



# Catholic Religious Australia Submission to the Inquiry into Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020

5 FEBRUARY 2020

## **Submission to the Senate Standing Committee on education and employment legislation inquiry into the provisions of the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020**

Catholic Religious Australia (CRA) welcomes the opportunity to make a submission to the Senate Standing Committee on Education and Employment Legislation (the Committee) inquiry into the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020* (the Bill).

CRA is the peak body representing the Leaders of 150 Catholic Religious Institutes and Societies of Apostolic Life which operate in Australia. Our religious institutes comprise more than 5,500 Catholic religious women and men. Our members are employers with many staff members working in education, health care and social welfare, servicing many vulnerable groups and individuals in Australian society and globally.

We recognise that the global COVID-19 pandemic has been an immense challenge for the Australian economy and society, with lasting impacts likely, and that the Morrison government is committed to creating jobs, rebuilding our economy and securing Australia’s future.

We believe that safe, secure and fulfilling work is a right to which each person is entitled, allowing them to earn a reasonable living, support family, contribute to and participate in Australian society, forge relationships, express their skills and talents and securely enjoy leisure time. Legislation should therefore never reduce the function of work to a simple economic contract between employer and employee or to having the sole purpose of increasing capital.<sup>1</sup>

While we recognise that the proposed Bill has many elements that support the rights and security of employers and their employees, the COVID-19 pandemic has exposed and exacerbated pre-existing weaknesses in the Australian economy, including the increasing casualisation of the workforce, the insecurity of the ‘gig economy’, and the precarious position of vulnerable people. In particular, the progression of the pandemic saw unemployment and underemployment drastically increase for young people, many of whom engage in casual work around study, and women, who are highly represented in the industries most impacted by closures due to lockdown and other stages of COVID-19 restrictions. In addition, while both parents have also had to juggle periods of home schooling, women in casual work have been significantly affected.<sup>2</sup> We are concerned that some of the Bill’s propositions may further threaten the stability, well-being and rights of the most vulnerable workers.

### **Requests for Casual Conversion**

Casual employment grew by over 400,000 positions between May and November of 2020, representing the biggest expansion of casual employment in Australia on record.<sup>3</sup> The Bill’s proposed changes to the right to request casual conversion will increase the casualisation of the Australian workforce, leaving many Australians in an unstable and precarious financial position, violating human dignity by causing immense strain on the wellbeing and mental health of individuals and their ability to support themselves and their

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<sup>2</sup> J. Zabar and A. Treloar, *Strong Economy, Stronger Australia: Building Our Prosperity to Serve the Common Good* (Catholic Social Services Australia (CSSA): Canberra, 2020).

<sup>3</sup> Australian Bureau of Statistics, “Insights into casual employment, occupation and industry,” ABS, retrieved 2 February 2021, URL: <https://www.abs.gov.au/articles/insights-casual-employment-occupation-and-industry>

families. While there can be a conversion of the casual relationship to a permanent position, if an employer refuses, the employee has little comeback. Significantly, there is no ability for arbitration or for an employee to go to court and disagree with the decision of the employer. Whilst we commend the Bill's greater clarity around the definition of a casual worker, we are concerned that the employment relationship stipulated at the start of the contractual arrangement will define the arrangement for the course of the employment, rather than look at the reality of the arrangement. This denies the dynamics of employment relationships, especially in relation to casuals.

Furthermore, we are concerned that a misclassified casual employee may be deterred from rightfully seeking permanent employment because they may retrospectively lose their right to paid leave, as under the new proviso, their previously paid casual loading may count towards this liability.

In addition, the proposed changes can lead to a greater vulnerability to exploitation as casual workers are less likely to speak out about treatment that is unfair or unjust, because of the risk that they could lose their job more easily than a person with a permanent position. This will ultimately permit employers to continue hiring people as casuals despite employees performing ongoing permanent work, denying them the security and stability of permanent employment.

Whilst finding employment in casual positions may provide some short-term relief for those seeking work as there are benefits in casual work, it is the degree of casual work replacing permanent positions which will have a negative impact on the sustainability of the economy in the long term, as greater instability in the workplace results in less spending, borrowing and the like, by the individual.

