PER CAPIT

SUBMISSION TO THE SENATE STANDING COMMITTEE INQUIRY INTO FAIR WORK AMENDMENT (SUPPORTING AUSTRALIA'S JOBS AND ECONOMIC RECOVERY) BILL 2020 [PROVISIONS]

Per Capita

5 February 2021

About Per Capita

Per Capita is an independent public policy think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice. Our research is rigorous, evidence-based and long-term in its outlook.

We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

Table of Contents

INTRODUCTION 1

CASUAL EMPLOYMENT 3
ENTRENCHING CASUALISATION 4

PART TIME FLEXIBILITY 7
CASE STUDY 1: HELENA 7
CASE STUDY 2 8
THE THREAT OF THE 'FLEXIBLE PART TIME' CATEGORY 8

BARGAINING 10

CONCLUSION 12

APPENDIX: CASE STUDY METHODOLOGY 13

BIBLIOGRAPHY 14

PER CAPIT

Introduction

The recession precipitated by the COVID-19 pandemic is the most acute economic crisis to face Australia for almost a century. While our collective efforts to contain the virus itself have been remarkably successful by global standards, Australia's economy took a significant hit in 2020, and is not expected to recover to its pre-pandemic levels for at least two years. Many industries and small businesses will continue to struggle even as others resume business-as-usual, especially those that have relied on international workers and immigration, such as tourism, agriculture, aged care, hospitality and higher education.

Despite a strong recovery in asset prices and a falling headline unemployment rate towards the end of 2020, the reality is that Australia's broader economic recovery threatens to take the shape of a 'K' rather than a 'V': that is, some people will do very well, having retained their jobs and saved money during the lock-downs last year, while others will fall deeper into insecurity and poverty. The divide between those with assets, or capital wealth, and those who live pay-cheque to pay-cheque – many of them the workers in essential services upon whom we relied so heavily during the acute phase of the pandemic last year - is growing, and the share of productivity going to wage share has fallen below 50 per cent for the first time in more than 60 years.

Following the first wave of the pandemic, the National Accounts released by the Australian Bureau of Statistics (ABS) for the June 2020 quarter showed that company profits had increased by an extraordinary 14.9 per cent, while wages (categorised by the ABS as 'compensation of employees') fell by 2.5 per cent, the biggest quarterly drop on record[1].

The impact of COVID-19 has exacerbated a decline in the share of national income going to workers that has been evident since the 1970s. Even before the onset of COVID-19, the level of underutilisation in our labour market was unacceptably high and growing year-on-year. Wages have been stagnant for the better part of a decade and show no sign of recovering to a rate of growth that allows working families to keep pace with the inflation of prices in such essential goods and services as housing, energy, health and education.

The sub-title of the Bill to amend the Fair Work Act that is currently before the Parliament is "Supporting Australia's Jobs and Economic Recovery", yet it rests on an assumption that our economic recovery requires a further degradation of the right and incomes of working people. The view that people who have been left without work due to the impact of the pandemic will be desperate enough to accept a job with lower rates of pay and greater insecurity of income than they had before clearly underpins the proposed amendments to the Fair Work Act contained in the Bill. This view is both wrong and dangerous, threatening not only individual living standards but Australia's broader economic recovery.

The provisions of this Bill would not only fail to solve the problems it claims to address, but would actively entrench job insecurity and low wage growth for millions of working Australians. As we will show, while the Bill has been presented as a series of necessary reforms to help both workers and industry respond to the once in a century health and economic crisis, it presents very serious threats to workers and almost seems intended to produce the 'K' shaped recovery that will increase wealth and income inequality in Australia.

The provisions of the Bill that are aimed at providing 'greater flexibility' for employers and workers will systematically weaken existing conditions for workers, further entrenching wage stagnation and deepening insecurity within the Australian labour market. They are designed to further dilute the power of trade unions to organize and bargain for better wages for workers.

In this submission, we analyse three discrete areas of employment law for which the provisions of the Bill threaten particularly adverse outcomes for workers: *casual employment*, *part-time flexibility* and *bargaining*. Per Capita

[1] https://www.abs.gov.au/statistics/economy/national-accounts/australian-national-accounts-national-income-expenditure-and-product/jun-2020

contends that these amendments, and the Bill as a whole, should be rejected by the Parliament, and that the Government should consult more constructively with unions and small business employers in order to ensure that changes to the industrial legislation are in the interests of Australian workers, rather than increasing the power and profits of large companies, as the current iteration of the Bill will most certainly do.

PER CAPIT

Casual Employment

The casualisation of the Australian workforce has long been a drag upon Australia's economy. Over the past 40 years, casualisation has increased from 15.8% of workers in 1984 to a quarter of all workers in 2020 (Australian Bureau of Statistics, 2020; Independent Inquiry into Insecure Work in Australia, 2012, p. 14).

