

# **Victorian Government Submission to the Senate Select Committee on Job Security:**

## **Inquiry into the impact of insecure or precarious employment**

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**Industrial Relations Victoria  
Department of Premier and Cabinet  
1 Spring Street, Melbourne Victoria 3000  
[irv.info@dpc.vic.gov.au](mailto:irv.info@dpc.vic.gov.au)  
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# Executive Summary

Insecure work is not a new phenomenon.

Employers need capacity to scale their workforce up and down to meet changing demand and circumstances. Genuine self-employed independent contractors can carry on viable and successful businesses, accepting that with this choice they carry a degree of risk balanced against the benefit and profit to be gained. The capacity to have greater flexibility and choice over work timing and take-up is valued by some workers.

However, insecure work is problematic for the community at large when it is used to substitute for, or undermine, ongoing or direct employment. The extent and impact of non-permanent working arrangements have outcomes for workers that frequently include financial insecurity, difficulty planning and saving for the future, and stress (including in the management of working time and family commitments). Many workers in this position would prefer more ongoing or permanent forms of work.<sup>1</sup>

All Australians have seen the devastating impact that insecure work can have in times of crisis, such as during the height of the coronavirus (COVID-19) pandemic. For workers who are casual or in insecure forms of work, or workers who have no sick leave entitlements, the pandemic created a dilemma - being potentially forced to choose between self isolation and reduced financial capacity, or their own and broader community health.

The Victorian Government considers that insecure or precarious employment in Australia is too prevalent, and its adverse impacts on individual workers and the broader community warrant intervention by government, whilst still ensuring that entrepreneurial and innovative businesses are encouraged.

Some key points covered in this submission include:

- In 2017, for the first time since these statistics have been collected, the proportion of employed Australians filling a standard job fell below 50 percent. Less than half of employed Australians now work in a permanent full-time paid position with basic entitlements (like sick pay and paid holidays).
- In total, 72 per cent of new jobs created since the bottom of the coronavirus (COVID-19) economic downturn are without paid leave entitlements.
- The disproportionate impacts of the pandemic on women's employment and economic security has been driven by the overrepresentation of women in casualised employment.

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<sup>1</sup> A Forsyth, [Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report](#), Department of Economic Development, Jobs, Transport and Resources, State Government of Victoria, 2016, p.16, accessed 10 March 2021.

- Women are the majority of workers in three of the four industries with the highest incidence of insecure work.
- Insecure work has been identified in numerous inquiries into wage theft as a contributing factor, due to the fear of losing work.
- There are inadequate protections for non-employee platform workers.

The Victorian Government's strong response to address the impacts of the coronavirus (COVID-19), and key commitment to ensuring the economic security of its community and its more vulnerable cohorts of workers, has been solidly demonstrated both longer term and in response to the pandemic, with specific social policy, industrial relations and economic policies and supports.

But more needs to be done. The Commonwealth Government should:

- improve protections for on-demand/gig economy workers, by working collaboratively with Victoria and other Australian jurisdictions to implement reforms to national work laws identified in the Report of the On-Demand Inquiry (On-Demand Inquiry)
- create any future wage theft offences in line with Victoria's submission to the Senate Education and Employment Legislation Committee Inquiry into the Commonwealth Government's Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill (Commonwealth Bill) introduced on 9 December 2020
- improve legislation regarding independent contractors and provide stronger enforcement to prevent sham contracting
- better target industries and worker cohorts most impacted by the pandemic especially the disproportionate impacts of the pandemic on women's employment and economic security.

# Introduction

- 1 The Senate Select Committee on Job Security (Committee) is conducting an inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:
  - a. the extent and nature of insecure or precarious employment in Australia;
  - b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
  - c. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
  - d. the aspirations of Australians including income and housing security, and dignity in retirement;
  - e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
  - f. accident compensation schemes, payroll, federal and state and territory taxes;
  - g. the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
  - h. any related matters.
- 2 The Victorian Government is pleased to provide the Committee with this submission providing information and drawing on several relevant recent inquiries and significant pieces of research. The submission will primarily focus on Terms of Reference (TOR) (a), (b) and (c) to:
  - provide an overview of the prevalence and impacts of insecure work in Victoria
  - highlight the health, economic and social risks associated with insecure work
  - discuss the impacts of the coronavirus (COVID-19), including the gendered impact of insecure work
  - provide an overview of the key findings and recommendations from the independent On-Demand Inquiry Report
  - describe key Victorian Government initiatives to address insecure work, including a secure work pilot scheme, On-Demand Inquiry and portable long service leave benefits for the community services, contract cleaning and security sectors.
- 3 Some data from 2020 and 2021 is not yet available to fully assess the impact of coronavirus (COVID-19) on the labour market. This is particularly relevant given the imminent cessation of the JobKeeper payments and JobSeeker supplement.
- 4 Throughout this submission, *precarious* and *insecure* work will be referred to as *insecure* work.

# TOR (a) – The extent and nature of insecure and precarious employment in Australia

**Less than half of employed Australians now work in a permanent full-time paid position with basic entitlements (like sick pay and paid holidays).**

**Vulnerable workers including migrant workers, young workers and women are disproportionately impacted by wage theft, by virtue of the fact that they are more likely to be in casual or insecure employment.**

- 5 The Victorian Government considers that insecure or precarious employment in Australia is too prevalent, and its adverse impacts on individual workers and the broader community warrants intervention by government, whilst still ensuring that entrepreneurial and innovative businesses are encouraged.

## **Extent of insecure work and what makes some work arrangements less secure?**

- 6 The term and meaning of *insecure* work has been contested. Some work arrangements will be *insecure* because they do not provide any assurance that work will be ongoing. This may include casual employment, short fixed term employment, independent contracting or labour hire work.
- 7 It is the effect, more than the form of legal engagement, which is most important for the Committee's consideration. The Victorian Inquiry into Labour Hire and Insecure Work described the characteristics associated with insecure work arrangements as including:
- unpredictable and fluctuating pay
  - inferior rights and entitlements
  - limited or no access to paid leave
  - irregular and unpredictable working hours
  - a lack of any say at work over wages, conditions and work organisation.<sup>2</sup>
- 8 As well as the difficulty in making ends meet, unreliable and low incomes associated with insecure work make it difficult to plan for the future. Without permanent work it may not be possible for workers to get a loan or mortgage. Reduced and irregular incomes have a negative impact on retirement incomes for insecure workers.

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<sup>2</sup> Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, p 263.



