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**Submission into the Senate Standing Committee into Education & Employment's
inquiry into the *Fair Work Amendment (Supporting Australia's Jobs and Economic
Recovery) Bill 2020*.**

February 5, 2020.

Dear Committee members,

The McKell Institute thanks the Senate Standing Committee on Education and Employment for the opportunity to share its perspectives and findings on the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020* (hereafter, the Bill).

The COVID-19 pandemic has tested Australia's policymakers like few events in our history.

In this context, a detailed discussion about the future of our economy is warranted.

As this submission will note, however, the McKell Institute has particular concerns over key provisions within the Bill relating to intentional underpayment (wage theft) and the alterations to casual work arrangements, both topics subject to extensive research work undertaken by the Institute.

Further, as a proud, born and raised South Australian currently residing in Adelaide, I have serious concerns over the consequences of certain provisions of this bill with specific regard to my home state. As the state with the second highest rate of casualisation in the country, South Australian workers are particularly vulnerable to any further deterioration of job security.

Despite South Australia's success in limiting the number of COVID-19 cases, the state's economy has been amongst the worst affected. For much of 2020, South Australia recorded the highest rate of unemployment in the nation, despite recording among the lowest case numbers.

Further, travel bans have severely impacted South Australia's tourism industry; trade tensions with China have impacted our horticultural industry; and the state has received a disproportionately small percentage of the Commonwealth's infrastructure stimulus since the pandemic began.

Additionally, the withdrawal of JobKeeper and JobSeeker at the end of March will further challenge SA's small businesses – especially those in areas where tourism and viticulture are highly prevalent, and will be declining in activity as peak seasons conclude. This is particularly the case in the Adelaide Hills, Fleurieu Peninsula, Kangaroo Island, Barossa and both Eyre and Yorke Peninsulas.

The passage of the Bill as it stands risks compounding a challenging economic situation for the state, places further anxieties on South Australia's disproportionately casual workforce, and fails to sufficiently address the scourge of wage theft in the state, which is already costing the South Australian economy at least \$500 million per year.

Your consideration of this submission is appreciated, and I would be happy to further explain our findings to the committee in person should that be requested.

Sincerely,

Edward Cavanough
Director of Policy, McKell Institute

About The McKell Institute

The McKell Institute is an independent not-for-profit research organisation dedicated to advancing practical policy solutions to contemporary challenges.

The Institute also regularly convenes a bipartisan roster of policymakers, business leaders, trade union leaders, and leading voices from across civil society in regular roundtable discussions and public events.

About This Submission

The bill under analysis by the committee is broad in its remit. Considering this, this submission is focused on Schedule 5 – “Compliance and Enforcement”.

The McKell Institute has published extensively on the intentional underpayment of workers, and the conditions some Australian workers have been subjected to in certain industries. Wage theft is a pernicious and growing economic problem. We witness it in all industries, among all demographics, and in all states and territories. Though there are several industries where intentional underpayment is highly prevalent, such as horticulture and other areas of agriculture, hospitality and construction, intentional underpayment occurs throughout our national economy.

This submission highlights the Institute’s previous work on this worrying trend, and identifies faults within the Bill, concluding that the wage theft provisions in the legislation ultimately fail to realistically address the issue at hand.

About The Author

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Key Findings

Finding 1: The Bill's wage theft provisions are unlikely to lead to a considerable decline in wage theft. The language regarding criminal culpability lacks breadth, overrides stronger laws at a state level, and grants those engaging in intentional underpayment a degree of plausible deniability that makes prosecution challenging.

Finding 2: The Bill's commitment to prohibit job advertisements that advertise a sub-minimum wage does not reflect how nefarious employers, especially fly-by-night labour hire firms operating in vulnerable industries, attract workers into exploitative forms of employment. The Bill would be strengthened if this provision considered penalising intentionally *misleading* advertisements that could be traced back to an original employer, not the individual subcontractor who often is charged with posting and managing a job advertisement.

Finding 3: The Bill does not consider the broader determinants of wage theft in Australia. Without addressing the problems around piece-rate payments, the 88 day regional work requirement of Working Holiday Makers, international students' work-hour restrictions, and lack of enforcement of existing laws, this Bill will do little to end the actions of unscrupulous employers who exploit vulnerable workers.

Finding 4: Some of the key provisions in the legislation, such as the capacity to circumvent the Better Off Overall Test (BOOT), the implementation of agreements of up to 8 years on greenfield projects, and the way in which casual employment has been broadly defined, risks placing additional downward pressure on wages growth nationally. This will be particularly impactful in states such as South Australia, where higher rates of unemployment and the economic headwinds forecast as a result of the JobKeeper and JobSeeker wind-downs are likely to create real challenges for workers in Q2 and Q3 of 2021.

Underpayment and exploitation in the Australian economy

Key Points

1. Wage theft and other forms of labour exploitation are commonplace throughout the economy.
2. McKell Institute research has consistently demonstrated the scale of the issue, and presented actionable recommendations that would end the practice.
3. South Australia is among the states exposed to poorly designed wage theft laws at a federal level, given its poor regulations on labour hire and lack of criminal sanctions for wage theft offenders in the state.

McKell Institute's previous work on wage theft

The McKell Institute has published several major works on wage theft and issues related to wage theft, including *The Economic Cost of Wage Theft in South Australia (2019)*, *Wage Theft, Economic Distress (2018)*, *Ending Wage Theft (2019)*, and *A Fairer Pathway (2020)*, which examined the problems within Australia's immigration framework that is leading to widespread exploitation of temporary migrants.

Most recently, in December 2020, the Institute published *Blue Harvest*, a detailed investigation into the gross underpayment of wages and other exploitative practices that the Institute's researchers, including this submission's author, witnessed in the blueberry industry in Coffs Harbour, in northern New South Wales.

What *Blue Harvest* documented was "disgraceful",¹ according to senior government ministers. The report detailed \$3 an hour wages; workers' forced to pick fruit proximate to active bushfires; working holiday makers living in cramped, overly priced accommodation – including allegations of individuals being charged full rent to live in their cars; over 100 Pacific Islander workers living in shipping container homes that cost \$450 per week; and other workers who simply were not paid and were never able to successfully recover wages through the Fair Work Ombudsman. It also led to widespread media coverage, including a front page story in the Australian, leading to public responses from the Attorney-General and the Agriculture Minister.

