to determine a bargaining representative application in respect of employers not named in a separately determined employer SIEA; and
3. ensure that variations to expired enterprise agreements under s207 cannot operate to engage

s249(1D) in a manner that defeats or frustrates a pending SIEA application.

The proposed amendments would promote procedural certainty and prevent fragmentation or strategic duplication of SIEA applications, while preserving the underlying policy intent of the Secure Jobs, Better Pay reforms.