- 9 Many Australians may be engaged in insecure work in casual, contract, self-employed or labour hire arrangements. In 2017, for the first time since these statistics have been collected, the proportion of employed Australians filling a standard job fell below 50 percent. Less than half of employed Australians now work in a permanent full-time paid position with basic entitlements (like sick pay and paid holidays).<sup>3</sup> Research shows that many workers engaged in insecure work would prefer ongoing or more permanent forms of work.<sup>4</sup>

### Impacts of casual and insecure employment

- 10 In Victoria as at August 2020 (**Table 1**), there were:
- 505,600 casual employees (18.77 per cent of the total Victorian workforce of 2,694,200) (that is, without paid leave entitlements).<sup>5</sup>
  - 231,800 male casual employees (17.03 per cent of the total male Victorian workforce of 1,361,000).
  - 273,800 female casual employees (20.54 per cent of the total female Victorian workforce of 1,333,100).
- 11 The Australian Bureau of Statistics (ABS) provides information about the number of owner managers without employees in each state. This category contains independent contractors and sole traders. At January 2021, there were 374,600 Victorian workers (11 per cent of Victorian workers) who were sole traders or independent contractors in their main job.<sup>6</sup>

**Table 1: Characteristics of employment – Number of persons by gender in Victoria and Australia (August 2020)**

Characteristic of employment	Victoria (000's)	Australia (000's)
<b>Persons</b>		
With paid leave entitlements	2,188.6	8,146.1
Without paid leave entitlements	505.6	2,281.6
Total	2,694.2	10,427.7
<b>Males</b>		
With paid leave entitlements	1,129.2	4,190.7
Without paid leave entitlements	231.8	1,064.1
Total	1,361.0	5,254.8
<b>Females</b>		
With paid leave entitlements	1,059.4	3,955.4

<sup>3</sup> T Carney, J Stanford, [The Dimensions of Insecure Work: A factbook](#), The Australian Institute: Centre for Future Work, 2020, accessed 9 March 2020.

<sup>4</sup>Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, 2016, p 262; J Stanford, [Insecure Work: The New Normal](#), The Australia Institute website, 2018, accessed 24 March 2021.

<sup>5</sup> Australian Bureau of Statistics (December 2020), Table 1c. – Median earnings for employees by sex, state and status of employment, 2004 – 2020, [data set], [Characteristics of Employment Australia, August 2020](#), accessed 29 March 2020.

<sup>6</sup> Australian Bureau of Statistics (February 2021), 'Table 5 Labour force status by Sex, Victoria' [data set], [Labour Force, Australia, Detailed](#), accessed 29 March 2021.

Characteristic of employment	Victoria (000's)	Australia (000's)
Without paid leave entitlements	273.8	1,217.5
Total	1,333.1	5,172.9

Source: ABS Cat. No. 6333.0 *Characteristics of Employment*, Australia, August 2020

- 12 The most significant disadvantages experienced by casual workers are that they are much more likely to experience insufficient hours of work and fluctuating earnings.<sup>7</sup> In some cases, the casual loading, where it is paid, is insufficient to compensate for the value of conditions that casual employees do not receive.
- 13 An Australian Capital Territory Inquiry heard that casual employees also have double the risk of periods of unemployment compared to permanent employees.<sup>8</sup>
- 14 Concern about reductions in shifts can prevent casual workers from raising concerns about health and safety and underpayments or asking for flexibility in their working arrangements. Rostering arrangements can be used as a penalty for raising such issues, including rostering across greater numbers of days, at unfavourable times or for shifts of unfavourable duration.<sup>9</sup> It follows that transitioning casual and other insecure work to permanent employment could contribute to a reduction in wage theft and an increase in workplace safety.<sup>10</sup>
- 15 In its submission to the Senate Committee Inquiry into the Commonwealth Government's Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill (Commonwealth Bill) introduced on 9 December 2020, the Victorian Government<sup>11</sup> supported a robust entitlement for casual workers to be converted to permanent employment following a period of regular employment. In late March 2021, that Bill was significantly amended to achieve passage, leaving only elements relating to casuals in Schedule 1. The provisions introduce a definition of casual employment, provides for casuals to convert to permanent employment after 12 months and permits employers to offset any loadings they paid against any entitlements a court finds they owe.

### Impacts of Fixed Term Employment

- 16 Public sector employees across Australian jurisdictions are more than three times as likely to be on fixed term contracts as private sector employees.<sup>12</sup> This

<sup>7</sup>G Gilfillan, [Characteristics and use of casual employees in Australia](#), Parliamentary Library, Australian Government, 2018.

<sup>8</sup>Standing Committee on Education, Employment and Youth Affairs, [Inquiry into the Extent, Nature and Consequence of Insecure Work in the ACT: Report 3](#), Australian Capital Territory Government, 2018, p.59, accessed 10 March 2021.

<sup>9</sup> Standing Committee on Education, Employment and Youth Affairs, 2018, p.62.

<sup>10</sup> Standing Committee on Education, Employment and Youth Affairs, 2018, p.105.

<sup>11</sup> Inquiry into the Commonwealth's Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020, [Submission by the Victorian Government](#), 5 February 2021, p.14.

<sup>12</sup> G Gilfillan, [Trends in Use of non-standard forms of employment](#), Parliamentary Library, Australian Government 2018, accessed 09 March 2021; R Bachelor, [Insecure Work and Portable Entitlements: A solution for Australia](#), [online document], Mc Kell Institute, 2021, p.12, accessed 24 March 2021.

means that fixed term employment tends to be higher in many of the industry sectors which have a higher proportion of women, such as education. Some specific initiatives have been introduced in Victoria to address this trend. For example, the 2017 Victorian Government Schools Agreement contains provisions facilitating transition from fixed term to ongoing positions where available. The current VPS enterprise agreement also includes a commitment to pilot a process to convert to permanent employment and a commitment to audit the use of casual and fixed term employment in the VPS.

- 17 The same power imbalances that affect casual employees in relation to the prospect of future work can also discourage fixed term workers from raising concerns about safety issues or suspected breaches of workplace laws. Workers on fixed term contracts may have greater difficulty obtaining home loans or acquiring rental leases. Employees on rolling or consecutive fixed term contracts may experience job insecurity unnecessarily. Whilst fixed term employment may provide greater security than casual employment, it can foster the same insecurity and consequences.

### **Independent Contracting and its consequences**

- 18 Some workers will prefer independent contracting arrangements. Workers may be paid a premium to compensate for the lack of certain leave and other entitlements. If the services they offer are in demand, workers may be able to select between clients. In such circumstances they may have greater job security than workers dependent on a single employer. They may also enjoy high levels of autonomy, pay and job satisfaction.
- 19 However, independent contractors may be exposed to vulnerability when they do not have a comprehensive understanding of infrastructure and requirements of business operations, including insurances and tax laws.<sup>13</sup> Low leveraged (with little or no bargaining power) non-employee workers may also be vulnerable when not in a position to negotiate terms or conditions of engagement.<sup>14</sup> These workers may experience low and variable incomes and, insecurity attached to being easily replaceable and on contracts that are terminable at employer discretion and at short notice.<sup>15</sup>
- 20 Having a high level of autonomy when working is one of the key indicators of genuine self-employment. However, as at August 2020, there were 385,000 independent contractors (of 1.03 million) who indicated they did not have

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<sup>13</sup> N James, [The Report of the Inquiry into the Victorian On-Demand Workforce](#), [on-line document], Department of Premier and Cabinet, State Government of Victoria, 2020, p 129, accessed 08 March 2021.

<sup>14</sup> James, [The Report of the Inquiry into the Victorian On-Demand Workforce](#), 2020, p 67

<sup>15</sup> For example, in Victoria as far back as 2005, the Government passed legislation to assist business information asymmetry in the forestry and transport sectors, which had seen a high level of business failures, Victorian Legislative Assembly, [Second Reading](#), 01 May 2019.

authority over their own work (37 per cent).<sup>16</sup> Other data that may provide an indication of how many people are engaging in platform arrangements (and potentially insecure work) is the number of applications for an Australian Business Number (ABN).

