

**TO THE SENATE EDUCATION AND EMPLOYMENT COMMITTEE:**

**SA UNIONS SUBMISSION ON THE  
FAIR WORK AMENDMENT (SUPPORTING AUSTRALIA'S  
ECONOMIC RECOVERY) BILL 2020**



**Angas Story**

**Secretary SA Unions**

**5 February 2021**

## **FAIR WORK AMENDMENT (SUPPORTING AUSTRALIA'S ECONOMIC RECOVERY) BILL 2020**

### **INTRODUCTION**

#### **Forward**

SA Unions is the peak trade union council for South Australia. Through its affiliated organisations, it represents approximately 160,000 union members in all industries and sectors. SA Unions is the South Australian branch of the Australian Council of Trade Unions (ACTU).

For over 150 years unions have been on the front line of political, industrial, and legal battles to create and protect workers entitlements.

Improving the wages, working conditions and safety of employees remains a major focus for the union movement as is protecting workers from exploitation and the theft of salary and superannuation entitlements.

SA Unions is very concerned with the proposed *Fair Work Amendment (Supporting Australia's Economic Recovery) Bill 2020*. In its current format it will have a significant and detrimental impact on working people. We ask the Senate to either significantly amend the legislation or reject it.

#### **Context**

Workers have borne the brunt of the COVID-19 pandemic; many have been stood down or lost work; others have had no option but to exhaust leave balances or withdraw from their superannuation. Those who continued to be employed, particularly those classified as 'essential workers', faced greater working pressures than ever before.

To abandon workers now - to reduce their conditions of employment as is proposed in the *Fair Work Amendment (Supporting Australia's Economic Recovery) Bill 2020*, will make more jobs insecure, will cut living standards for working people, and will ultimately make economic recovery harder and longer.

The Bill makes no effort to reduce the number of Australian workers employed in casual, insecure jobs. In addition, the removal of the better off overall test (BOOT) will place more downward pressure on already stagnant wage growth, stifling consumer spending and retarding the contribution of households to economic recovery from COVID-19. Workers with secure well-paying jobs will better support Australia's economic recovery from COVID-19 through increased spending – supporting small businesses in the process. The higher proportion of small businesses in South Australia, in conjunction with a weaker labour market means that the Fair Work Amendment will disproportionately impact on businesses and workers in South Australia compared to other states.

Overall, an examination of labour market trends over the last two decades reveals the emergence of high levels of labour underutilisation which negatively impacts the security and wellbeing of millions of Australians. It has also become apparent that wage growth is more likely to be driven by underemployment and underutilisation than unemployment. This represents a major policy challenge for government, requiring measures that help to significantly increase the opportunities available to Australians, to secure stable, rewarding full-time employment. Although this is an Australian wide problem, there are factors in South Australia's labour market which exacerbate the challenge.

Government has long touted employment growth as a key indicator for the strength of the economy. But the benefits of increased employment and lower unemployment are diminished if the jobs that are being created put workers in precarious employment, or do not provide enough hours or income for an individual or family to live on. In these circumstances, people seek additional hours at their current job, or find a second job, and are considered underemployed. Additional to underemployment is underutilisation, which measures the number of people looking for work and the number of people looking for more work.

High underutilisation shows there is a higher supply of labour hours than there is demand. Underutilisation, and the number of people working more than one job, highlight the underlying weakness of the labour market, and the poor quality of jobs which are being created. In turn, this creates an imbalance in bargaining power between employees and employers which will not remedy stagnant wages growth. When the supply of labour outstrips the supply, employers do not have to offer higher wages, or better conditions, to attract a new worker. This places downward pressure on wage growth and reinforces the trend of casualisation and subcontracting.

Wages growth has been stagnant since around 2012, which has weighed on both household spending and government revenue, impacting on the economy.

## **MAJOR CONCERNS WITH THE FAIR WORK AMENDMENT (SUPPORTING AUSTRALIA'S ECONOMIC RECOVERY) BILL 2020**

SA Unions is the South Australian branch of the Australian Trades and Labour Council. We have had input to the submissions of the ACTU and we endorse and adopt the summary and conclusion contained in those submissions.