Australians understand casual employment to be offered in situations in which the workforce needs of a business are variable, so that the employer can bring on additional staff in times of high demand and reduce the hours of work offered when demand is lower. There is a community expectation that workers hired on casual contracts will be compensated for their irregular hours and lack of leave provisions through a higher hourly rate of pay ('casual loading') and a reciprocal level of flexibility, in which the worker can accept or decline shifts according to their other work or family commitments. Casual work has also been understood to be of a temporary or short-term nature, or, in cases where a casual position exists for months or years, that the hours of work remain irregular and that such reciprocal flexibility remains in place.

Yet recent analysis conducted by Professor David Peetz (2020, pp. 25–27), a leading expert in employment relations, found that the majority of 'leave-deprived workers' (which is a categorisation analogous to that of casual, as workers have no leave entitlements such as would be expected with a permanent part- or full-time position) have been with their employer for over a year, expect to be with the same employer next year and have predictable, stable hours. It has become clear over recent years that the definition of casual employment has become inconsistent across different industries and employers.

The Government's preferred solution to this definitional problem, as outlined in the Bill, is to include a statutory definition of a casual worker as '*a person who has accepted an employment offer on the basis that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work*' (Porter, 2020, p. xi). Further, the proposed reform would enshrine a universal casual conversion mechanism in the National Employment Standards (NES). This NES reform would compel employers to make an offer of conversion to any casual employee who has been both employed for a period of 12 months *and* has worked 'a regular pattern of hours on an ongoing basis in at least the last 6 months of that period' (Porter, 2020, p. xii).

There is little doubt that this definitional inconsistency has been a key contributor to the increasing prevalence of casual work in the Australian labour market (Buchanan, 2004, pp. 4–14), so an attempt to clearly define in legislation the conditions that must attend casual employment is needed. However, the provisions contained in the Bill to this end are likely to favour employers over workers, and to entrench in law the means by which some employers have excessively casualised their workforces over recent decades, without agreement from their workers and with scant regard for workers' wellbeing.

Entrenching casualisation

While a stronger definition of casual work and the right for casuals to request conversion to ongoing, permanent employment has long been called for by the union movement (ACTU, 2018, 2019), the nature of the reform proposed in the Bill is likely to exacerbate, rather than relieve, the insecurity of hours and income experienced by too many workers in Australia.

While there is a shift in the onus of responsibility for casual conversion from worker to employer, the provision rests on an ill-defined justification of 'reasonable grounds' by which employers would be exempt from making the offer. There insufficient detail provided in the Bill as to what such 'reasonable grounds' might be, meaning that it is impossible to assess whether the grounds invoked to avoid the obligation of offering a long-standing casual employee

conversion to permanent part-time would be considered reasonable by the employee or by an average member of the Australian community.

Further, the benchmark of regular hours for a pattern of six months is easily avoidable by employers – that is, in order to avoid offering conversion, the employer can simply ensure that a worker's hours are sufficiently varied across shifts in the eligible period. The legislation also fails to offer any penalty for employers who repeatedly underestimate their need for the ongoing employment of casual workers and continually renew casual contracts. Finally, there is still an implied onus on the employee to track their hours and prove that they have been working regularly if their employer fails to offer conversion.

At its worst interpretation, the new definition and conversion clause could encourage employers to offer casual employment to all new employees, giving them a year of 'try before you buy' employment for all employees, regardless of the eventual hours worked. Additionally, there is no indication that employers have to prove that they have offered casual employment and file documents signed by both parties with the Fair Work Commission. If this is the case, there is significant room for smaller employers to ignore or avoid their responsibility to offer conversion to casual workers, placing the onus back onto casuals to prove their entitlement to said conversion.

Additionally, there are two key issues with the presented changes to casual work that come from their interaction with other changes proposed by the Bill. The first is the very clear implication that by tightening the definition of a casual employee as being 'a person who has accepted an employment offer on the basis that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work', the employer's ability to use casual employment contracts on a long-term basis is protected by law, regardless of whether the offer of casual employment was replacing a previously permanent job. This provision would make it harder for workers and their union representatives to run cases before the FWC that make the argument that a casual is actually a permanent part- or full-time worker who is integral to the operations of the business.

While there are certainly some seasonal changes that affect some businesses in certain industries, creating a genuine need for extended casual contracts, the idea that workers performing the same job for the same hours for 12 months or more may prefer casual contracts to permanent employment that includes leave entitlements is a myth that is deliberately holding our economy back.