- 21 The late Mr Michael Andrew, Chair of the Black Economy Taskforce Advisory Board, commented that between the 2011–12 and 2017–18 financial years there was a 40 per cent increase in ABN applications by individuals.<sup>17</sup> A Commonwealth Treasury paper on the ABN system indicated that the growth of the gig or sharing economy may have played some part in the increase.<sup>18</sup>

### **The impact of insecure secondary employment**

- 22 Workers who supplement income through second jobs often experience job insecurity. They may be under-employed in their primary roles or experience variable or inadequate income. Holding obligations to multiple employers can create further uncertainty and anxiety.
- 23 Secondary jobs are more likely to be insecure. Whilst the proportion of workers who have secondary jobs has been stable recently, this followed an increase from 14.4 per cent in 2011–12 to 15.6 per cent in 2016–17.<sup>19</sup> Only 10 per cent of secondary jobs are ongoing.<sup>20</sup>
- 24 Secondary jobs were impacted by coronavirus (COVID-19) more severely than primary jobs. Between 14 March 2020 and 18 April 2020, primary jobs declined by seven per cent, while secondary jobs declined by 33.3 per cent.<sup>21</sup> While over half of primary jobs have since been reinstated, only a third of secondary jobs have returned.

### **Insecure work and wage theft**

- 25 As demonstrated by recent wage theft inquiries, it is not uncommon for wages, superannuation or loadings to not be paid in part, or at all.
- 26 Several jurisdictions have held inquiries into the prevalence of wage theft in their States and the manner in which it occurs, including Queensland, South Australia and Western Australia. All of those inquiries found widespread and systemic wage theft, disproportionately impacting the most vulnerable workers in the

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<sup>16</sup> Australian Bureau of Statistics, (August 2020), 'Table 11 – Independent Contractors by whether had authority over own work, industry and occupation' [data set], [Characteristics of Employment, Australia](#), accessed 29 March 2020.

<sup>17</sup> M Andrew – Chair Black Economy Advisory Board, [Submission to the Inquiry into the Victorian On-demand Workforce](#): Submission 4, p 2.

<sup>18</sup> Australian Government, [Tackling the Black Economy, Designing a modern Australian Business Number system: Consultation Paper](#), [online document] The Treasury, 2018, p 4, accessed 24 March 2021.

<sup>19</sup> Australian Bureau of Statistics (December 2020), Table 1 Total all industries, [Labour Account Australia](#), accessed 30 March 2021.

<sup>20</sup> R Bachelor, [Insecure Work and Portable Entitlements: A solution for Australia](#), Mc Kell Institute, 2021, p 19, accessed 08 March 2021.

<sup>21</sup> Bachelor, [Insecure Work and Portable Entitlements: A solution for Australia](#), 2021, p.19.

- community.<sup>22</sup> Insecure work is identified in almost every inquiry into wage theft as a contributing factor as these workers are in fear of losing their job, or of not being offered further work, if they make a complaint.
- 27 The McKell Institute report on eradicating wage theft identified vulnerable workers as disproportionately impacted by wage theft. Vulnerable workers included migrant workers, young workers and women, by virtue of the fact that they are more likely to be in casual or insecure employment.<sup>23</sup>
- 28 The Victorian Government passed legislation in 2020, to commence from 1 July 2021, establishing criminal offences for wage theft and related record-keeping offences.
- 29 As well as the individual adverse impacts, insecure work-related wage theft has a negative flow-on impact to the Australian community at large, due to lost taxation and a greater reliance on the social welfare safety net.
- 30 Changes to the *Fair Work Act*, other relevant legislation and awards are needed to expand appropriate protections to workers in insecure work arrangements. As noted in the Victorian Government's recent submission on the Commonwealth's Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020, the proposed amendments (now passed) do not go far enough in providing support and security for casual workers.<sup>24</sup>

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<sup>22</sup> Following its inquiry, the Queensland Government amended its Criminal Code to make wage theft a specific "stealing" offence, enforced by Queensland police. It came into effect on 14 September 2020. Following its inquiry, Western Australia implemented a number of other measures to tackle wage theft, including increased compliance and enforcement and an anonymous wage theft reporting line which also includes information to assist with the resolution of underpayment matters. The South Australian Legislative Council's Select Committee on Wage Theft released their interim report in July 2020, but the Government is yet to make any announcements or commitments on how to address the identified issues. The submissions tabled in the report overwhelmingly called for wage theft to be made a criminal offence. See: T Beech, [Inquiry into Wage Theft in Western Australia](#), Government of Western Australia, 2019, accessed 24 March 2021; <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1921.pdf>.

<sup>23</sup> E Cavanough and L Blain, [Ending Wage Theft: Eradicating Underpayment in the Australian Workplace](#), McKell Institute, 2019, p 20-21.

<sup>24</sup> Inquiry into the Commonwealth's Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020, [Submission of the Victorian Government](#), 5 February 2021.

## TOR (b) - the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

**In total, 72 per cent of new jobs created since the bottom of the COVID-19 economic downturn are without paid leave entitlements.**

**Unemployment and under-employment remain high.**

**Job losses in less secure forms of work, such as casual employment accounted for almost all of the reduction in employment in 2019–20.**

**The incidence of job losses for casuals was eight times that of permanent waged employees**

**The disproportionate impacts of the pandemic on women's employment and economic security has been driven by the overrepresentation of women in casualised employment.**

- 31 Early indications are that the risks associated with insecure work were exacerbated and exposed by the coronavirus (COVID-19) pandemic. Australian governments have responded well to deal with the impacts of the pandemic but should not be diverted by signs of economic recovery into complacency about longer term structural issues in the workplace. Australia's industrial relations laws have generally been built on concepts including a safety net of minimum wages, conditions and leave entitlements for workers.
- 32 As noted earlier, some data from 2020 and 2021 is not yet available to fully assess the impact of coronavirus (COVID-19) on the labour market. This is particularly relevant given the imminent cessation of the JobKeeper payments and JobSeeker supplements, and also the changing workforce profile over this period.
- 33 To consider the extent to which the risks of insecure or precarious work were exposed or exacerbated by the coronavirus (COVID-19) crisis, it is instructive to consider:
- the economic forecast and employment trends
  - the impact of JobKeeper and JobSeeker supplement payments
  - gendered impacts of the pandemic
  - impacts on other cohorts such as young workers.

### **Impact of coronavirus (COVID-19) on employment**

- 34 Workers with low and variable incomes experienced the most significant reduction in working time and income during the coronavirus (COVID-19) pandemic.



- 35 According to the ABS, in 2019 there were 12.8 million Australian workers. Of that number, 2.6 million or 20.2 per cent of workers were casual.<sup>25</sup> By August 2020, the Australian workforce had reduced in size to 12.5 million workers.<sup>26</sup> At that time 2.3 million or 18.2 per cent of workers were casual.<sup>27</sup>
- 36 Job losses in less secure forms of work, such as casual employment accounted for almost all of the reduction in employment in 2019–20. The incidence of job losses for casuals was eight times that of permanent waged employees.<sup>28</sup>
- 37 ABS data indicates that the unemployment rate had fallen to 5.8 per cent in February 2021, but the underemployment rate increased to 8.5 per cent.<sup>29</sup>
- 38 The proportionate decline in casual employment was not because workers were transitioning from casual work to more secure work. It appears to be primarily because casual workers were losing their jobs.
- 39 The Australian jobs recovery commenced in May 2020. Between May and August 2020 employment rebounded by 340,000 workers.<sup>30</sup> However, 200,000 or 58 per cent of the new jobs were casual. A further 14 per cent were owner managers.<sup>31</sup>
- 40 Self-employment increased by over 75,000 positions between May and October 2020, more than offsetting the 70 per cent decline in self-employment during the first few months of the pandemic.<sup>32</sup> Of the 75,000 positions, more than 55,000 were owner managers of unincorporated enterprises without employees. There are now more workers with this insecure status than before the pandemic.
- 41 In total, 72 per cent of new jobs<sup>33</sup> created since the bottom of the coronavirus (COVID-19) economic downturn are without paid leave entitlements.