This submission summarises our key concerns then focuses on matters that are of particular interest to South Australian workers and the South Australia community and economy.

### **Schedule 1 – Casual Employment**

The proposed provisions in the *Fair Work Amendment (Supporting Australia's Economic Recovery) Bill 2020* : Schedule 1, if passed, WILL further reduce the rights of casual workers.

The statutory definition of casual employment will extinguish the rights of workers who have been wrongly labelled as casuals, overturn judicial precedent, and facilitate the casualisation of jobs that should be permanent and secure.

Casual employees have less job security; fewer rights at work; often lower pay than their permanent counterparts; less predictability and certainty of working hours and income; no annual or sick leave. A majority have no guaranteed minimum hours and around half knowingly receive the casual loading.

Casualising what should be permanent jobs fundamentally swings the pendulum towards employers, further exacerbating the lack of fairness in the system. The reality is that most employment contracts for insecure work are offered on a take-it-or-leave-it-basis in a market which heavily favours the seller. Employers have overwhelmingly greater bargaining power than unemployed workers.

The proposed legislation's entire concept of casual employment, from definition to conversion, is misplaced. It needs an objective definition of casual employment, which would provide certainty for

all parties, together with a robust conversion scheme. It should more closely align with the common law position on the distinction between casual and permanent employment, and when a worker is genuinely found to be casual, offer a pathway to convert to permanent employment.

The ability for an employer to avoid making an offer of conversion to permanent employment is too broad, with the potential for unlimited “reasonable grounds”, which allows an employer to avoid making an offer of permanent employment. Further, the proposed conversion scheme means the FWC can only exercise its arbitral powers subject to agreement of the parties, allowing employers to avoid their compliance obligations by declining to allow the independent umpire to make a binding determination.

### **Schedule 2 – Modern Awards**

The proposed changes come under two parts – ‘simplified additional hours agreements’ allowing part-time employees to work additional hours above their scheduled hours without payment of overtime; and ‘JobKeeper enabling directions’ allowing employers to issue unilateral directions in relation to an employee’s duties and location of work. However, unlike JobKeeper, an employer would not have to meet the strict ‘decline in turnover’ test to issue the directions.

While these variations would apply to 12 identified modern awards, the bill allows the Minister to extend these provisions to workers in every industry under every modern award.

### **Schedule 3 – Enterprise Agreements**

The *Fair Work Amendment (Supporting Australia’s Economic Recovery) Bill 2020* makes significant changes to the Enterprising Bargaining Agreement, which will make it easier for employers to undercut or exclude the minimum safety net of employment conditions and undermine workers’ fundamental rights to have a union represent their interests in bargaining.

The combined effect of the reforms will be to undermine the Better Off Overall Test (BOOT) protective function by removing several of the planks which underpin its foundation. These changes will leave workers worse off overall.

### **Schedule 4 – Greenfields Agreement**

For ‘major projects’, the bill allows Greenfield Construction Agreements to extend for up to 8 years from the date specified in the agreements and projects can have a value as low as \$250 million, including amounts spent prior to construction work. For the entire duration of projects to which Greenfields Agreements apply, workers would be at risk of being deprived of any capacity to renegotiate wages and conditions of employment and would not have access to arbitration.

### **Schedule 5 – Compliance and enforcement**

Our most significant concern relates to sanctions against wage theft. The bill if passed, would override State and Territory laws which criminalise underpayments, and replace them with a watered down version which would make conviction of an employer difficult to achieve.

## **IMPACT ON SOUTH AUSTRALIA**

South Australia performs worse than the Australian average in many key labour market indicators, including labour underutilisation. This is partly due to South Australia’s industry composition, and ageing population.

South Australia's participation rate (proportion of working age individuals employed or searching for employment) in the labour force historically has lagged Australia's, and other States, except for Tasmania. Over the past 5 years, the difference between the participation rate in Australia and South Australia has been on average about 3.0 percentage points. At the same time, unemployment has historically been higher in South Australia. Before the COVID-19 lockdowns, South Australia last had an unemployment rate lower than Australia's in August 2014.