Almost all Modern Awards of the Fair Work Commission specify that casual employees should receive a 25% casual loading.[2] This means that in exchange for giving up paid leave, predictable or regular hours, and the right to notice prior to termination, casual employees are supposed be paid 25% more than permanent employees doing the same job.[3]

In fact, research on casual loading indicates that the full 25% rate is very rarely applied.[4] In 2018, the Centre for Workplace Leadership at the University of Melbourne used Australian Bureau of Statistics data to demonstrate that casual loading actually paid averages between 4% and 5%. Of the occupations examined, only school teachers came close to a 25% loading rate, at 22%.

Workers in some of Australia's lowest paid professions, including sales assistants, hospitality workers, personal carers, cleaners, laundry workers, food preparation assistants, and some labourers, received casual loading of 5% or less. Office clerks, packers, and sports and fitness workers were actually paid less than permanent workers, receiving no casual loading at all. These occupations account for more than half of all adult casual employees.

[2] https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/minimum-wages
[3] https://www.australianunions.org.au/casual_workers_factsheet
[4] https://theconversation.com/the-costs-of-a-casual-job-are-now-outweighing-any-pay-benefits-82207

More recently, David Peetz has determined that nearly half of all workers without leave entitlements (Peetz, 2020, pp. 25–28) are not in receipt of appropriate casual loadings. If half of the approximately 2,485,100 workers without leave entitlements in 2020 received the absolute minimum of three hours per week and were receiving only the minimum wage of $19.84 (Australian Bureau of Statistics, 2020; Fair Work Ombudsman, 2020), but were not paid their full loading, **that is a loss of $37 million a week in unpaid wages to the lowest paid workers in our country**.[5] Given that lower paid workers spend almost all of what they earn back into their local economies, that is **$1.9 billion in unpaid wages a year that is not going into circulation in our economy**.

Another concern with these provisions in the Bill is that, in the event that a casually employed worker was to successfully argue at the FWC that he or she should be reclassified as permanent, his or her employer would be able to deduct the wages paid in casual loading from any back-pay of forgone entitlements.

This is intended to end the so-called practice of 'double dipping', a practice that was identified as problematic by employer groups during the case of *WorkPac vs. Skene*[6]; however, previous research by Per Capita into the issue of 'double dipping' proved that such a practice does not exist under current workplace laws (Dawson, Lewis, & Smith, 2019, pp. 5–6). In the *WorkPac vs. Skene* decision, the Court did not decide that casual employees could claim both the 25% loading and the annual leave entitlement. In fact, the Court found that the company had not paid Mr. Skene a casual loading at all. It said (emphasis added): "Like the contract under consideration in MacMahon (see at [67]), **Mr Skene's contract did not allocate any part of the rate of pay to a casual loading or as monies in lieu of paid annual leave"**.

The Court decided that Mr. Skene was wrongly categorised as a casual employee, and thus was entitled to an accrued annual leave payment. The Court did allow WorkPac to offset the cost of back-paying Mr Skene his annual leave entitlements against any casual loading they had paid him. The problem for WorkPac was ***that they were unable to show that they had paid Mr. Skene a casual loading***, as his contract did not specify that his flat hourly rate included a casual loading amount. The Court dealt explicitly with the 'double dipping' argument and rejected it as fallacious. In the words of the Court, "no 'double dipping' is possible" under our current workplace laws.[7]

Ultimately, the proposed changes to casual work entailed within the Bill not only fail to offer any potential to improve the lives of casual workers, they actively enshrine precarity and exploitation into law. As such, Per Capita does not support either of the proposed changes to the Bill, as it stands.

[5] Assuming that the loss of casual loading is $4.96

[6] https://www.guild.org.au/resources/business-operations/workplace-relations/member-resources/blogs-and-updates/workpac-pty-ltd-v-skene-casuals-are-still-casuals#:~:text=First%20decision%3A%20Skene%20v%20Workpac,in%20accordance%20with%20the%20Agreement.&text=However%2C%20the%20primary%20judge%20concluded,and%20entitled%20to%20annual%20leave.

PER CAPIT

Part Time Flexibility

The need for greater flexibility in part-time working arrangements is characterised within the Bill as necessary to address 'award complexity', a long-held defence used by employers who are found to be avoiding workplace entitlements, despite there being no evidence that Australian workplace awards are overly complex (Forsyth, 2019). It is argued that the 'complexity' of the current award system means that employers don't offer additional hours to part time workers because they are unable to determine at what rate they should be paid. First, the Bill proposes that employers should be able to offer additional hours without paying overtime for any 'employees who are engaged for a minimum of 16 hours per week and 3 hours per shift where additional flexible hours are agreed could agree to work additional hours'.