### **Economic forecast and employment trends**

- 42 Casual employees already earn less in median earnings compared to full-time ongoing employees. In fact, the gap in earnings between casual and full-time employees has widened by nearly seven per cent in Australia over the last 14

<sup>25</sup> Australian Bureau of Statistics (August 2020); 'Table 1b – Median earnings for employees by sex, state and full-time or part-time' [data set], [Characteristics of Employment, Australia](#), accessed 30 March 2021.

<sup>26</sup> Australian Bureau of Statistics (August 2020); 'Table 1b – Median earnings for employees by sex, state and full-time or part-time' [data set], [Characteristics of Employment, Australia](#), accessed 30 March 2021.

<sup>27</sup> Australian Bureau of Statistics (August 2020); 'Table 1b – Median earnings for employees by sex, state and full-time or part-time' [data set], [Characteristics of Employment, Australia](#), accessed 30 March 2021.

<sup>28</sup> D Nahum and J Stanford, [Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic](#), Australian Institute: Centre for Future Work, 2020, p 11, accessed 24 March 2021

<sup>29</sup> Australian Bureau of Statistics (February 2021), [Labour Force, Australia](#), [ABS Website] accessed 30 March 2021.

<sup>30</sup> Australian Bureau of Statistics (December 2020), [Casuals hardest hit by job losses in 2020: Media Release](#) [ABS Website], accessed 30 March 2021.

<sup>31</sup> Australian Bureau of Statistics (December 2020), [Casuals hardest hit by job losses in 2020: Media Release](#) [ABS Website], accessed 30 March 2021.

<sup>32</sup> Nahum and Stanford, [Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic](#), 2020, p 15

<sup>33</sup> Nahum and Stanford, [Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic](#), 2020, p 15

years. In 2019, casual employees earned, on average, 78 per cent of their full-time counterparts' income.<sup>34</sup>

- 43 Historical evidence indicates that economic downturns are followed by increases in economic inequality.<sup>35</sup> This means that low paid insecure workers are likely to find themselves falling further behind after the coronavirus (COVID-19) pandemic, with consequences for their earnings over the long term, and ultimately their retirement incomes and capacity to support themselves without government support.
- 44 Underemployment remains high, relative to pre-pandemic levels (9.4 per cent in November 2020 compared with 8.6 per cent in February 2020).<sup>36</sup> Some underemployed workers will have lost work during coronavirus (COVID-19) and would now be included in elevated unemployment figures. During the recovery the proportion of workers working less than full time hours, including permanent, casual and self-employed workers, has also risen to a record 32.3 per cent.<sup>37</sup>
- 45 By late 2020, Victoria's employment rose by 236,800 people since the trough in September 2020 and full-time employment exceeded pre-pandemic levels in February. The unemployment rate fell to 5.6 per cent to be the lowest since March 2020. This rebound in Victoria's economic and employment growth rates is expected to continue across 2021 and beyond, underpinned by high levels of government support, and the RBA's commitment to maintaining historically low interest rates.<sup>38</sup>

#### **The impact of JobKeeper and JobSeeker supplement payments during the pandemic and their removal**

- 46 Short-term Commonwealth Government payments such as JobKeeper and the coronavirus supplement to JobSeeker reduced income inequality in 2020 and prevented 2.2 million people from living in poverty. However, the structure of JobKeeper has also exacerbated some labour market inequalities. Commonwealth Government policy meant 1.1 million casual employees, employed for less than 12 months, did not qualify for the JobKeeper scheme.<sup>39</sup>
- 47 There is evidence that the significant difference in the incidence of job losses between casual and permanent staff reflects Commonwealth Government policy

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<sup>34</sup> Australian Bureau of Statistics (August 2019), 'Table 1b Median earnings for employees by sex, state and status of employment, 2004 – 2019 [data set]', [Characteristics of Employment, Australia](#), accessed 30 March 2021.

<sup>35</sup> OECD, [In It Together: Why Less Inequality Benefits All](#), [online document] OECD Publishing, 2015, accessed 24 March 2021

<sup>36</sup> Nahum and Stanford, *Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic*, 2020, p 15

<sup>37</sup> Nahum and Stanford, *Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic*, 2020, p 15

<sup>38</sup> Australian Bureau of Statistics (February 2021), [Labour Force, Australia](#), [website], accessed 30 March 2021.

<sup>39</sup> Nahum and Stanford, *Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic*, 2020, p 12



- as well as the inherently flexible nature of casual employment contracts.<sup>40</sup> This may have encouraged employers to sever shorter term casual staff and use wage subsidies to retain long-term or permanent employees.
- 48 There were around 160,000 temporary residents employed in Victoria in 2019. Many of these people were employed in industries most affected by the coronavirus (COVID 19) pandemic, including accommodation and food services.<sup>41</sup> Temporary residents were also ineligible for Commonwealth support from either the JobKeeper or the JobSeeker payments.
- 49 The JobKeeper scheme and JobSeeker supplement are due to cease on 28 March and 31 March 2021 respectively. Following the cessation of these payments there may be further negative impacts on unemployment rates and an increase in insecure work. Without the JobKeeper subsidy, businesses that have not recovered since the peak of the pandemic may not be able to return to pre-pandemic employment arrangements. Employees who lose their jobs in these circumstances may take up casual or platform-based work to ensure some source of income, despite the insecurity.
- 50 The Victorian Government has previously submitted that the Commonwealth Government's JobKeeper support package was a tacit acknowledgement that \$1,500 per fortnight represents a 'living wage'. The JobKeeper payment was set at approximately 70 per cent of median wages and is above the then National Minimum Wage (NMW) of \$1,481.6 per fortnight. However, the JobKeeper program is unique in that it is a specific and time-limited response to Australian businesses affected by the COVID-19 pandemic.
- 51 More significantly, the JobSeeker payment, with the COVID-19 supplement, at \$1,115.70 per fortnight equated to just over 75 per cent of the then NMW. The supplemented JobSeeker payment, despite it also being time limited, is tacit acknowledgement of the minimum income benchmark for a single person without dependants.
- 52 Employees who are unable to find work have instead recently received from the Commonwealth Government an inadequate increase of around \$3.50 a day, leaving much of that group in poverty. A fair and reasonable long-term increase to the JobSeeker payment is required to support those unemployed with the costs of living and finding work, particularly whilst there are still significant areas of the economy impacted by pandemic job losses, such as hospitality, travel and tourism. The pre-pandemic rate is not sufficient. From February to August 2020, employment declined by 69,700 (31 per cent) in accommodation and food services and 26,700 (34 per cent) in arts and recreation.<sup>42</sup>

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<sup>40</sup>Nahum and Stanford, *Briefing Paper: 2020 Year End Labour Market Review: Insecure Work and the COVID – 19 Pandemic*, 2020, p 12

<sup>41</sup> Annual Wage Review 2020–21: Submission by the Victorian Government, 2021

<sup>42</sup> Australian Bureau of Statistics (February 2021), 'Historical data: Table 10 – Form of employment by industry, occupation and educational qualification' [data set], [Characteristics of Employment Australia](#), accessed 30 March 2021.

