

5 February 2021

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
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Canberra ACT 2600

Via email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

To the Secretary,

**Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020**

The Australian Manufacturing Workers' Union (AMWU) represents over 70,000 workers who create, make and maintain in cities, suburbs and regions across Australia. Our members rely on the industrial relations system to defend and deliver improvements to their wages and conditions through a workplace bargaining. The AMWU has a proud history as a leader in worker involvement in workplace bargaining, leading to better wages and conditions in some of our nation's most important industries.

We believe that the changes proposed in the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (the Bill) will not achieve better outcomes for workers. We support and endorse the detailed submission by the Australian Council of Trade Unions (ACTU) to this inquiry.

In our view, the Bill will lead to a reduction in workers' rights, employment conditions and further suppression of wages. This will hurt the workers whose sacrifices and hard work ensured that we were kept safe and healthy through the COVID-19 crisis.

From the beginning of this crisis the AMWU has taken a constructive approach. Our members have been flexible and worked hard to ensure that the goods and services that Australian families and businesses need, know and want were available throughout the pandemic. We have worked closely with government and employers to support Australia's vital manufacturing industry through the challenges as they arose.

Sadly, our recommendations have often fallen on deaf ears. Through the National Covid Coordination Commission process, we pushed a range of different policy ideas to ensure that Australia had a manufacturing-led recovery from COVID-19. But instead, this vital industry is being used as a fig leaf to push for the expansion of the gas export industry.

Rather than supporting the workers who have kept our country running, this Bill foreshadows another lost decade of wage growth, fuels the scourge of insecure work and losses of hard-fought conditions for Australian workers.



## Casual employment

One quarter of all Australian workers do not enjoy the full suite of industrial rights and conditions, including annual leave, sick leave and redundancy pay. Independent research has shown<sup>1</sup> that around half these workers would prefer permanent, on-going employment. While there are many casual workers from whom that style of employment is preferable, the insecurity of casual work is a burden for millions of Australian workers.

With the needs of these workers trapped in casual employment on one hand, and the recent court decisions on the other, it is imperative that the government take the opportunity presented to us now and seek to encourage direct, secure and permanent employment in Australia.

This can be done in two ways, through limiting the casual engagement of workers to those in genuine casual relationships and to assist workers that are engaged as casuals to convert to permanent, on-going, full- or part-time jobs, where the worker chooses to do so. These approaches are considered in the Bill, but the solutions chosen are likely to increase the number of new casual workers engaged and have a negative impact on existing casual workers seeking to convert to permanent employment.

### What to casual employees want?

A critical starting point to any discussion about casual work is an understanding of who casual workers are and what they want. Rather than relying on stereotypes and assumptions, we wish to inform the Committee about what recent research tells us about these important questions.

As part of the four-yearly review of Modern Awards, the AMWU attempted to improve the casual conversion clause in Awards that cover our members (Matter numbers AM2014/196 and 197). As part of this process, we undertook an analysis of survey data that pertained to casual workers, by bringing together different sources, as well as undertaking research of our own. The original submission and one of its key attachments are included as attachments 1 and 2 to this submission.

Details of all three of the surveys referred to below (AMWU, ACTU and Fair Work Commission (FWC)) can be found from page 42 of Attachment 2. This includes data validation, sample assessment and details of the methodology for each survey.

There are a few key findings from that research which we would like to bring to the attention of the committee:

#### 1. Up to half of casual workers want to be permanent

According to survey data presented to the FWC, between a third (ACTU Survey) and half (AMWU Survey) of casual workers interviewed wanted the opportunity to convert to permanent employment (Attachment 2, page 35). This would mean around 1 million Australian workers want the ability to convert to permanent employment.

This data is further confirmed by the FWC's own survey which found that 58% of casual employees wanted to be with the same employer in the same role in 12 months' time. This compares very

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<sup>1</sup> See Attachments 1 and 2



closely with 64% of permanent employees who want the same (Attachment 2, page 41). Casual jobs are not, according to the lived experience of workers, much more likely to be temporary or transitional in the eyes of the casual workers in those jobs, when compared with workers in permanent jobs.