As has become increasingly clear over recent years, the findings of the *Blue Harvest* report are not isolated. The Commonwealth Government-commissioned Migrant Worker Taskforce identified that around half of the estimated 850,000 migrant workers in the country, for example, were routinely underpaid.² Non-compliance rates from Fair Work Ombudsman audits consistently demonstrate high rates of underpayment in a variety of

industries. And despite legislative measures such as the *Protecting Vulnerable Workers' Act (2017)*, the Commonwealth has generally demonstrated a degree apathy towards the issue, failing to address the root causes of this economy-wide inequity.

Wage theft is highly prevalent in Australia and has multiple determinants

Wage theft remains prevalent throughout the Australian economy. In *Ending Wage Theft: Eradicating Underpayment in the Australian Workplace*, the McKell Institute identified that underpayment was occurring consistent across all industries. A detailed analysis of every FWO audit campaign identified the breadth of the challenge:

Industry	Campaign	Year	Audits	Per cent finding wage theft	Average recovered
Agriculture, forestry and fishing	Horticulture industry shared compliance program ³	2010	277	12.6%	\$389
Manufacturing	Structural metal product ⁴	2012	253	12.3%	\$1,401
Construction	Insulation installers ⁵	2010	211	11.8%	\$614
	Building & construction ⁶	2014-2015	610	24.6%	\$1,289
Retail trade	Retail ⁷	2010-2011	1866	16.7%	\$775
	Pharmacy ⁸	2012-2013	523	21.4%	\$469
	Motor vehicle ⁹	2013	462	6.9%	\$1,854
Accommodation and food services	Food services ¹⁰	2009	481	16.8-30.8% ¹¹	\$658
	Hospitality (Accommodation, pubs, taverns and bars) ¹²	2012-2013	750	19.6%	\$584
	Hospitality (Restaurants, cafés and catering) ¹³	2012-2013	1066	46.3%	\$442
	Hospitality (Takeaway foods) ¹⁴	2014-2015	565	47.1%	\$627
	Cleaning services ¹⁵	2010-2011	315	23.7%	\$390
Administrative and support services	Clerical worker ¹⁶	2011	1621	8.9%	\$611
	Cleaning follow up ¹⁷	2012-2013	578	27.5%	\$629
	Cleaning services compliance ¹⁸	2014-2015	54	33.3%	\$289
	Security ¹⁹	2009	256	23.4%	\$695
Public administration and safety	Security follow-up ²⁰	2011	392	17.3%	\$649
	Children's services ²¹	2013-2014	420	24.3%	\$751
Health care and social assistance	Health care and social assistance ²²	2014-2015	696	15.2%	\$566
Other services	Hair and beauty ²³	2009	330	23.6%	\$623
	Vehicle repair and maintenance ²⁴	2012	759	19.0%	\$873
	Hair and beauty ²⁵	2012-2013	838	40.0%	\$538

Various	Follow up campaign ²⁶	2010	311	31.5%	\$452
	National compliance monitoring ²⁷	2015	891	17.3%	\$429
	Apprenticeship ²⁸	2014-2016	822	32.1%	\$1,051
	Records and resources ²⁹	2016	1376	3.7%	\$1,845
	National compliance monitoring #2 ³⁰	n/a	479	24.2%	\$704

Figure 1: FWO audit campaigns since 2010, and their findings. Source: The McKell Institute.

Surveys have identified the prevalence of wage theft

Beyond the FWO audits, numerous large-scale surveys have of certain cohorts particularly vulnerable to wage theft and exploitation have been conducted. These surveys have found startling rates of underpayment amongst these vulnerable groups, with up to 81.8 per cent of international students reporting being underpaid.

Author(s)	Year(s) conducted	Sample size	Prevalence of wage theft	Survey of...
Nyland et al. ³¹	2005	200	58.1 per cent	International students
Campbell, Boese & Tham ³²	2014-2015	21	81.8 per cent	International students
Clibborn ³³	2015	1,433	60 per cent	International students
Berg & Farbenblum ³⁴	2016	4,322	46 per cent ³⁵	Temporary migrant workers
Young Workers Centre ³⁶	2016	1,024	19.7 per cent	Young (15-30) workers
		220	36.8 per cent	Young (15-30) retail workers ³⁷
Hospo Voice ³⁸	2017	624	76 per cent	Victorian hospitality workers

Figure 2: Past surveys into wage theft and underpayment among various cohorts. Source: various.

Existing laws and enforcement regimes are inadequate

Governments at state and federal levels have consistently failed to pass thorough legislation aimed at addressing the myriad determinants of wage theft. Though the Bill creates a new criminal penalty for intentional underpayment, which is broadly welcomed, this submission notes concerns that the Bill fails to fundamentally address some of these root causes, and without further enforcement, is unlikely to end the prevalence of intentional underpayment in the Australian workplace.

The Bill is unlikely to minimise the prevalence of wage theft

Key Points

1. The criminal sanctions in the bill are not sufficient, and concerns remain over how enforceable the sanctions are.
2. The proposed illegal job advertisements ban does not reflect the reality of how illegal and misleading job ads are distributed, and other measures exploitative actors use to entice workers into underpaid labour.
3. The Bill doesn't address the larger problem of enforcement: the new laws will provide no additional 'boots on the ground' through the FWO to enforce any slightly stricter laws.
4. The Bill is inherently reactive to the issue of wage theft, failing to address the determinants of the problem in the first place, including failures with our immigration system and the 88-day regional work requirement associated with Working Holiday Makers.

Criminalising wage theft is essential

The criminalisation of wage theft of the 'systemic pattern of underpaying one or more employees', as the Bill stipulates, is long overdue. Criminal penalties for wage theft have been legislated in both Queensland and Victoria, but no other jurisdiction has proceeded to do so.

Anti-wage theft advocates have long pushed for criminal sanctions for worst case offenders. It is important, however, to but not criminal sanctions without appropriate levels of enforcement, not criminal sanctions that are written in a way that makes prosecution improbable.

Definition of 'dishonest' does not align with state definitions and could lead to fewer prosecutions

Schedule 5, part 7, Division 1, Line 6 refers to the definition of 'dishonest' conduct. A determination of whether the alleged offender has been dishonest in his or her employment practices is conditional to whether the individual will be found liable for intentional underpayment.