The stress of insecure work can also be detrimental to the quality of family life, with not just the individual impacted but all those within their household. Strain on familial relationships can be caused by higher rates of poor mental health, low self-esteem, reduced marital satisfaction and adverse behavioural responses such as aggression. This can negatively impact both partners and children.<sup>4</sup>

The casual workforce was shown to be the fastest and hardest hit sector in the initial months of the global pandemic, with casual workers accounting for two thirds of those who lost jobs.<sup>5</sup> This reflects the fact that casual workers are inherently a highly vulnerable group and we are concerned that the proposed changes will leave a growing casual workforce vulnerable to again be disproportionately impacted in the event of any future economic shocks, impacting not only on these individuals and their families, but the stability of the Australian economy. For the dignity of the human person to be fully realised, we call for an effective way for casual workers to be treated fairly and moved to permanent employment.

## Flexible Work Directions

CRA is concerned that the new provision for flexible work directions in areas covered by particular Modern Awards will allow an employer affected by COVID-19 to give variable directions to their employees about the

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<sup>4</sup> J. Zabar and A. Treloar, *Strong Economy, Stronger Australia: Building Our Prosperity to Serve the Common Good* (CSSA: Canberra, 2020).

<sup>5</sup> Australian Bureau of Statistics, "Casuals hardest hit by job losses in 2020," ABS, retrieved 2 February 2021, URL: <https://www.abs.gov.au/media-centre/media-releases/casuals-hardest-hit-job-losses-2020>

duties to be performed and the location of the employee's work. This need only be advised with 3 days' notice, and only on the first occasion, even when subsequent directives differ.

In our opinion, the threshold for defining a COVID-19 affected businesses is too low, differing from the JobKeeper test which was an objective test and had to demonstrate a reduction in turnover. The proposal allows the employer to give varied directives based on the broad definition that it *"is a necessary part of a reasonable strategy to assist in the revival of the employer's enterprise."* These directions will continue in place until withdrawn, revoked or replaced by the employer. We are concerned that although the Bill states that directives must be within the employee's skill and competency, workers may be assigned tasks that differ from their accepted job description, having a possible detrimental impact on the quality and fulfilling nature of an individual's work. The little to no notice required for varied work directions, including location, may negatively impact vulnerable employees who may not have the luxury of flexibility around other commitments such as study or care for dependents.

At a minimum, we believe that the same standard as the objective JobKeeper test be applied to ensure that the flexible work directives occur for as little time as needed and only as a necessary response to a reduction in turnover caused by COVID-19, and that workers who cannot fulfil flexible work directions have some protection.

### Suspension of the 'Better Off Overall Test' (BOOT)

CRA believes that the BOOT is a minimum test that protects those who were most vulnerable to exploitation under Enterprise Agreements. There is no reason to change the current arrangements which already allow for the removal of the BOOT "in exceptional circumstances." Suspending the BOOT for two years, if "appropriate" and "not contrary to the public interest," removes the safeguard that employees will not be disadvantaged under an Enterprise Agreement, in comparison with the equivalent Modern Award. Enterprise Agreements made during this two-year period will remain in place until terminated or replaced, again placing vulnerable workers in a challenging and weaker position of having to re-negotiate a new Agreement.

### Criminal Sanction for Wage Theft

CRA believes that, whilst it is positive that the proposed Bill addresses the issue of criminal wage theft with the introduction of high penalties for the offence, the proposed test for the criminal offence of underpaying employees sets the bar too high.

While we favour a harmonised national approach to this issue, it must be done in consultation with the states which already have laws in this area, to ensure that the most effective laws will be in place to deter wage theft. A problem with the wage theft provisions proposed in the Bill is that it requires a 'systemic pattern of underpaying employees', rather than a single underpayment as required under state laws – the former provision proposed in the Bill, sets a much higher bar. Further, it involves satisfying both an objective test and a subjective test for such dishonesty, rather than one, objective test that applies in Victoria, for example. Ensuring an effective deterrent for criminal wage theft is in place will only occur if successful prosecution of those who engage in criminal wage theft is achievable.

As outlined above, elements of the proposed Bill leave certain workers vulnerable, compromising their dignity and the common good of Australian society. We call upon the government to work collaboratively with business, not-for-profit organisations, unions and the broader community, to ensure that our industrial relations system supports the full employment of Australians, supporting, incentivising and rewarding employers who provide secure employment. Any initiatives to rebuild the Australian economy following both the global pandemic, any future economic shock and more generally, should always respect and enhance the human dignity and rights of **all** Australians, allowing for their full participation in our society.