This can be further seen in the FWC Survey results which showed that 83% of casual workers had been with the same employer for longer than 12 months and 24% for longer than five years (Attachment 2, page 4). There are many casual workers in long-term, stable, on-going roles which have all the hallmarks of permanent employment, except for the conditions offered to those workers.

Despite the impression of casual employment as the domain of low-skilled, school aged workers, nearly half of all casuals are aged between 25 and 54 (Attachment 2, page 46). Other than an over-representation of casual workers among those with only secondary school education, casual workers have very similar education attainment levels from certificate level right through to postgraduate degrees (Attachment 2, page 7). Casual employment is not just for young people and students.

This data shows the degree to which casual employment is being used for long-term, ongoing employment of skilled workers during the prime of their working lives.

It should therefore be unsurprising that a large portion of casual workers want to become permanent. With so many skilled workers, in their 20s, 30s, 40s, working for years in the same job, with every intention of remaining in that job, it is little wonder that around a million casual workers would prefer the stability and support provided by permanent employment as they seek to start a family or buy a home.

## 2. Flexibility is important - and available - to all workers, not just casuals

According to research done by the FWC (Attachment 2, Page 37), 98% of casual employees selected 'flexibility' as an important part of their job satisfaction. 95% of permanent employees did as well. Further, 38% of casual employees highlighted flexibility as the most important aspect of their job satisfaction, as did 32% of permanent employees. So we can see that both casual and permanent employees consider flexibility important, and both groups believe that they have it in their current jobs.

Despite the common impression of how casual employment works, the flexibility in casual employment does not come from any additional power of workers to set their own hours. Evidence from the ACTU survey showed that 74% of casual workers had little or no say over how their hours were set. When asked, 90% of casual workers in the AMWU survey also said that they had little control over how their hours were set (Attachment 2, page 17).

Given the lack of control that casual workers enjoy, and the evidence that both casual and permanent employees value and use workplace flexibility, we submit that casual employees enjoy the same level of practical flexibility as permanent employees. This is because permanent workers have access to many types of paid leave which casual employees do not. Further, permanent employees have the additional benefits of guaranteed hours, redundancy benefits and annual leave, which make it easier to make long-term plans – something denied to casual workers.



In short, converting casual employees to permanent is unlikely to have a material impact on the flexibility of engaging workers in casual employment, it can simple be afforded through other means already at the disposal of employers, and already used by permanent full- and part-time employees.

### 3. Most workers do not choose to be casual

Survey evidence from the AMWU and ACTU surveys show that most casual workers did not choose to enter that type of employment relationship in the first place. 56% of the respondents to the ACTU survey and 79% of the AMWU respondents indicated that they were never offered a choice other than casual employment (Attachment 2, page 34). Fewer than 1 in 5 casual workers surveyed were offered a choice and chose to become casual.

Asked why they continued to work as a casual employee, nearly half of the respondents (49%) indicated that no other work was available, while 44% chose to remain as a casual employee (Attachment 2, page 33). This further confirms the findings above that around half of casual workers would prefer to be in permanent employment.

#### Manufacturing workers worse off under new casual conversion rules

Under clause 11.5 of the Manufacturing and Associated Industries and Occupations Award (the Manufacturing Award), clause 11.6 of the Graphic Arts, Printing and Publishing Award and clause 11.6 of the Vehicle Repair, Services and Retail Award (among others) casual employees that are engaged for a period of six months have a right to convert to permanent employment.

Under the changes in the Bill, these workers would be forced to wait an additional six months before having any right to convert to permanent employment.

In addition, the proposed casual conversion scheme, compared to comparable casual conversion provisions in both Modern Awards and Enterprise Agreements will only apply to a very limited number of workers under the proposed s.66B and s.66F.

This is because the proposed s.66B and s.66F require the employee to have “worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee”.

By distinction clause 11.5 of the Manufacturing Award requires only that a casual employee not be an “irregular casual employee” in order to have an entitlement to convert. Irregular casual employee being defined as an employee who “has been engaged to perform work on an occasional or non-systematic or irregular basis.”