This submission notes that the definition of 'dishonest' is broad. The relevant clause states:

"Dishonest means:

- a) Dishonest according to the standards of ordinary people; and*
- b) Known by the defendant to be dishonest to the standards of ordinary people. “*

It is unclear why the second definition of dishonesty (“known by the defendant to be dishonest to the standards of ordinary people”) is required. There are some concerns that this particular wording adds unwarranted subjectivity into the definition of dishonesty, thus making prosecution more complicated. It should be noted that the expanded definition of ‘Dishonest’ is not found in either Victoria’s or Queensland’s legislation criminalising wage theft within those jurisdictions.

Terms of punishment are weaker than existing laws

This submission notes that the maximum term of imprisonment for serial offenders in the Bill is four years imprisonment. This is much weaker than the laws passed in Victoria, which could lead to 10 years imprisonment for worst-case offenders, and acts as a stronger deterrent.

Criminality must be coupled with genuine enforcement

As with any new criminal sanction, the change in the law is relatively ineffective unless it is coupled with the appropriate degree of enforcement. It is unclear that the introduction of a criminal sanction in the Bill will genuinely disincentivise intentional underpayment, given the lack of workplace oversight that currently exists, which the Bill does not fundamentally address.

The wording regarding illegal job advertisements is too ambiguous to apply to most cases, and may punish the wrong individuals

“Division 7, 2, 53: Employers must not advertise employment with rate of pay less than the national minimum wage.”

The language in *Schedule 5, Division 4, 53*, however, is too narrow to apply to a majority of illegal advertisements which see workers exploited, and though perhaps well intentioned, could have adverse consequences, which illustrates a shallow degree of understanding knowledge regarding how wage thieves attract victims.

Use of subsidiaries gives responsible employers plausible deniability on illegal job advertisements

Limiting the wording to ‘employers’ only fails to reflect the way in which nefarious employers, particularly labour-hire firms, use subsidiaries, including loosely affiliated, ‘off the books’ individuals, to advertise jobs at sub-minimum wages across a multitude of platforms.

In horticulture, labour-hire firms often ask staff to post job advertisements on the firms' behalf, and ask those individuals to facilitate the hiring of others. Regularly, the individual that is hired will not even be aware who their employer is, at least not at the point of hiring. The way in which this amendment to the Fair Work Act is worded allows for an employer to maintain plausible deniability if they had utilised a subsidiary to post an illegal job advertisement.

McKell's *Blue Harvest* report found that only 34 per cent job advertisements in the Coffs Coast blueberry season of 2019/20 were posted by ABN registered companies. 15 per cent of advertisements were listed by individuals, who often have no discernible link to a registered business. The opaque nature of job advertisements renders the clause within the Bill extraordinarily difficult to enforce.

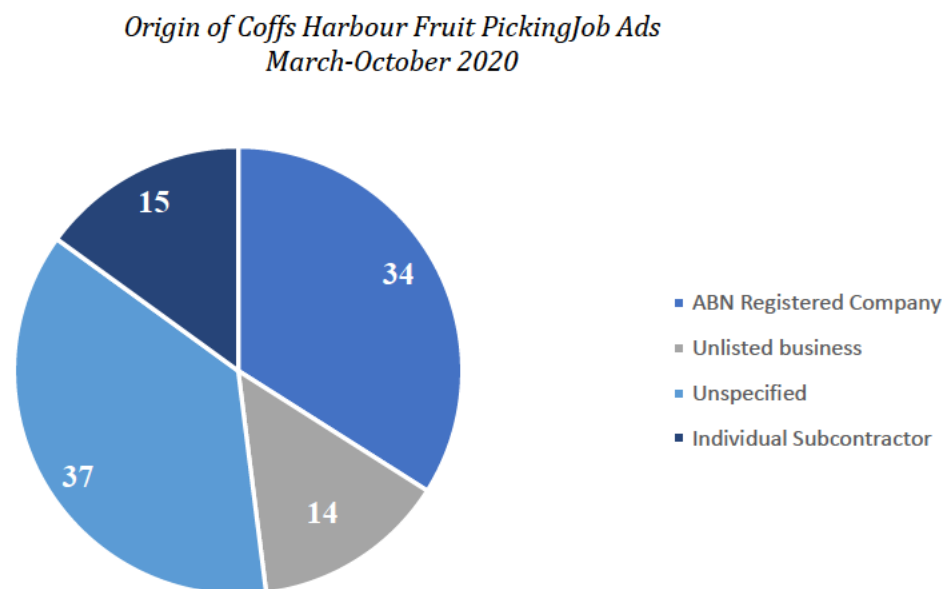


Figure 3: *Origins of job advertisements during the 2020 blueberry season in Coffs Harbour. Source: McKell Institute*

Indeed, there is some risk that the proposed wording could see the liability for posting job advertisements that state wages well below the minimum fall on wage theft victims themselves, given employers' tendency to use their informal and occasionally unpaid 'staff' to post job ads and hire workers on the employers' behalf.

Specificity regarding piece-rates in job advertisements should be included

Further, the clause simply requests that employers 'must not advertise employment with rate of pay less than the national minimum wage'. However, in many cases employers will argue that the rates they have advertised are legal so long as they are referring to piece-

rate agreements. This author has seen job advertisements promising pay of less than \$100 per day in horticulture, though marketed as piece rate positions.

Given the number of hours worked does not have to be listed in job advertisements, those posting job advertisements could simply contend that the job advertised was only meant to be performed for the number of hours each day that would constitute the legal minimum wage. In practice, this does not happen, with workers often being asked to engage in 8-12 hour days in horticulture especially.

The figures below demonstrate the type of advertisement that might fall into this loophole. A Chinese language ad, posted on the message board Yeeyi, advertises fruit picking work for “\$60-100” per day. On the surface, this is an illegally low rate of pay. However, given the hours of work are not listed, the individual who posted the advertisement could credibly claim that they only expected the individual to work three hours. Were that to be genuine, the advertisement would not be in gross violation of the law. In practice, fruit pickers often work much more than three hours per day, but are routinely paid as little as \$3-5 per hour. Further consideration must be made regarding the way in which piece-rate jobs are advertised.