Full-time work is another area where South Australia is behind the nation. Full time employment as a proportion of total employment in South Australia is 64%. The Australian average is 68%.

The rate of underutilisation in South Australia is higher than the Australian average and other Australian States with more than 16.7% of people in South Australia either looking for work or looking for more hours. This amounts to more than 150,000 people. Nationally, the rate is 15.1%, representing 2.1 million people. Employment in South Australia is more highly concentrated in industries which are more susceptible to casualisation and precarity such as Health Care and Social assistance, Accommodation and Food Services, and Retail Trade. These industries have the highest levels of underemployment across Australia, thus resulting in larger negative impacts for South Australians from the changes to the Fair Work Act.

The changes proposed do not address the fundamental problem that many South Australian households face – that of sustained and protracted deterioration in wages and rising levels of job insecurity. In turn this Americanisation of the Australian industrial relations system accelerates a widening income and work sufficiency gap between Australians – a problem that has manifested in destabilising levels of social and economic inequality in the United States. This is not a path to a fairer or more prosperous Australia.

**Employment data South Australia<sup>1</sup>** (as at December 2020 using ABS Labour Force Data)

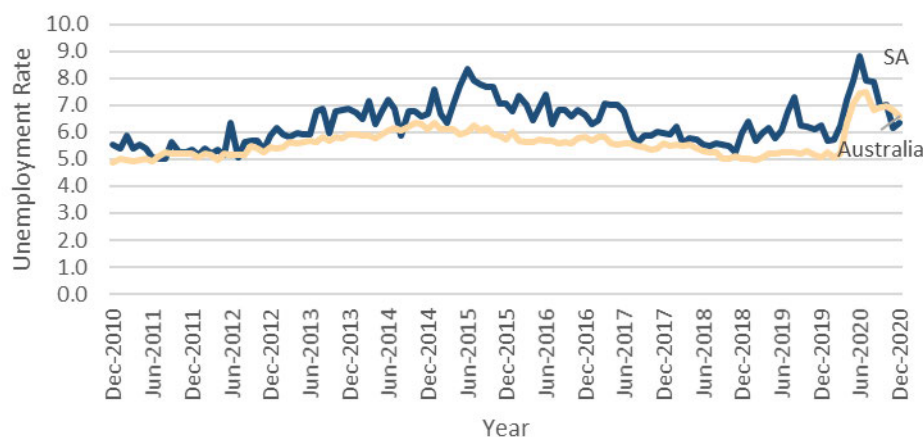
- The number of people employed in South Australia is 852,400 (6.6% of the Australian workforce of 12.9 million).
- The number of people employed full time is 555,400 and part time is 294,700.
- The employment to population ratio is 58.6%, the second lowest of all States and Territories.
- The number of unemployed is 58,000.
- The underemployment rate is 10.4%, the highest of all States and Territories. Based on ABS national data, almost all (1.1 million of 1.2 million underemployed people) worked part time.
- South Australia has the second highest share of casual employees to total employees in its workforce, at 26.5% - a total of 186,000.<sup>2</sup>

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<sup>1</sup> ABS Labour Force Data, December 2020