This is similar to the threshold that is applied to assessing whether a casual is eligible to apply for an unfair dismissal remedy which is whether the employee was employed on a “regular and systematic basis” and had a “reasonable expectation of continuing employment on a regular and systematic basis.”<sup>2</sup>

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<sup>2</sup> *Fair Work Act 2009* (Cth) s.384(2)(a).



Currently there exists a line of authority dealing with the meaning of regular and systematic employment. For example, in *Yaraka Holdings v Giljevic* it was held that when considering whether employment is regular and systematic, it is the engagement and not the hours that need be regular and systematic.

So the effect of this Bill for workers covered by at least these three awards, will be to raise the bar significantly for eligibility for casual conversion. This appears to be a deliberate policy choice as the 'Note' to s.66B states:

*"Note: An employee who meets the requirements of paragraphs (a) and (b) would also be a regular casual employee because the employee has been employed by the employer on a regular and systematic basis."*

This "note" makes it apparent that it was the intention of the drafters of the legislation that that employees eligible for casual conversion would also be eligible to apply for an unfair dismissal remedy in the unfortunate event of their termination, but that the reverse isn't necessarily true.

In the AMWU's submission, this apparent decision to raise the bar will make an already difficult to access workplace right completely irrelevant to almost all casual workers. If a casual employees' engagement is such that it is 'regular and systematic' they should also be captured by any casual conversion regime.

The focus in the proposed ss66B and 66F in the Bill on the requirement for a casual employee to work regular hours for a period of at least six months and be employed by the employer for at least twelve months flies in the face of this principle of "regular and systematic employment" which is a principle which is well understood.

For example, see the 'Casual Case Study' below where the AMWU represented two casual workers that had been employed by their employer on a regular and systematic basis for over ten years, although there was some irregularity to their hours of work. Such employees may not have been eligible for casual conversion under the proposed ss66B and 66F.

The small number of workers that would likely be captured by the proposed casual conversion provisions is indicative of the more fundamental flaws with this Bill - that casual conversion is no substitute for an employer properly classifying their workers as permanent or casual in the first place.

In other words, it is likely that because the scope of the proposed casual conversion provisions is so narrow that it will only assist those workers which, under the current state of the law, are already considered permanent employees anyway.

Moreover, the proposed ss.66B and 66F provide a significant capacity for employers to either avoid offering their employees full time work or reject their reasonable requests. That is because there is no capacity for a worker to refer the matter to arbitration unless their employer also consents to the matter being arbitrated.

It is the experience of the AMWU that employers will go to great lengths to avoid the existing casual conversion obligations (i.e. those found in industrial instruments such as modern awards and enterprise agreements). This includes even in circumstances where the casual conversion entitlement is provided for in an enterprise agreement which allows the parties to seek arbitration of casual conversion disputes.

For example, in “Casual Case Study” the employer was able to avoid a casual conversion dispute being arbitrated by making an application to dismiss the dispute on the grounds that the Fair Work Commission did not have jurisdiction.

This forced the AMWU and its members into protracted legal proceedings which took almost two years to resolve (including an appeal).

This case study reveals the extent to which employers will go to avoid disputes about casual conversion being arbitrated. In this context it is difficult to envisage a scenario where an employer that has not offered an employee conversion to permanent employment under the proposed s.66B or that has rejected a request made under s.66H, consenting to an arbitration of the dispute.

Practically speaking, this will mean that the only mechanism of enforcement will be for a casual employee to take their employer to Court. This would likely be beyond the means of many if not most workers.



### Casual Case Study

In August 2018, the AMWU submitted casual conversion request forms on behalf of two of its members who had been employed on a regular and systematic basis for almost ten years in one case, and for more than ten years in the other case by a large and well-known employer in Tasmania.

Although the employees in question had been working on a regular basis there was some variation to the times at which they were working.

In September 2018, the individual members were called into separate meetings and told that their requests could not be accommodated because the Employer did not have any job vacancies. This is despite the workers having been with the employer for more than 10 years.

This was put into dispute in October 2018 and unsuccessfully conciliated in November 2018 before being referred to arbitration.