- 53 The impact of ceasing the JobKeeper and JobSeeker supplement payments may not be fully realised for several months (or longer). These types of payments should be considered as part of a multi-pronged strategy to address insecure work.

**Gendered impacts of insecure work - the disproportionate and multi-faceted impact of COVID-19 on women in the workforce**

- 54 Hours of work, shift patterns and rostering under insecure work arrangements, can reduce a worker's capacity to organise child-care and can have a negative impact on women's participation in the workforce and their longer-term financial security. Unpredictable work hours and less access to paid leave and paid breaks inhibit workers' ability to participate in or commit to family activities, social activities, community life and study. Lack of access to sick leave and carers leave may have an adverse impact on a workers' health, especially where workers are forced to choose between earning an income and working when unwell.
- 55 Customer facing service industries requiring physical proximity, including arts and recreation, accommodation and food services and personal services, have been disproportionately affected by the pandemic. The most severe impacts have been on women, younger Victorians, and workers without post-high school qualifications (with significant overlap between these groups).<sup>43</sup>
- 56 The disproportionate impacts experienced by women dictate that government priority should be to reduce levels of job insecurity in certain industries.
- 57 The pandemic significantly reduced women's jobs in Greater Melbourne, particularly part-time jobs.<sup>44</sup> Comparing February 2020 to October 2020, approximately 109,000 fewer Victorian women had a job.<sup>45</sup> In net terms, women have shouldered 83 per cent of all job losses in Victoria since the start of the pandemic. This compares to 61 per cent of all jobs lost nationally.
- 58 Part-time work generates almost 50 per cent of all women's jobs, compared to 20 per cent of men's jobs. As a result of the pandemic, some full-time workers have moved into part-time employment and lifted part-time numbers. However, February 2020 compared to October 2020 saw a net drop of 55,000 jobs in women's part-time employment.
- 59 Coming into the pandemic, Victorian women's labour force participation rate was at an historic high. On average, women's workforce participation rate throughout 2019 sat at 61.6 per cent, and January 2020 saw a peak at 62.3 per cent. However, by September 2020, this rate had been eroded to 57.8 per cent. By

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<sup>43</sup> Annual Wage Review 2020–21, Submission by the Victorian Government, 2021.

<sup>44</sup> Annual Wage Review 2020–21, Submission by the Victorian Government, 2021.

<sup>45</sup> This compares to a fall of 22,000 jobs among Victoria men.

October 2020, the rate started to improve at 59.4 per cent, but still sat 2.3 per cent lower than its February 2020 rate.<sup>46</sup>

- 60 This means that more women than men have left the workforce completely. The pandemic has left Victoria with a wider gender gap in workforce participation. Compared to the start of the pandemic, there are now 53,900 women fewer Victorian women in the workforce.
- 61 The disproportionate impacts of the pandemic on women's employment and economic security has been driven by the overrepresentation of women in casualised employment. Nationally, women make up 55 per cent of the total casual workforce, and a quarter of all women employees in Victoria work on a casual basis. Women also make up 54 per cent of multiple job holders, indicating women are more likely to be underemployed and therefore more vulnerable to forms of insecure work across the economy.

### **The impact of insecure work on women's retirement income**

- 62 Women make up the majority of workers in three of the four industries with the highest incidence of insecure work.<sup>47</sup> The Association of Superannuation Funds of Australia (ASFA) found that, on average, the superannuation balances of women at the time of retirement is 42 per cent lower than men.<sup>48</sup> This is because women are more likely to move in and out of the paid workforce and between full time and part time work. Women tend to take extended time out of the workforce to have and care for children. When women return to work, they often return on a part-time or casual basis.
- 63 In August 2020, there were 736,200 women self-employed in their main job.<sup>49</sup> Women who are self-employed are less likely to have superannuation than men who are self-employed.<sup>50</sup> This may be because as self-employed workers, they do not have adequate disposable income to make superannuation contributions or believe that investing money back into their business will be more beneficial.
- 64 As a response to coronavirus (COVID-19), rules about early access to superannuation were relaxed, purportedly to enable consumer spending and act as an economic stimulus. The Commonwealth Treasury advised the Senate Select Committee on COVID-19 that, as at 26 July 2020, 1,157,300 women had made an application to access their superannuation early.<sup>51</sup> Despite (or perhaps also because of this), there is evidence that Australian and Victorian women

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<sup>46</sup> Annual Wage Review 2020 – 21, Submission by the Victorian Government, 2021. In comparison, as a result of men's jobs being impacted less profoundly, and recovering more quickly, the overall drop in men's workforce participation rate has now nearly fully recovered, sitting only 0.3 percentage points below the February rate

<sup>47</sup> Commonwealth Government's Review of the Retirement Income System, [Submission of the Victorian Government](#), 10 Feb 2020, p. 12.

<sup>48</sup> R Clare, [An update on the level and distribution of retirement savings](#), Association of Superannuation Funds Australia, 2014, p 17, accessed 18 December 2019.

<sup>49</sup> Australian Bureau of Statistics (August 2020), Table 9 – Form of employment by demographic characteristics [data set], [Characteristics of employment, Australia](#), August 2020, released 11 December 2020.

<sup>50</sup> Clare, [An update on the level and distribution of retirement savings](#), 2014, p 17.

<sup>51</sup> R Bachelor, [The Impact of COVID-19 on Women and Work in Victoria](#), Mc Kell Institute, 2020 p.7, accessed 06 March 2021, In addition, 1,478,600 men had also made an application.

were more worried than men during coronavirus (COVID-19) about their job security and retirement income levels.<sup>52</sup>

- 65 Around 62 per cent of female HESTA members who claimed early access applied for the full amount they had saved.<sup>53</sup> Analysis by economists at AlphaBeta showed that drawing down on superannuation early has a significant detrimental impact on retirement income.<sup>54</sup>
- 66 According to the ABS, the median superannuation balance for women approaching retirement is currently just \$118,600.<sup>55</sup> Many women have no superannuation at all. About one in three women have no superannuation coverage, compared with one in four for men.<sup>56</sup> This is because casual workers, and those who work for multiple employers, are less likely to meet the 15 hour per week threshold for compulsory superannuation guarantee payments to be made.
- 67 To address, in part, some of the gendered impacts of insecure work, the Victorian Government has encouraged the Commonwealth Government to consider amending the *Superannuation Guarantee (Administration) Act 1992* and the *Independent Contractors Act 2006* to support payment of superannuation contributions to independent contractors, gig and self-employed workers.<sup>57</sup>

### Impacts on young workers

- 68 Casual employment is often seen as an entry point into the workforce, especially for young people.<sup>58</sup> Young people are particularly vulnerable in times of economic downturn, with their lack of experience and skills making it difficult to transition from education into a competitive labour market. Hospitality, arts and recreation, and information and communications continue to experience lower levels of employment than before the pandemic.
- 69 A weak labour market in the decade after the Global Financial Crisis of 2008–2009 meant that young workers experienced nearly zero wage growth in real wage rates from 2008–2018.<sup>59</sup> For young people, most new and attainable jobs are casual or insecure.<sup>60</sup> This has forced many young people into precarious positions with too few hours and low pay. A rise in underemployment, especially

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<sup>52</sup> A Carson et al, [Worsening of Australian Women's Experiences under COVID-19: A Crisis for Victoria's Future](#), [online-document] Life Course Centre, 2020, accessed 29 March 2021.