Original Chinese Language Ad	With Translation
<p>web_1591077256_</p> <p>手机已验证: 045*****23</p> <p>澳盛集团 诚聘英才, 业界最高佣金</p> <p>招聘信息</p> <p>所在城市: 其他 Other</p> <p>具体职位: 技师/工/学徒</p> <p>公司名称: Provide Group PTY LTD</p> <p>工作性质: 不限</p> <p>签证状态: 不限</p> <p>经验要求: 不需要</p> <p>学历要求: 请选择</p> <p>招聘人数: 15人</p> <p>工资待遇: 请选择/面议</p> <p>联系人: Ronnychu</p> <p>电话: 0459665223</p> <p>微信: ronnychu0522</p> <p>邮箱: ronny730522@gmail.com</p> <p>NSW 藍莓採手夏令營</p> <p>科夫港藍莓冬季夏令營</p> <p>主題</p> <p>交友: 結交來自世界各地的背包客, 開拓你的朋友圈, 學習各種語言, 交流不同文化, 分享美食聖經。</p> <p>工作: 藍莓採摘相較其他外場較易上手, 但各個農場地勢不同, 有輕鬆也有辛苦, 但只要上手速度就是你最大的競爭對手</p> <p>賺錢: 新手入行頭三天60S-100S, 後面就是看果量拼速度, 100S-150S是絕對可以的, 就等你来挑戰。</p> <p>現在此刻正是加入藍莓夏令營的好時機, 如果你想在第二營或是三營時, 想要有這樣的體驗及待遇, 快快聯繫我和我報名參加吧</p> <p>更多相關資訊請洽詢以下:</p> <p>Line:ronnychu</p> <p>Wechat:ronnychu0522</p> <p>Phone:0459665223</p>	<p>web_1591077256_</p> <p>Phone verified: 045*****23</p> <p>澳盛集团 开发商直销 + 最多房源</p> <p>Job Offers</p> <p>City: Other</p> <p>Specific position: Technician/Worker/Apprentice</p> <p>company name: Provide Group PTY LTD</p> <p>Nature of the work: Unlimited</p> <p>Visa status: Unlimited</p> <p>Experience requirements: Not needed</p> <p>Academic requirements: please choose</p> <p>Number of recruits: 15 people</p> <p>Wages: Please choose/negotiable</p> <p>Contact: Ronnychu</p> <p>phone: 0459665223</p> <p>WeChat: ronnychu0522</p> <p>mailboxes: ronny730522@gmail.com</p> <p>NSW Blueberry Picker Summer Camp</p> <p>Coff Harbor Blueberry Winter Summer Camp</p> <p>Themes Make</p> <p>friends: make friends with backpackers from all over the world, expand your circle of friends, learn various languages, exchange different cultures, and share food bibles.</p> <p>Work: Blueberry picking is easier to pick than other outfields, but the topography of each farm is different, there are easy and hard, but as long as the speed of picking is your biggest competitor to make money, novices start 60S-100S in the first three days, and look at the back For the amount and speed, 100S-150S is absolutely possible, just waiting for you to challenge.</p> <p>Now is a good time to join the Blueberry Summer Camp. If you want to have this experience and benefits when collecting the second or third lottery,</p> <p>please contact me and sign up for it. For more information, please contact the following:</p> <p>Line:ronnychu</p> <p>Wechat:ronnychu0522</p> <p>Phone:0459665223</p>

Figure 4: A Chinese language fruit-picking advertisement, offering pay as low as \$60 per day for a job in NSW. Source: Yeeyi.

Work: Blueberry picking is easier to pick than other outfields, but the topography of each farm is different, there are easy and hard, but as long as the speed of picking is your biggest competitor to

Make Money: **novices start 60\$-100\$ in the first three days**, and look at the back for the amount and speed, **100\$-150\$ is absolutely possible**, just waiting for you to challenge.

Now is a good time to join the Blueberry Summer Camp. If you want to have this experience and benefits when collecting the second or third visa, please contact me and sign up for it. For more information, please contact the following:

Figure 5: Translation of Figure 4.

The Bill does not make the posting of *misleading* job advertisements subject to sanction

Though job advertisements offering sub-minimum wages are a problem, a larger issue is the posting of misleading job advertisements that promise much higher wages than are realistically achievable. Workers interviewed for the McKell Institute's *Blue Harvest* report regularly claimed they travelled to a regional harvest after being promised remuneration over \$1000 per week. This rarely materialised, however, with most research participants in that particular study claiming and showing evidence that they received less than \$500 per week for upwards of 60 hours work. The Bill does not propose any solution to this problem. Indeed, the creation of a civil sanction for advertisements demonstrating subminimum wages may encourage more misleading advertisements, and drive some of the more nefarious employers and labour-hire operators underground.

The Bill does not address core determinants of wage theft in Australia

Broadly, the approach that this proposed legislation has adopted with regards to underpayment is expected to do little to eradicate the practice from the Australian economy. The Institute is unable to identify any aspect to the Bill that will ensure the stricter laws regarding intentional underpayment are enforced, and that workplaces will be inspected more regularly. Similarly, there appears to be no mention, in the explanatory memorandum, of the issue of the FWO being unable to adequately handle its existing case load. Workers who have spoken to the McKell Institute's researchers have noted the complexity and duration of seeking redress through the FWO. This issue needs to be comprehensively dealt with, otherwise new laws alone will be unlikely to alter the status quo.

Labour exploitation in Australia will not end without reform to our immigration system

Fundamentally, this Bill ignores the ‘elephant in the room’ when it comes to the determinants of wage theft in Australia: our immigration system. Among the numerous vulnerable cohorts of workers in Australia are temporary migrants, particularly Working Holiday Makers (WHMs) and student visa holders. Conditions attached to both of these visas are among the largest drivers of exploitative employment in Australia.

There is a significant power imbalance between workers on these visas and their employers. WHMs, for example, must complete 88 days of regional work if they are to remain in the country for a second year. In order to provide the evidence that they have met these conditions, the WHMs must supply to the Department of Immigration pay-slips from an employer. The dependence of these WHMs on receiving payslips from their employer, simply in order to remain in the country, must be addressed.

Similarly, temporary migrants in Australia holding student visas have typically only been allowed to work 20 hours per week, as a condition of their visa. Though this has been relaxed during COVID, that requirement has seen international students often work ‘off the books’, so that they aren’t seen to work beyond their legal obligations. Employers are aware of this predicament, and have too often taken advantage of international students’ fears regarding their visa status.