At a directions hearing held in early December 2018 the Employer objected to the matter being arbitrated on the basis that the dispute had been raised under an Enterprise Agreement which had been replaced. On 22 June 2020 the FWC handed down its Decision and resolved the dispute by finding that it did have jurisdiction to arbitrate the matter. This Decision can be found at [2020] FWC 3171.

The Employer successfully appealed this Decision to a Full Bench of the Fair Work Commission. The Full Bench Decision can be found at [2020] FWCFB 5054.

This shows the lengths that employers will go to to avoid existing casual conversion clauses. Without providing casual workers with an easy, low-cost method to enforce their rights to convert, it is our view that the use of these new clauses will not assist workers seeking permanent employment.

### Bargaining

Wages in Australia have been at historic lows since the GFC and the COVID-19 crisis has done little to provide extra support for workers' wage demands. Without significant structural reform to readdress the power imbalance between workers and employers in industrial bargaining, there is unlikely to be any significant improvement in wage outcomes in the foreseeable future, other than through protracted industrial disputation.

The Wage Price Index only grew by 1.3% in the year to September 2020 and the Consumer Price Index increased by only 0.9% in the year to December 2020. Stubbornly high unemployment (6.6%) and underemployment (8.5%) indicate that the demand for working hours significantly exceeds the availability of those hours, which will also keep downward pressure on wages.

The enterprise bargaining system was established to ensure that workers got their fair share of productivity growth. In contrast to stagnant wage growth for a decade, there has been steady improvements in productivity and record profitability. In the year to September 2020, one measure



of productivity (GDP per hour worked) improved by 3.2% - with wages not growing at that level since 2013.

The current bargaining system is failing workers and must be reformed through the lens of improving the capacity for workers to be able to bargain for better wages and conditions in their workplace or across their industry.

### Termination

It is our view that there is nothing in the Bill that will address the current power imbalance between workers and employers which has been allowed to develop under our industrial relations laws and a series of one-sided industrial relations reforms.

Given the current limitations on arbitration and weakness of good faith bargaining orders, there is no way for the FWC to meaningfully intervene in disputes to protect workers or help them to achieve a fair bargaining outcome.

While the FWC has shown a repeated willingness to prevent workers from taking industrial action before it begins – see Sydney Trains dispute<sup>3</sup> – it has not been similarly moved to protect workers from damaging lock outs – see the ESSO dispute at Longford<sup>4</sup> which lasted 700 days and the Glencore dispute at Oaky North which lasted 235 days<sup>5</sup>, among others.

While there is no mechanism by which the FWC can intervene in bargaining to meaningfully assist workers, there is one very significant way that it can intervene in bargaining to assist employers – allowing the unilateral termination of existing agreements. Since the decision of the FWC to approve unilateral applications to terminate existing agreements, the bargaining power between workers and employers, already tilted towards the employer by limitations on industry bargaining and industrial action, now rests almost entirely with employers.

Workers know that their employer has the power to rip up their hard-won wages and conditions and dump them back on the Awards. When Awards represented the industry rate, that would not have been much of a threat. But since the decision to use the Award as a minimum wage safety net, they now represent a major reduction in take home pay, well below a living wage, and provide for a significant loss of conditions for most workers currently covered by a collective agreement.

Faced with threats to their take home pay, most workers have opted to plead to protect their current conditions, at the expense of fighting for fair wage increases, increased job security or the addition of new conditions, such as Paid Domestic Violence Leave. This has directly led to the decade of lost wages growth that workers have experienced in Australia, despite rising profits and increases in productivity.

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<sup>3</sup> <https://www.abc.net.au/news/2018-01-25/sydney-train-strike-cannot-go-ahead-fair-work-commission-rules/9361270>

<sup>4</sup> <https://www.abc.net.au/news/2019-07-05/two-year-fight-at-esso-longford-gas-plant-ends/11284060>

<sup>5</sup> <https://www.themorningbulletin.com.au/news/cfmeu-glencore-share-thoughts-on-end-to-oaky-north/3347395/>



Below we will share three recent case studies showing the impact that the ability of companies to threaten to unilaterally terminate their agreements has had on workplace bargaining.