<sup>53</sup> AlphaBeta cited in Bachelor, [The Impact of COVID-19 on Women and Work in Victoria](#), Mc Kell Institute, 2020.

<sup>54</sup> AlphaBeta cited in Bachelor, [The Impact of COVID-19 on Women and Work in Victoria](#), 2020.

<sup>55</sup> ASFA (Association of Superannuation Funds of Australia), [Superannuation Statistics](#), ASFA, March 2021, accessed 29 March 2021.

<sup>56</sup> R Clare, [Superannuation account balances by age and gender](#), ASFA Research and Resource Centre, 2017, p.7, accessed 5 March 2021.

<sup>57</sup> Commonwealth Government's Review of the Retirement Income System, Victorian Government Submission, 10 Feb 2020, p. 33.

<sup>58</sup> [Four yearly review of modern awards – Casual and Part-time employment](#), [2017] FWCFB 3541, [356].

<sup>59</sup> Annual Wage Review 2020 – 21, Submission by the Victorian Government, 2021, p.24.

<sup>60</sup> Ziffer D and Clayton R, (2020), [One in three young Australians is unemployed or needs more hours, and the trend could last a decade](#), ABC News, 2020, accessed 29 March 2020.

amongst young people, has meant that many cannot cover their living costs or save for their future.

- 70 The industries most affected by the coronavirus (COVID-19) shutdowns include food and beverage services, road transport, food manufacturing, adult and community education, administrative services, sport and recreation, and accommodation.<sup>61</sup> According to the HILDA survey, young people (aged 15-24) made up 35 per cent of employees in the worst affected industries, compared with only 14 per cent in other industries.<sup>62</sup>
- 71 Victoria's recovery was affected by the second wave of coronavirus (COVID-19), with reintroduced Stage Three stay at home restrictions beginning in July 2020, and then tougher Stage Four restrictions in August 2020. While employment for young people aged 18–24 recovered to 65 per cent as restrictions eased for the rest of Australia, Victoria's youth employment rate remained at just 46 per cent.<sup>63</sup> As of February 2021, the youth unemployment rate in Victoria was 13.3 per cent.<sup>64</sup> The Commonwealth Government JobKeeper measure excluded 1 million young casual workers, who had been with their employer less than twelve months.<sup>65</sup>
- 72 Faced with fewer job prospects, young people with tertiary qualifications are applying for lower skilled positions in retail and hospitality, increasing competition for the limited, low-paid jobs available. Entering the job market in times of recession can lead to 'scarring', when young people are forced to halt career progression by periods of unemployment.

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<sup>61</sup> R Wilkins et al, [The Household, Income, and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 18](#), Melbourne Institute Applied Economic and Social Research, 2020, accessed 12 March 2021.

<sup>62</sup> Wilkins et al, *The Household, Income, and Labour Dynamics in Australia Survey*, 2020, p.83.

<sup>63</sup> J Kabatek (2020), [5 Charts on how COVID-19 is hitting Australia's young adults hard](#), The Conversation, 2020, accessed 25 March 2021.

<sup>64</sup> Australian Bureau of Statistics (February 2021), 'Table 16 Labour Force status for 15 – 24 year-olds' [data set], [Labour Force, Australia](#), accessed 30 March 2021.

<sup>65</sup> B Silvester (2020), [My sense of identity is falling away: young people pay the heaviest price in COVID recession](#), The Guardian, accessed 29 March 2021.

## TOR (c) – workplace and consumer trends - the On-Demand Inquiry: and its recommendations for change

**Platforms are emerging, growing, and mostly use non-employment models.**

**‘Low-leveraged’ workers (those with limited resources and little if any bargaining power) are accessing work through platforms and legal work status is often ‘borderline’.**

**There are inadequate protections for non-employee platform workers.**

- 74 The On-Demand Inquiry was established by the Victorian Government in late 2018 to examine the extent and nature of the on-demand workforce and economy in Victoria including:
- the effect of the on-demand economy on the labour market and economy
  - the legal or work status of people working with or for platforms in Victoria
  - the application of workplace laws to on-demand workers, whether contracting arrangements are being used to avoid work laws and statutory obligations, and to assess whether work laws are being enforced effectively.

- 75 The recently completed Victorian On-Demand Inquiry Report considered matters directly relevant to TOR (c). The Victorian Government recommends that the Commonwealth should improve protections for on-demand/ gig economy workers.

### **The On-Demand Inquiry and Report**

- 76 The emergence of digital platforms, and their reliance on business models that operate primarily outside of labour market regulation, has put the spotlight on the need to balance flexibility for businesses and consumers with protections for workers.<sup>66</sup> Prior to the Victorian Government’s On-Demand Inquiry, there was little deliberate, transparent consideration of these matters by Australian governments.<sup>67</sup>
- 77 The Report of the On-Demand Inquiry considered workplace and consumer developments and the associated impact on work arrangements in the ‘gig’ or ‘on-demand’ economy.

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<sup>66</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p.185.

<sup>67</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p.185.



78 The Report found that:

- there are sound commercial reasons for Victorian businesses to use on-demand arrangements, including to manage fluctuations in consumer demand
- workers can seek different arrangements at different stages in their life, depending on their preferences, skills and lifestyle,<sup>68</sup> but
- the *mechanisms* relied upon to determine legal work status, which are so critical to confirming whether workers gain many entitlements, protections and obligations, are not always accessible or effective and not serving today's labour market well.<sup>69</sup>

79 Some 'gig' workers engaged under independent contracting arrangements could be considered to experience work insecurity as a consequence of 'sham contracting', with little control over their work environment save for, in some cases, the choice of when to work.

80 Others who operate as independent contractors, through demand for their specialist skills and services, can successfully operate autonomously, choose who they work for and negotiate beneficial terms and conditions. These workers may enjoy greater security and preferable working conditions than many permanent employees.

81 On the other hand, the operations of some independent contractors and micro/small business owner managers may be precarious due to a number of factors such as poor cashflow, reliance on single contracts, or inability to compete with larger firms or operators in the market place due to structural impediments.

82 The Australian labour market's ability to meet the needs of businesses and workers is critical to our future economic success.<sup>70</sup>

83 The focus of the On-Demand Inquiry was on digital platform work, involving the matching of workers and clients via internet platforms or apps.

84 A national survey commissioned by the Victorian Government to support the Inquiry also showed that platform work is more prevalent in Australia than previously thought.<sup>71</sup>

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<sup>68</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p. 9.

<sup>69</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p. 9.

<sup>70</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p. 185.