Making action on wage theft conditional to other reforms diminishes the issue

A broader concern is the manner in which long-overdue action on intentional underpayment has been incorporated into a bill which addresses issues unrelated to the matter. The Government has been aware of the extent of intentional underpayment for several years. The *Protecting Vulnerable Workers Act*,³⁹ which passed the parliament in 2017, for example, was a first step – albeit an relatively inconsequential one – towards ending the scourge of wage theft in this country.

Since the passage of that bill, little has changed on the frontline of worker exploitation in the country. This is due to the fact that, while the *Protecting Vulnerable Workers Act* strengthened civil penalties for employers found to be intentionally underpaying staff, it did little to address the broader determinants of wage theft, especially with regards to enforcement of existing laws, the granting of significant additional resources to entities responsible for addressing wage theft, and the well-documented problems regarding labour-hire firms.

Since the *Protecting Vulnerable Workers Act* was passed in 2017, however, the Government has failed to pass any further legislation extending protections to vulnerable workers. During this period the Government has on numerous occasions expressed its

outrage at the scale of workplace abuses that have emerged on a near weekly basis in the media. Despite this, the Government has committed to action on the issue – imperfect as it may be, as this submission has noted – only if such action is legislated alongside adjustments to industrial relations laws elsewhere that many believe will undermine certain rights and conditions of workers across Australia.

In short, the Government has agreed to act on wage theft, but tied that action to legislation that could lead to a deterioration of workers' conditions in other areas. It is, fundamentally, a political approach – using the plight of exploited workers as a bargaining chip for industrial relations reform that favours the ideological predispositions of the government of the day – that, in the view of this author, is deeply insensitive to the plight of the hundreds of thousands of workers in Australia that are routinely underpaid and exploited.

The unique impact of the Bill on South Australian workers

Key Points

1. South Australia has the second highest casualisation rates in the country, after Tasmania, with over 25 per cent of the state's workforce without access to paid leave.
2. Unlike Victoria and Queensland, South Australia has not made wage theft illegal, nor has it fully enforced labour-hire licensing, meaning that the state's wage theft victims will only be protected by the substandard Federal wage theft regulations proposed in the Bill.
3. Workforces in the state's most vulnerable industries, such as tourism, are already bracing for the impacts of the JobKeeper and JobSeeker drawdown: this will further risk jobs in key regions, including the Fluerieu, Adelaide Hills, Eyre Peninsula, and beyond.

The McKell Institute is concerned about the disproportionate impact the Bill may have on the economic trajectory of South Australia, (the state in which the author of this submission resides, works and is providing testimony to the committee).

Though South Australia has managed COVID-19 with considerable success, its economy is still vulnerable during the recovery phase. Given that economic support measures such as JobKeeper and JobSeeker are due to be withdrawn at approximately the same time as the Bill is to be voted on the parliament, there is a risk this legislation could compound the economic challenges SA will face in Q2 and Q3 of 2021.

South Australia has a casualised, lower paid, higher unemployment labour market

There are several features of the South Australian labour market that leave it poorly placed to manage a further deterioration of workplace security. Chief amongst these is SA's stubbornly high rate of casualisation. South Australia maintains the second-highest casualisation rate, after Tasmania. Additionally, South Australian workers are the second-least remunerated in the country, with median weekly earnings of \$1050, \$100 less than the national median.

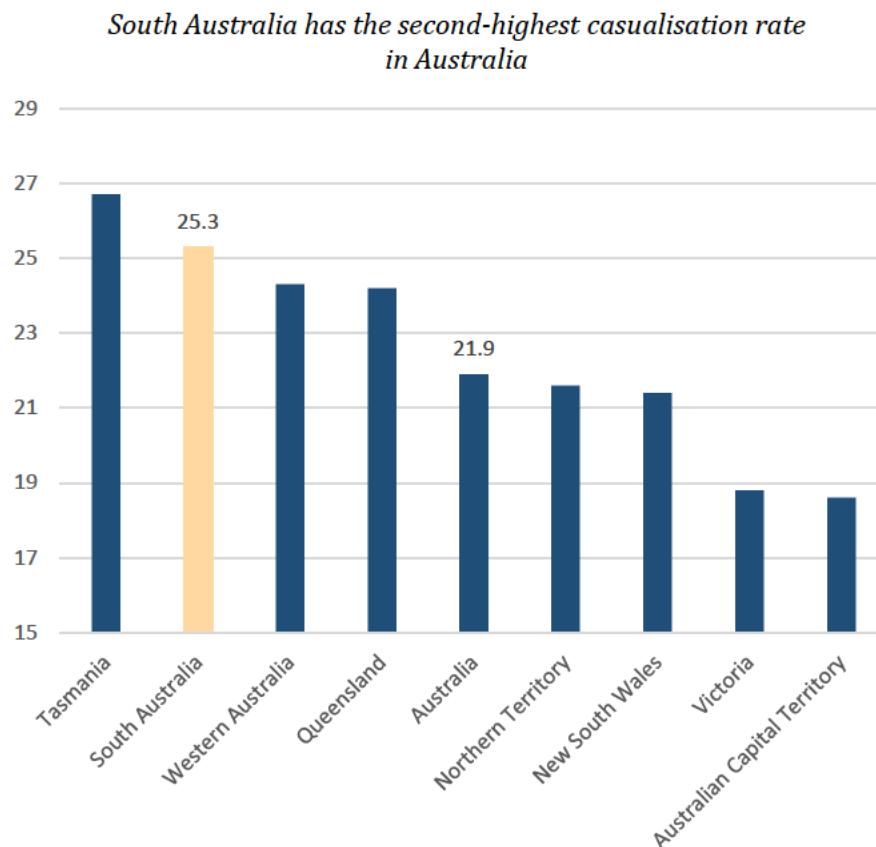


Figure 6: Casualisation rates in Australian states and territories December 2020. Source: ABS