#### **Bargaining Case Study: Ovato**

Ovato is a media, marketing and printing company with employees across the country. It is a large company with significant assets that suffered a reduction in its printing business in the lead up to, and during, the COVID-19 crisis.

Prior to the advent of JobKeeper, the employer asked staff to agree to a reduction in hours to share work across its existing workforce to avoid redundancies, which was agreed though proceedings before the Fair Work Commission which documented and tracked the changes to hours.

With the expiry of the existing agreement looming, the AMWU inquired about initiating bargaining, with the employees seeking to roll over the existing agreement for 12 months, with no pay rise or changes to conditions. The company rejected this offer, telling employees that redundancies would be required and that the company could not afford to pay them at the rate set out in the EBA.

The workers offered to enter into a “New Approaches” bargaining round, given the financial issues facing the company and the significance of the changes that they were seeking. Ovato declined the offer and instead applied to terminate the Agreement. They claimed that they needed to reduce the redundancy pay to the 300 workers about to lose their jobs to save the rest of the jobs at the company.

Facing a decision between slashing their redundancies or losing all of their hard-won pay and conditions through a termination of their agreement, the workers – including 300 workers who knew they were signing away thousands of dollars in their impending redundancies – agreed to halve their redundancy (from four weeks a year to two).

Following this agreement being reached, Ovato applied to the Courts to restructure their company. The move left the 300 redundant workers in a holding company that was stripped of its assets and, once it was approved by the Court, was immediately liquidated. This left the Commonwealth Government, through the Fair Entitlements Guarantee, to pay the redundancy for these workers.

After begging these workers to reduce their own entitlements so that the company could afford to pay them – Ovato left it to the taxpayers to pick up the tab. The threat of termination forced these workers to vote for an agreement that left them thousands of dollars worse off, all in the name of helping their workmates. Sadly, the underhanded dealings from the company meant that at the end of the day they didn't even have that



#### **Bargaining Case Study: Royal Automobile Association**

RAA is the roadside assistance organisation in South Australia with an agreement that covers around 100 employees. RAA is one of the top ten most profitable companies in South Australia. In 2020 RAA made \$199 million.

Our members have been bargaining with RAA for over 2 years to keep their current conditions – including toilet and meal breaks, which their employer is seeking to reduce – with a modest 3% pay rise. The workers have been taking industrial action, including stop work meetings and protests against the employer's position, and have rejected several offers from the company which included reductions in their conditions.

In order to pressure their workers into accepting cuts to their conditions, RAA said that it would apply to terminate their agreement, which expired on 30 June 2019, if the workers did not approve the agreement put to them. Despite this pressure, the workers rejected the offer and RAA have now lodged an application, which is currently listed for a hearing.

Despite the impasse and employer threats, the FWC can do nothing to help resolve the dispute or help workers to achieve a fair improvement in their wages and conditions. However, it can help the employer by terminating the existing agreement, giving them even more power at the bargaining table.

Given that the agreement expired more than three months ago, the Bill will make no difference to the employer's actions in this case. But even in cases where the agreement has not yet expired, the changes will not stop the threat of termination from hanging over negotiations prior to expiry.

#### **Bargaining Case Study: Streets**

In 2017 Unilever, the transnational corporation which owns popular brands such as Streets Ice Cream, applied to terminate the enterprise agreement applying to its production workers in Sydney after workers, concerned about their job security, rejected Street's first offer. Despite global sales of €53.7 billion in 2017, Unilever sought to reduce working conditions in its Sydney production facility rather than agree with a union plan to save millions while protecting conditions and saving jobs. Workers would have faced a 46% pay cut if the agreement was terminated.

The Australian public reacted strongly to Unilever's attempts to drive down working conditions and heeded our call for a boycott on their products. This prompted Unilever Australia to return to the bargaining table and negotiate a fair replacement agreement which contained no loss of pay or conditions.

Unilever is a major transnational corporation, and the Australian public rightly responded to their attempts to reduce employment conditions with condemnation. But for this public support, Unilever may have proceeded with their application to terminate their enterprise agreement and been successful in delivering wage cuts to their workforce. The Fair Work Commission had no power to intervene in the dispute, except when asked by the employer to terminate the agreement.