<sup>71</sup> Research released in June 2019, found that 13.1 per cent of persons in Australia (1,827 of 14,013) have at some time undertaken platform work, and 7.1 per cent were currently working (or offering services) through a platform or had done so in the 12 months before they were surveyed (988 of 14,013). In Victoria, 13.8 per cent had undertaken platform work at some time, with 7.4 per cent doing so at the time of the survey or in the 12 months before they were surveyed: P McDonald et al, [Digital Platform Work in Australia: Prevalence, Nature and Impact](#), Queensland University of Technology, the University of Adelaide and University of Technology Sydney.

85 The Report of the Inquiry noted that there is no distinct 'platform economy'. Rather, platforms are a tool through which on-demand work is accessed.

86 The Report further noted that the community has benefited greatly from the innovation of platforms. When embarking on regulatory change, governments should consider the cost to businesses, so that innovation is not stifled.<sup>72</sup>

### Reasons to act

87 The Inquiry identified the following six key aspects of the current system that are not serving the community well, and that require governments to act:

- there is uncertainty around legal work status
- advice and support about work status is limited and fragmented
- participants in the on-demand economy have no real pathways to determine work status
- platforms are emerging, growing, and mostly use non-employment models
- 'low-leveraged' workers (those with limited resources and little if any bargaining power) are accessing work through platforms and legal work status is often 'borderline'
- there are inadequate protections for non-employee platform workers.<sup>73</sup>

### Key outcomes

88 The Recommendations for change set out in the On-Demand Inquiry Report are directed at the following six key outcomes:

- (a) **Clarify and codify work status:** to reduce doubt about work status and the application of entitlements, protections and obligations for workers and business, and align legislative definitions across the statute books.
- (b) **Streamline advice and support:** for workers whose work status is borderline.
- (c) **Provide fast-track resolution:** of work status so workers and business do not operate with prolonged doubt about the rules.
- (d) **Provide for fair conduct for platform workers** who are not employees through establishing Fair Conduct and Accountability Standards that are principles based and developed through a consultative process with relevant stakeholders.
- (e) **Improve remedies for non-employee workers:** to address deficiencies and anomalies in the existing approach.

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<sup>72</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p. 190.

<sup>73</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, section 7.1, pp. 185-187.



(f) **Enhance enforcement:** to ensure compliance, including where sham contracting has occurred.<sup>74</sup>

**Summary of the On-Demand Inquiry’s recommendations**<sup>75</sup>



89 The Victorian Government recommends that the Commonwealth should improve protections for on-demand/gig economy workers, by working collaboratively with Victoria and other Australian jurisdictions to implement reforms to national work laws identified in the Report of the On-Demand Inquiry.<sup>76</sup>

90 The Victorian Government will continue to advocate to the Commonwealth, to act on the suggested reforms of the national workplace system set out in the Report. The Victorian Government also considers that the Commonwealth Fair Work (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 (now

<sup>74</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, section 7.5, pp. 191-206.

<sup>75</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, section 7.5, p. 184.

<sup>76</sup> Inquiry into the Commonwealth’s Fair Work (Supporting Australia’s Jobs and Economic Recovery) Bill 2020 [Submission of the Victorian Government](#), 5 February 2021, p. 13.

passed in part) missed an opportunity to adopt reforms to national work laws identified in the Report.<sup>77</sup>

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<sup>77</sup> Inquiry into the Commonwealth's Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Submission of the Victorian Government](#), 5 February 2021, p. 13.

## TOR (e) – the effectiveness of existing laws

**Recent Commonwealth proposed amendments are a missed opportunity to reduce inequality and improve job security.**

**Sham contracting arrangements need stronger deterrence.**

- 91 As stated previously and noted in a related recent submission, the Victorian Government considers that all workers should have access to decent working conditions and secure employment. Coronavirus (COVID-19) has proved challenging to individuals, communities, businesses and governments. However, our experiences in managing its effects offer an opportunity to review and if necessary, modify Australia's industrial relations laws to support the broader economic and social prosperity and recovery of Australians post-COVID.<sup>78</sup>
- 92 It is against this baseline that governments should now consider the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies to consider the opportunity to improve conditions and entitlements for insecure workers.
- An opportunity missed: The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020**
- 93 In its recent submission to the Senate Committee Inquiry, the Victorian Government argued<sup>79</sup> that the Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (the Bill) represents a lost opportunity and does little to encourage jobs growth, strengthen the labour market or address insecure employment.
- 94 As noted earlier, that Bill has now passed, retaining only changes to casual employment. The Victorian Government agrees that there is clearly a need to clarify and codify work status – to reduce doubt about that work status and the

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<sup>78</sup> Inquiry into the Commonwealth's Fair Work (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Submission of the Victorian Government](#), 5 February 2021, p. 1.

<sup>79</sup> Victorian Government, '[Victorian Government supplementary submission to the Annual Wage Review 2019](#)', Australian Government, 2019, Paras 1.4 – 1.7.

consequent application of entitlements, protections and obligations for workers and business.

- 95 However, the definition of casual employment approved does not meet that objective. Instead it allows an employee to be treated as casual even though this may not reflect actual conduct. In consequence, some employers will be even more likely to engage casual workers, knowing that by simply applying the casual label they can shift risk and engage workers on an insecure basis, regardless of whether a permanent employee is required.
- 96 The Victorian Government would urge the Commonwealth to reconsider opportunities to reduce inequality and improve job security through review of industrial relations laws, including the *Fair Work Act 2009*. It may also look to Victorian initiatives to improve job security for some workers working in essential services.
- 97 The Victorian Government submits that the current test to establish unlawful conduct under sham contracting laws is too high a hurdle. The On-Demand Inquiry recommended (recommendation 19) that the sham contracting provisions in the *Fair Work Act* be amended so that the current threshold be lowered. Sham contracting arrangements could be better deterred if the legal test was amended to whether an employer “reasonably should have known” that workers engaged by them were to be classified as employees.

## TOR (h) – Other matters - initiatives that address the effects of insecure work

- 98 The Victorian Government has implemented or announced a number of initiatives to address the effects of insecure work, improve working conditions for Victorians and promote more secure forms of employment, including in response to the pandemic and longer term. These include:
- Pandemic support payments
  - Trialling a sick-leave bank for casual employees
  - Developing a Fair Jobs Code
  - Portable long service benefits
  - Criminalising wage theft
  - Regulating labour hire
  - Victorian Jobs Plan.
- 99 The pandemic highlighted the individual and community impacts from the lack of sick leave and carer leave entitlements for casual and insecure workers. While this has been most acute in the transmission risk associated with the coronavirus (COVID-19), it brings to light a key issue regarding the insecurity of many work arrangements.
- 100 Victorian (and Australian) workers should not be required to choose between their livelihoods and their health, the health of their co-workers and customers, or the health and wellbeing of their family and dependents.
- 101 The Victorian Government implemented the Coronavirus (COVID-19) Worker Support Payment that has since transitioned to the Australian Government's Pandemic Leave Disaster Payment. Victorian workers are also able to access a test isolation payment of \$450.
- 102 The COVID-19 worker support payment is intended to help Victorians who are unable to earn an income due to quarantine, self-isolation or caring for someone with the coronavirus. The scheme provides a \$1,500 lump sum payment for a 14-day period for workers. This scheme is temporary in nature and when it concludes, there is no other last-resort payment available to workers who have no access to sick leave.