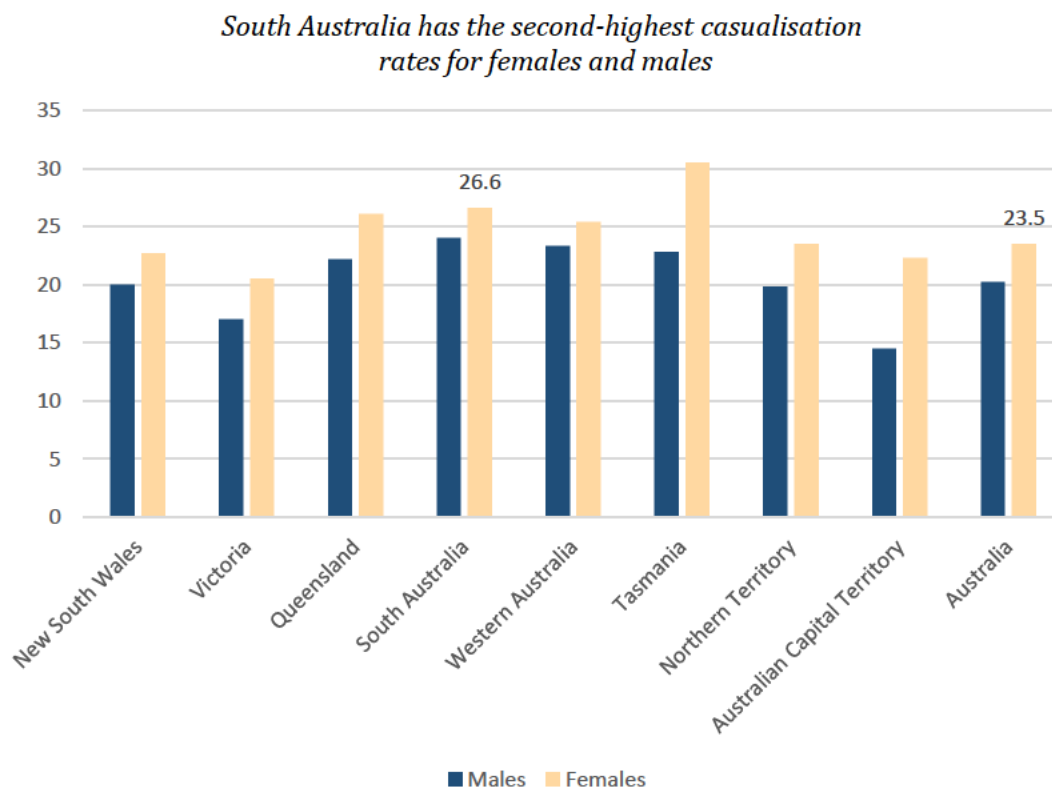


Figure 7: Female and male casualisation rates in Australian states and territories, December 2020. Source: ABS.

The Bill proposes changes to casual definitions that ultimately risk expanding casualisation in Australia. For South Australia, this presents a unique challenge. Though casual forms of work can be beneficial to certain individuals, the reality is that tens of thousands of workers in South Australia have little agency in determining whether their employment will be casual or not. The high rate of casualisation in South Australia is clear. At 25.3 per cent, SA's rate of casualisation is second to only Tasmania. More female workers in the state are casual than males, with 26.6 per cent and 24 per cent respectively.

The Government's policy goals should not include expanding access to casual forms of work, but instead driving an economic recovery that prioritises secure and stable forms of employment. This is a goal with particular relevance to South Australia.

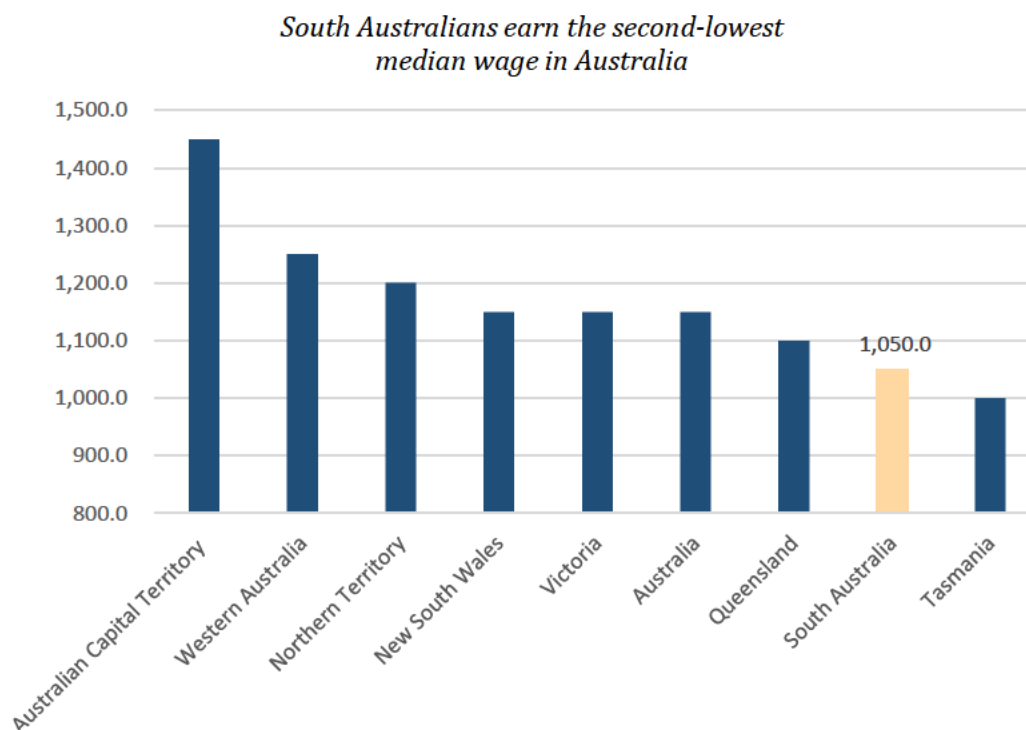


Figure 8: Median weekly earnings across Australia, November 2020. Source: ABS.