### Bargaining Processes

As a union with a broad coverage across many industries and occupations, AMWU members are likely to be adversely affected by the proposed changes to enterprise bargaining processes.

Many AMWU workplaces have a long and proud history of negotiating enterprise agreements in the workplace. Consultation and bargaining are an established aspect of the workplace relationship and while bargaining may be hard, the enterprise agreements that have been made is very likely to be informed and genuine. For many other workers, bargaining still remains out of their reach.

The changes proposed assume a greater level of knowledge and understanding of conditions by workers and employers. It also assumes a workplace where discussion and questions are encouraged. Because this is not the case in many workplaces, the changes proposed will generally only further advantage the employer.

#### 1. Issuing of the NERR

In the AMWU's experience it is unlikely for an employer to issue an NERR to its employees without there having been some interaction with the union prior to the notice being issued. There does not appear to be any reason why the timeframe for the issuing of the NERR needs to be lengthened. The 14 days provides an immediate ability of employees who are not already represented through their union to appoint representatives and have some say in the process.

It should also be noted that in some workplaces the employer does not know who is or is not a member of a union. Any union member in a workplace is automatically entitled to be represented by their union in bargaining. Should an employer not issue an NERR for 28 days, it is unlikely that some union members will be aware of their rights to involve the union, which may limit their ability to participate in bargaining. As well as providing support and advice at the bargaining table, union representation also ensures that workers are aware of the minimum entitlements that should follow from their roster – such as shift loadings and penalty rates – so that they can properly assess the deals that are being put to them rather than just a headline wage increase.

#### 2. The vagueness of pre-approval steps

The removal of clearly defined steps before a vote is taken will also disadvantage workers. Enterprise Agreements can and do contain clauses that are capable of more than one interpretation. If employers are not required to explain the terms of the Agreement to workers how can it be said that there has been genuine consideration and informed agreement?

In some workplaces where the AMWU has been bargaining, and has an active membership, the employer is reliant on the AMWU (and other unions) to keep the workforce informed of developments and explain changes to the Agreement. In other instances, employers have provided the Agreement to workers and provided them with an opportunity to ask questions if they feel the need to. Even when the Fair Work Act requires employers to explain enterprise agreements, employers often seek to minimise their direct involvement in doing so.



The AMWU is not confident that employers will take appropriate steps to ensure that workers are properly informed about what is being offered when there is no explicit requirement for them to do so.

3. Majority agreement does not indicate that there has been agreement to reduce conditions across the workplace

There are a number of problems with the Fair Work Commission being told to have regard to the views of the employer and workers, as demonstrated through a majority vote for an agreement, in relation to the Better Off Overall Test.

The proposed amendments assume an homogeneity in the workforce that will be covered by an enterprise agreement and that all workers are aware of the minimum entitlements that apply to others. This will not always be the case. Agreements that may cover a broad range of workers are likely to contain clauses that will only apply to a portion of the workforce. As agreements are voted up as a whole document, not line by line, a worker may believe that they are better off but will have no idea how others' pay and conditions will be affected by the new agreement.

As the union that covers maintenance trades, it is not unusual for AMWU members to be in a minority within their workplace, and have a different pattern of work than other employees. This can provide them with entitlements to penalties and allowances that do not apply to others. In many instances the number of maintenance workers is much smaller than the number of other workers covered by an enterprise agreement, and their impact on any vote to make the agreement is negligible.

The current process guarantees workers who are in a minority because of the roles they perform, or conditions around their employment (such as apprentices and trainees) will have their conditions assessed properly against the relevant Award to ensure that they are better off overall. The fate of these workers' pay and conditions is largely dependent on the vote of others, not themselves. While they can reject an agreement that might leave them worse off, their votes may have little or no impact on the final result.

When the explicit requirement to explain the document is removed, the risk that not all workers will be better off increases as workers may not be aware of the impact that the agreement will have on some of their coworkers.

It is in order to protect all workers that a better off overall test needs to be able to be properly applied to all workers covered, or likely to be covered, by an agreement.