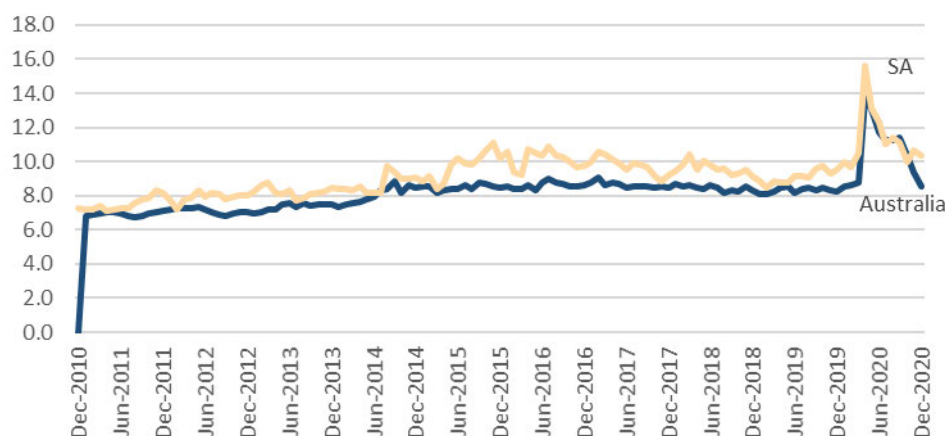
<sup>2</sup> Parliament of Australia,  
[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/StatisticalSnapshotCasualWorkersAustralia#:~:text=paid%20leave%20entitlements.-,There%20were%20just%20over%202.6%20million%20casual%20workers%20employed%20in,per%20cent%20in%20August%202019](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/StatisticalSnapshotCasualWorkersAustralia#:~:text=paid%20leave%20entitlements.-,There%20were%20just%20over%202.6%20million%20casual%20workers%20employed%20in,per%20cent%20in%20August%202019)

SA's unemployment rate has consistently tracked higher than the national rate



Source: ABS

SA's underemployment figures have been higher than the national rate since 2010



Source: ABS