Limiting union negotiated EBAs will put downward pressure on wages growth

This submission notes and concurs with the *Centre for Future Work's* submission into this inquiry, which identifies the risk that this legislation will lead to a decrease in union-negotiated EBAs, and an increase in non-union negotiated agreements.⁴⁰ As the Centre explains, the exceptions to the BOOT and new greenfields arrangements ultimately risk producing agreements that keep a lid on wage growth. Further, the fast-track provisions within the legislation, particular the 21-day deadline for the FWC to approve EBAs, risks creating poor agreements, particularly for those employees who are not represented. The capacity to circumvent the BOOT puts workers negotiating without the assistance of a

trade union at risk of ‘inferior wage outcomes’, as the Centre for Future Work argues, which is undesirable in the current low-wage economic climate. Data collected by the Commonwealth Department of Employment consistently demonstrates that EBAs negotiated with union involvement result in stronger wages outcomes. This is demonstrated by the most recent Average Annualised Wage Increase (AAWI) data, which shows that non-union negotiated agreements consistently provide greater wage increases to workers, and are struck for shorter durations of time.

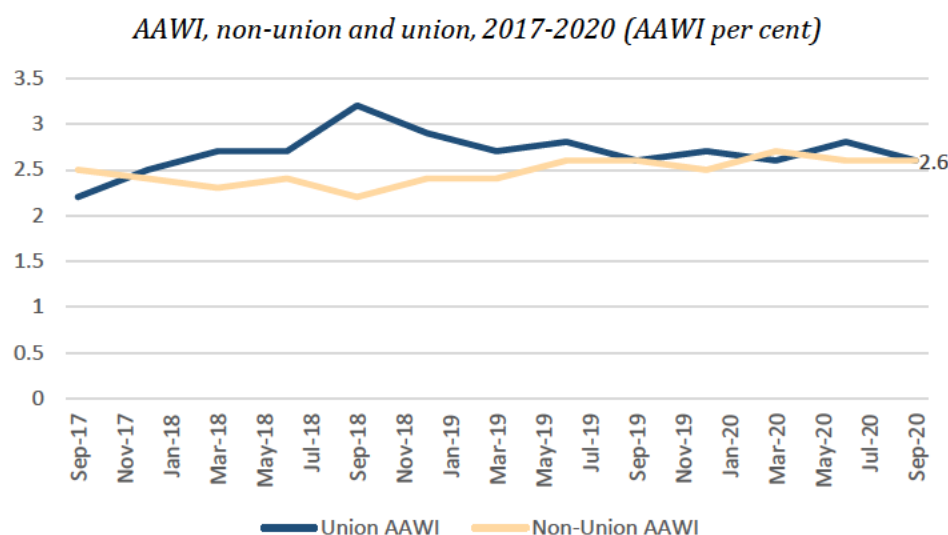


Figure 9: AAWI increases under union and non-union EBAs, 2017-2020. Source: Department of Employment.

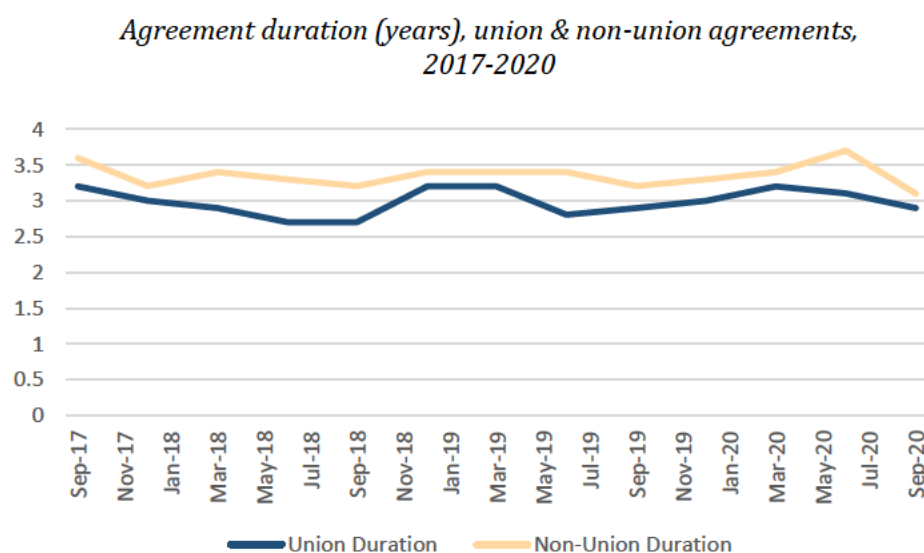


Figure 10: Agreement durations, union and non-union agreements, 2017-2020. Source: Department of Employment.

Given South Australia's comparably weak wages position, and the forecasts from the RBA of weak wage growth in the years ahead, the policy priority for governments, and South Australia's representatives in Canberra, should be to reverse this trend. This submission contends that key aspects of the Bill, especially the capacity for some agreements to circumvent the Better Off Overall Test, and the greenfields agreements on major projects, will only achieve the opposite.

8-year greenfield agreements will place downward pressure on SA wages

The proposal to allow greenfields agreements to be maintained for 8 years will further restrict the capacity of South Australian workers to push for better wages and conditions. The construction industry employs the third largest number of South Australian workers, at over 75,000 people, or 8.9 per cent of the South Australian labour market. The greenfields proposal effectively allows agreements surrounding certain major projects to be set in stone for close to a decade. Given the centrality of the construction industry to the South Australian economy, and the likely increase in major projects due to COVID-19 reconstruction/stimulus efforts, this provision could undermine South Australia's wage growth forecasts moving forward, and should be rejected.