### **Greenfields Agreements**

The changes to Greenfields Agreements will have the effect of barring entire classes of workers from ever being involved in bargaining for their wages and conditions in the workplace. Workplace bargaining is intended to be a system whereby workers needs and demands can be pursued in a fair and orderly way. The system is intended to allow growth and improvement in wages and conditions that are specific to the changing needs of the enterprise concerned.



Greenfields Agreements remove the workers from this equation entirely, as the agreements are reached between worker's representatives and employers before any actual workers are engaged. Clauses of the Fair Work Act allow for Greenfields Agreements to be reached without the support of a union, meaning workers voices might be entirely absent from the agreements that govern their working lives.

The obvious downsides of Greenfields Agreements are somewhat overcome by the knowledge that most projects are large enough, and will last long enough, that the workers on those projects will have an opportunity to bargain for improved wages and conditions during the life of the project, albeit four years in. Not only does this give workers the chance to improve their wages and conditions, it limits the scope for any undercutting of market rates that might have taken place in the original agreement.

If the Bill is passed in its current form, it will further increase the already significant number of workers for whom the bargaining system is unattainable or irrelevant. At the moment, millions of workers that aren't covered by agreements and instead rely on the Awards and common law contracts to set their wages and conditions never engage with bargaining. If the Bill proceeds in its current form there will be thousands more workers that are being covered by an Agreement, but who will never have had the chance to have a say in the contents of that agreement. While the employers argue this provides them with a level of project certainty, this is at a significant cost to workers, who effectively have all of their rights to organise, bargain and take collective action to improve the wages and project conditions, removed.

We know from our members that there are a wide range of different workers that move from project to project. Under the proposed changes these workers will never get to sit at the bargaining table or having a say in the agreement that covers their workplace. Given the low threshold and loose definitions of major projects, it is likely that this will include workers on CBD construction projects, defense procurement projects (like ship and submarine building) and many more, not just multi-billion dollar resource development projects.

### **Wage Theft**

The AMWU supports the criminalization of wage theft. We believe that wage theft has become a widely practiced business model in significant parts of the Australian economy and this must end. Including a criminal offense sends the right message to employers who are considering underpaying their workers that the behavior is not tolerated.

However, we are concerned that the proposals in the Bill will not have the desired effect. This is because the criminal offense established by the Bill has too high a bar and is unlikely to ever result in prosecution. Given the scale of wage theft around the country, there are clearly a large number of employers willing to risk the existing penalties on the assumption that they either won't be caught or the benefit of committing the offence is cost effective. The "softly-softly" approach from regulators to date has ensured that "crime does pay" because the costs (and chance) of being caught have been significantly lower than the benefits of stealing workers' wages.

Without significant increases to the resourcing of the FWO, or of Unions, to uncover wage theft, and a complete change to the use of existing powers including the capacity to prosecute when wage theft is uncovered, nothing will change. The effect of this Bill may even be to increase incentives for



wage theft as it will override existing or future state laws, which will reduce the number of agencies actively looking out for, and seeking to prosecute, wage theft.

## **Conclusion**

The Bill acknowledges some of the key issues that are undermining the objectives of the industrial relations framework in Australia. These flaws have led to low wages growth, loss of workplace conditions and decreased job security all leading to a poorly performing Australian economy with stubbornly high unemployment and underemployment, and slow economic growth even before the COVID-19 crisis.

Unfortunately, all of the proffered remedies that are contained within the Bill will only make those problems worse. The solutions posed for casual workers, bargaining, Greenfields agreements and wage theft will compound existing problems, leaving workers with even less support from an already broken system.

At a time when employers and workers need to be pulling in the same direction to recover from the health and economic impacts of the pandemic, we see a divisive industrial relations agenda being prosecuted. This can only be seen as a reflection of the lack of maturity of Australian business leaders and will lead to increased workplace animosity and conflict.

Workers need an industrial relations system that helps them to organise and build power in their workplace so that they can work together to ensure that are able to bargain for the wages and conditions that they deserve.

The Bill simply puts more power in the hands of employers, meaning more insecure jobs, low wages growth and cuts to existing conditions.

The Bill is a regressive piece of legislation and it cannot be passed in its present form.

Thank you,

Steve Murphy  
AMWU National Secretary