### Economic Data South Australia

The South Australia economy generates an estimated \$223.513 billion in output<sup>3</sup>. South Australia represents 5.8% of the output generated in Australia. The five largest contributors to annual economic output in South Australia are Manufacturing (18.59 percent of total output); Construction; Rental, Hiring and Real Estate Services; Health Care and Social Assistance; Financial and Insurance Services.

<sup>3</sup> Economic Development Australia - <https://app.remplan.com.au/eda-southaustralia/economy/industries/output?state=QP1XS2!ypXvhQM6ATWdZ0JS15ylNc6hyfWZgsGoPoxc9QJQRU1fAzSvf0IkkyzTvag>

South Australia's highest employing industries are:

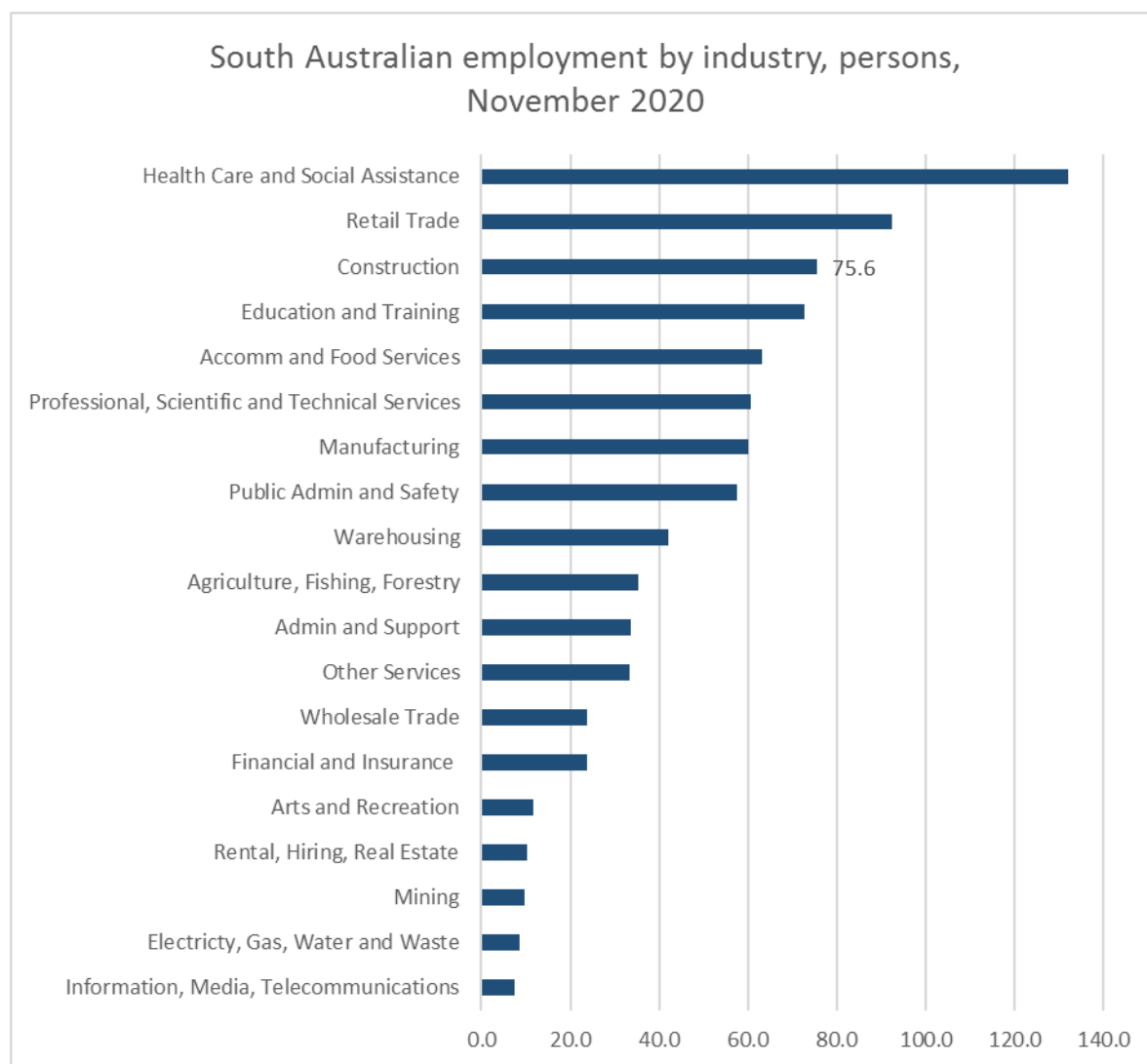
Health Care and Social Assistance (114,872)