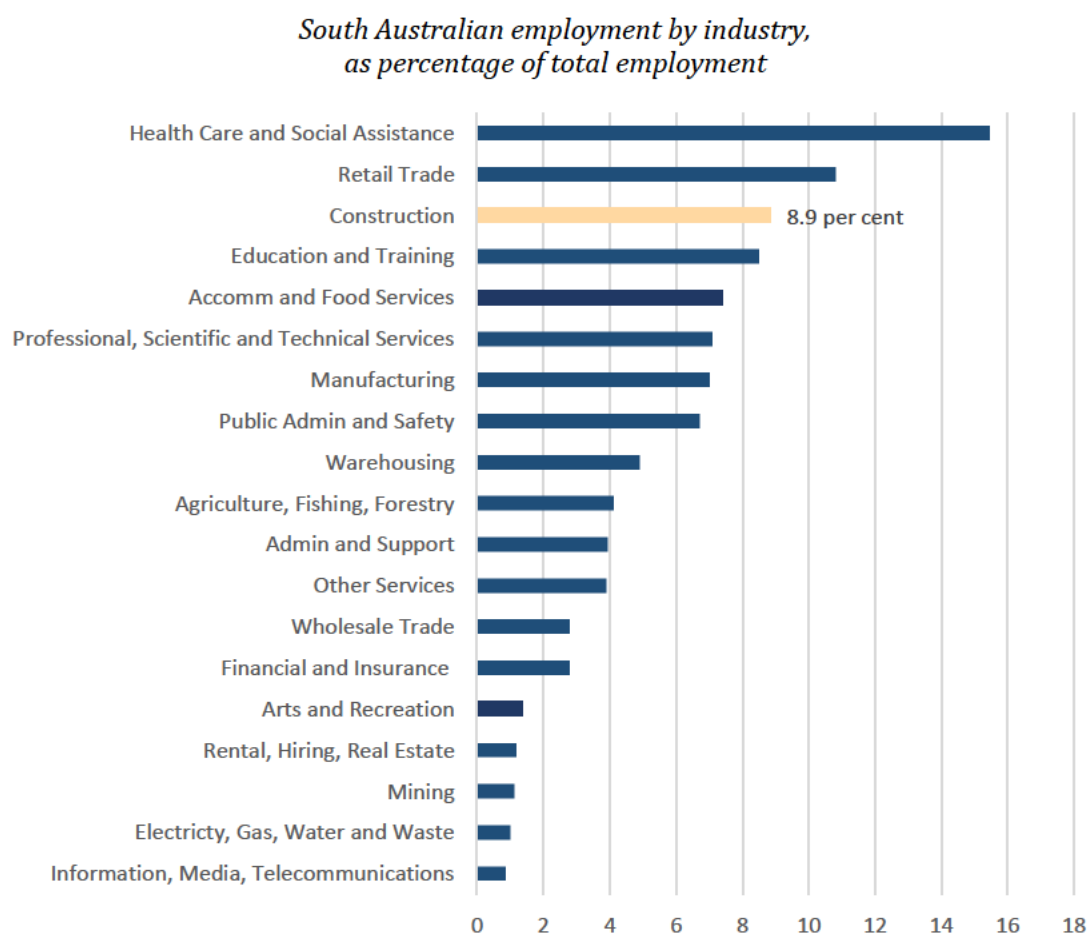


Figure 11: South Australia's labour market. Source: ABS Characteristics of Employment.

SA is likely to be impacted by the drawdown of fiscal support at the end of March

A further concern for the outlook of South Australia's economy and employment rates is the termination of the JobKeeper payment, and JobSeeker supplement at the end of Q1, 2020.

South Australia's economy, like much of the country, has been buffered by these largely successful emergency measures. While there is a consensus that JobKeeper, in particular, cannot be sustained for ever, there are genuine concerns that the termination of the program at the end of the March 2020 will undermine South Australia's economic recovery.

SA has seen a modest tourism boom over the Christmas period, with the Great State tourism vouchers encourage intrastate travel. Businesses in the tourism sector have also been supported by JobKeeper, and the broader economic activity generated by the JobSeeker supplement. With the conclusion of both the JobKeeper and JobSeeker supplement initiatives, and the Great State voucher program, there is real concern that key industries like tourism will be impacted, just as the peak tourism season ends.

This will likely lead to job losses in industries including Accommodation and Food Services, which employs 7.4 per cent of South Australia's labour force. Much of this economic deterioration will occur outside of metropolitan Adelaide, with key tourism regions like Kangaroo Islands, the Adelaide Hills, the Fluerieu Peninsula, and the Yorke and Eyre Peninsula's likely affected.

This context should be considered when assessing the broad economic ramifications of the Bill that is the subject of this submission.

The lack of wage theft regulation in SA leaves the state's workers' exposed

This submission has noted the inadequate nature of the Bill's provisions ostensibly designed to deter wage theft from occurring. This is of particular concern to South Australia, where there are no state laws criminalising wage theft, and where there is only modest enforcement of wage compliance at the state level. South Australia has some incredibly effective organisations and government bodies, including Safework SA, the Working Women's' Center, the Young Workers' Legal Center, and more, which provide essential legal services for those who have fallen victim to wage theft in the state. It has been estimated, however, that up to 1 in 5 South Australian workers experience wage theft to varying degrees, whether that be the gross underpayment of wages as evidence in recent investigations, or smaller infringements.

The scale of the problem is compounded by South Australia's ineffective labour-hire licensing regime. Labour-hire firms are often the most negligent in terms of their compliance. This is not to say a majority of labour-hire firms do the wrong thing – simply that too often, labour hire firms are culpable of underpayment, and regularly 'phoenix'.

Though South Australia does have a labour-hire licensing regiment in place, the South Australian Government has attempted to repeal such legislation. This has worked to minimise the efficacy of labour-hire licensing in SA. Ultimately, this leaves South Australian workers more exposed to wage theft than in jurisdictions with stronger protections, such as Victoria and Tasmania.

It is integral that, should the Bill be passed into law, that the South Australian Government continues to do all it can to prohibit wage theft in the state, as the Bill's measures are unlikely to significantly minimise the occurrence of wage theft in South Australia.

Conclusion

This submission has expressed concern for certain elements of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020*. In particular, it has drawn on the detailed research of the McKell Institute on the issue of wage theft to express concern about the efficacy of the wage theft measures within the proposed legislation.

Further, it has highlighted the Institute's concerns regarding the impact the legislation will have on South Australian workers, who are typically less secure in their jobs, and lower paid, than their counterparts in other states.

It has noted that the timing of the proposed legislation risks worsening the outlook for jobs and wages growth in South Australia. With the reduction of fiscal support measures, JobKeeper and JobSeeker at the end of March, South Australian workers in key industries are likely to enter a tenuous employment position. The aspects of the proposed legislation that work to reduce, in essence, the bargaining power of these workers risks dampening wages growth in South Australia more broadly, stalling the state's slow economic recovery.

The McKell Institute thanks the committee for the opportunity to submit its concerns.

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- ³³ Clibborn, S 2018, Multiple frames of reference: why international student workers in Australia tolerate underpayment, *Economic and industrial democracy*, forthcoming.
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- ³⁵ An additional 15 per cent of respondents were paid between \$15-17. However, because the NMW was within this range at \$16.87 when some respondents were working, Berg and Farbenblum focus on those paid below \$15 as underpaid. Of course, it is likely that this understates the extent of wage theft.
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