### **Secure Work Pilot**

- 103 The Victorian Government is developing a Secure Work Pilot Scheme in selected industries with high rates of casualisation and insecure work. In November 2020, the Government allocated \$5 million to develop the design of

the pilot Scheme – to provide up to five days annual sick and carers' leave pay at the national minimum wage for casual and insecure workers (including qualifying on-demand workers) in forms of work that do not otherwise provide for these paid benefits.<sup>80</sup>

- 104 The pilot will roll out in two phases over two years with the occupations eligible for each phase to be finalised after a consultation process that will include workers, industry and unions. The pilot is likely to apply in priority areas which are to be determined (such as cleaning, hospitality and the aged care sector).
- 105 Government is working to finalise the design of the pilot Scheme no later than the first quarter of 2022 to build on the policy intent of the worker support payment by giving Victorian workers greater security in their work.

### **Fair Jobs Code**

- 106 The Victorian Government is developing a Fair Jobs Code (the Code), which will outline standards to be met by businesses that are awarded significant industry grants and that supply goods and services to the Victorian Government. These standards will seek to ensure that these businesses are providing fair working conditions and are compliant with their workplace obligations.
- 107 These outcomes are reflected in the objectives of the Code<sup>81</sup>, which are to:
- (i) Promote fair labour standards in business
  - (ii) Comply with employment, industrial and workplace health and safety obligations
  - (iii) Promote secure employment and job security
  - (iv) Foster and promote cooperative and constructive relationships between employers, employees and their representatives
  - (v) Promote and foster workplace equity and diversity.
- 108 Government is working towards finalising and implementing the Code this year.

### **Portable long service benefits**

- 109 A portable long service benefits scheme has operated in Victoria since 1 July 2019 for specific industries. Workers in the security, cleaning and community services sectors rarely qualify for long service entitlements under traditional long service schemes, due to the contract and project nature of those industries.

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<sup>80</sup> Victorian Government, [Victoria to take first big step to tackle insecure work](#), [media release], Victorian Government, 23 November 2020, accessed 29 March 2021.

<sup>81</sup> ALP Victoria, [Fact Sheet, Victorian Fair Jobs Code](#), ALP Victoria, n d, accessed 29 March 2021.

110 The scheme ensures eligible workers in the three industries can build up long service benefits based on service to the industry as a whole, rather than service with a single employer.<sup>82</sup>

111 Information provided to the On-Demand Inquiry also suggested some industry support for extension of portable benefits to other workers.<sup>83</sup>

### **Criminalising wage theft**

112 As noted above, the Victorian Government has introduced criminal offences for the deliberate and dishonest underpayment of wages and other entitlements (now commonly referred to as ‘wage theft’) by employers and their officers.

113 The *Wage Theft Act 2020*, a standalone Act with offences targeted to the types of exploitative behaviours employers use to withhold lawful entitlements from workers, will commence operation on 1 July 2021. The Act also introduces a strong enforcement regime and a dedicated body to ensure that the laws are effective.

### **Regulation of labour hire**

114 The *Labour Hire Licensing Act 2018* (Vic) was passed at the end of June 2018. The labour hire licensing scheme commencing in 2019 implemented the recommendations of the Inquiry into Labour Hire and Insecure Work.<sup>84</sup> Key obligations include making it an offence for a labour hire provider to operate without a licence and complementary offences for a host to engage an unlicensed labour hire provider.

### **The Victorian Jobs Plan**

115 The Jobs Plan sets out the Victorian Government’s plan for Victoria’s growth and recovery from the severe effects of the global recession. This is underpinned by two key principles:

a) The Government will not leave any worker, sector or community behind. Genuine recovery means inclusive recovery, where every Victorian gets the support they need.

b) The Government will leverage the State’s strengths. Victoria has a range of fundamental strengths that will be critical to our rebuild and our long-term future.

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<sup>82</sup> It should be noted that there are insecure workers in other industries and for whom it is unlikely that they will ever build up long service leave entitlements. This raises the question of whether the tenure of insecure workers substantially is less than permanent employees.

<sup>83</sup> James, *Report of the Inquiry into the Victorian On-Demand Workforce*, 2020, p. 144.

<sup>84</sup> Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report*, 2016.



- 116 The Jobs Plan will provide a targeted, timely economic stimulus that ‘kick-starts’ the economy – getting more Victorians back to work and laying the foundations for a more inclusive and innovative economic recovery.
- 117 Some sectors and groups of workers have experienced a greater economic impact due to the characteristics of the coronavirus (COVID-19) pandemic and the necessary health restrictions. Sectors that are population dependant, like hospitality and residential construction, and sectors that have experienced structural change as a result of changes in consumer behaviour, like business travel and bricks and mortar retail, are likely to experience prolonged employment impacts. There has also been a disproportionate impact on younger and more insecure cohorts of Victorians, in particular casual workers and women.
- 118 The Government’s response is to focus heavily on repairing and supporting participation and employment in the first phase of the recovery, with an emphasis on supporting vulnerable cohorts, particularly through this uncertain period. This support includes boosting workforce participation through labour market programs, coupled with building worker capability through traditional and new approaches to skills.

#### **Targeted support for affected workers and business**

- 119 The Jobs Plan acts immediately to repair and support participation and employment, supporting insecure workers.
- 120 A substantial number of Victorians have been left without a job due to the coronavirus (COVID-19) pandemic or are currently not working and supported through the Commonwealth’s JobKeeper program. Many others have had their hours cut, while a further group of workers has left the workforce. These Victorians will be provided with opportunities to play a role in the State’s recovery. This will include opportunities for further skill development to re-enter the workforce, the development of new skills to switch to the industries that will enjoy significant growth, or simply to get that crucial start in the workforce they need.
- 121 The Jobs Plan includes Jobs for Victoria, a \$619 million initiative to maximise jobs and help Victorians into work. This investment includes 10,000 work placements that will complement Commonwealth initiatives; the promotion of further placements using expert job mentors, and jobs and skills advocates; and it will continue the successful JobsBank program.
- 122 A New Jobs Tax Credit will also be provided to encourage small and medium sized firms to re-employ staff, restore staff hours and hire additional staff. Businesses with annual Australian group wages less than \$10 million will receive a non-refundable credit of 10 cents for every dollar of Victorian wages paid in 2020–21 and 2021–22 above the previous year’s wages.



- 123 This targeted support for business from the Victorian Government reflects the significant role that small and medium sized firms play in the Victorian economy and are a major source of employment, particularly in those industry sectors that have been the most affected by coronavirus (COVID-19). The New Jobs Tax Credit is critical support for employers to recover from coronavirus (COVID19) especially with the imminent withdrawal of wage subsidies from the Commonwealth Government's JobKeeper program. The New Jobs Tax Credit will offset any cost increases, including increases to minimum wages, for small and medium sized firms.

## Conclusion

- 124 Insecure work consequences, exacerbated by the pandemic, require a thoughtful and targeted response by Australian governments at all levels.
- 125 We have seen the positive impacts of various stimulus packages for social inclusion, improved public health, decreased homelessness, workforce participation and unanticipated, quick (although still patchy) economic recovery. That evidence must be harnessed, and the hardships of the Coronavirus COVID-19 period leveraged for broad and ongoing community prosperity.