Retail Trade (82,359)

Education and Training (64,760)

Manufacturing (61,549)

Construction (58,143)

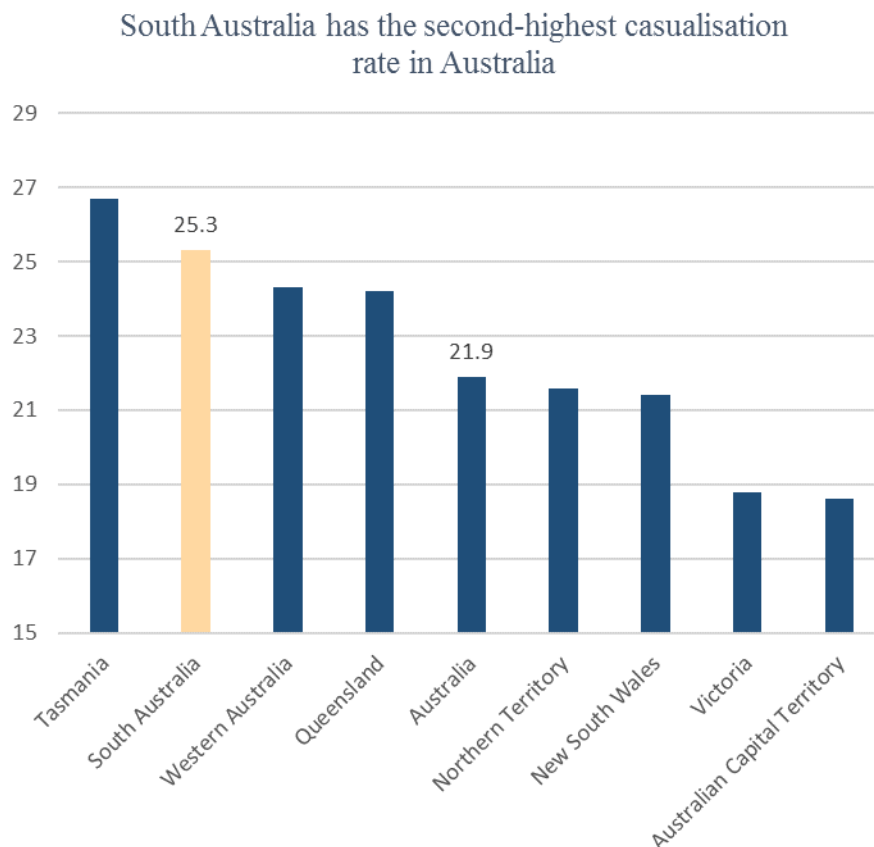


Source: ABS

### Casual workforce

More than one quarter of South Australia's workforce are casual employees. 10% of the workforce have identified as underemployed, the vast majority of whom are part time workers looking for more work. The level of casual and insecure work in this State is far too high.

Food and beverage services, other store-based retailing, food retailing, social assistance services, and construction services are the five highest industry sectors using casual workers.



**Source: ABS**

### Casual work and the COVID-19 pandemic

The COVID-19 pandemic highlighted the risk of casual and insecure work on our community's health and safety. A significant number of casual workers, particularly in the hospitality, food and beverage industries, lost their jobs in the first wave of the pandemic.

Casual workers, who either contracted the virus or needed to self-isolate, for 14 days or pending test results, did not have access to paid leave. Another feature of a casualised workforce is for workers to work across multiple employers and locations. This proved crucial to halting the spread of COVID-19, particularly in aged care homes.

In South Australia, the worker who was supposedly responsible for the 3-day lockdown in November 2020, worked in both a medi-hotel in the city as well as a pizza bar at Woodville. The need to work multiple jobs to earn a living wage puts the community, and State, at risk in a pandemic.

### Wage Theft

While South Australia does not currently have wage theft legislation in place, the South Australian Parliament is looking at both the Queensland and Victorian models. An interim report into wage theft in South Australia by a Select Committee of the Legislative Council has found widespread exploitation of workers who have been deprived of wages, superannuation and other entitlements,



workers who were subject to intimidation, loss of employment and for some, visa status leading to deportation.<sup>4</sup>

Recent media coverage in Adelaide of underpayment of wages to an international student, is testament to those findings.

The most recent audit by the Australian Building and Construction Commission found that most labour hire companies audited did not comply with existing industrial relations laws<sup>5</sup>.

*“An Australian Building and Construction Commission (ABCC) audit of 63 labour hire employers revealed a disappointing 79 per cent didn’t meet all their obligations under Australia’s workplace laws. This included not paying their workers correctly, not keeping proper records and not giving their workers’ pay slips.”*

If this is the level of compliance in a highly scrutinised industry with its own specialist “watchdog” what does that say about the level of compliance elsewhere, in a weakened economy and with new industrial laws permitting further reductions in workers entitlements?

It may be argued that some protection against wage theft is better than nothing. What is currently proposed in the legislation will do next to nothing to end wage theft, its provisions are weak and will not properly address enforcement. The ACTU submission provides a detailed summary on wage theft provisions.

## CONCLUSION

Post COVID-19, it is essential for the economy to recover as quickly as possible. For business to have confidence to invest. Hurting workers is not the answer. Lowering wages and conditions and increasing insecurity in work will lower living standards of working people and mean less spending across the economy.

This legislation should be tackling casual and insecure work, not exacerbating it.

Workers and small business will not be winners from this legislation – the real winners will be big business.

The *Fair Work Amendment (Supporting Australia’s Economic Recovery) Bill 2020* must be either significantly amended, or rejected outright, to appropriately support Australia’s economic recovery.

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<sup>4</sup> Interim Report of the Select Committee on Wage Theft in South Australia  
<https://www.unitedworkers.org.au/wp-content/uploads/2020/07/Interim-Report-of-the-Select-Committee-on-Wage-Theft-in-South-Australia.pdf>

<sup>5</sup> [https://www.abcc.gov.au/sites/default/files/20200603\\_labour\\_hire\\_campaign\\_report\\_final.pdf](https://www.abcc.gov.au/sites/default/files/20200603_labour_hire_campaign_report_final.pdf)