While the proposed solution states that workers would always be allowed to refuse, and that any adverse action taken by employers would be a contravention of the Act, because the agreement is made between employers and individual workers there is a significant power imbalance at play. As has been shown to be the case in the prevalence of wage theft in industries with high rates of part time employment such as like hospitality and retail, this power imbalance makes it less likely that individual workers will refuse, speak out or be treated fairly (Stanford, Hardy, & Fitzpatrick, 2018).

The Bill doesn't offer up any evidence to suggest how largescale or widespread the problem of 'award complexity' is. The only evidence cited refers to a study of employer attitudes, commissioned by the FWC, consisting of 10 individual interviews and six focus groups comprising self-identified small business owners in NSW and Victoria (Hodges & Bond, 2014, p. 11). Not only does this study not mention overtime specifically, but given that there are approximately 2,314,647 small businesses actively operating within Australian in 2020 (The Australian Small Business and Family Enterprise Ombudsman, 2020, p. 7), the sample size in the study means that it is not statistically representative of Australian employers.

The overall turnover of retail businesses increased by 13.3% in November 2020, up from 2.8% in 2018 and 3.3% in 2020. Business profits are holding up strongly in the wake of the pandemic, and there doesn't appear to be any evidence to suggest that overtime offered to part time staff is hindering businesses enough to warrant a fundamental change to the governing industrial legislation.

If, however, we focus on the workers who will be affected by the changes proposed in this Bill, the loss of individual income is potentially significant. For the purposes of illustration, Per Capita has put together some individual case studies that demonstrate the likely impact on take-home pay for different workers if this Bill were to become law.

Case Study 1: Helena

Helena[7] is a woman in her 60s who works part-time in a Melbourne retail clothing business. She works a nominal 16 hours every week, and works on average an additional four hours of overtime once a month on top of her nominal hours. If we assume she is paid correctly according to the *General Retail Industry Award 2010*, under the proposed changes she will be losing $653.40 a year from an annual income of $18,425.88.[8] For a worker like Helena, that additional $653.40 is enough to pay for her grandchildren's Christmas presents and the lunch they share after opening them.

[7] Not her real name
[8] We assume that Helena is working 3 hours under the "first three hours" over time rate and 1 hour under the "more than three hours" overtime rate, as a Retail Employee Level 1 under the *General Retail Industry Award 2010*.

Case Study 2

'Barry'[9] is a man in his late 50s from regional Queensland, who has dropped from full-time to part-time employment as he approaches retirement. He is a third-generation miner, and has worked at the open-cut silver mine where he is employed since he was a teenager. He works 25 hours per week, and gets an average of 12 hours a month in overtime, which he uses to put extra money into his superannuation, so that he and his wife of nearly 40 years can retire at 65 as they've always planned. Under the changes proposed by the Bill, Barry would lose $2,298.24 a year in overtime wages.[10] Not only is Barry losing those wages, he's losing the compound interest he would have been generating on his super that will determine how long it will last in retirement.

While the problem might not be widespread, the people who will be affected by these changes are the kinds of workers who rely on the extra money provided by overtime for key living expenses – there is little 'fat' in the weekly budget of part-tie workers who take on overtime hours. Furthermore, while the case is being made that these changes will help small business, there is little evidence to suggest that it will do anything other than cut wage bills for employers that were already offering overtime.

The threat of the 'flexible part time' category

While there are problems in implementing these changes in the hospitality and retail awards, if there is an introduction of a new work classification of *flexible part time* in all modern awards, there is an even greater potential for abuse. If this provision were to work in conjunction with the changes to casual employment classifications contained in the Bill, it would effectively mean that a worker could be employed casually for a year, and then offered a flexible part time contract without the loading. Effectively, this would render the provision to require an offer of permanent work after 12 months meaningless.

As explained in our previous research (Dawson et al., 2019, pp. 11–13), the creation of such a classification has the potential to effectively eradicate permanent employment from certain sectors of the economy, and shifts the risk of managing fluctuating workloads due to changes in consumer demand and other vagaries of the business cycle from the owner of the business onto workers.

All casualisation of work is essentially a process of shifting business risk from the employer to the employee. An employer who employs workers on a permanent basis must manage the risk associated with fluctuating workloads through business management. By shifting the workforce to 'flexible' conditions, a large part of this risk is transferred from the business owner to the worker: when the amount of work required to service the business drops, the worker receives reduced hours, and the employer has reduced wage costs.

Equally, under the 'flexible' working conditions afforded by labour hire and casualised work, when the business demands additional hours, employers are able to bring in additional labour without paying the overtime loading that would be due to permanent part- or full-time staff. Even if an employer could not forcibly move individual workers from permanent to perma-flexi conditions immediately following the creation of the latter employment category, it would be possible to shift an entire workforce into perma-flexi roles over time. Once the underpinning award is varied to provide to perma-flexi employment, this could be achieved by shifting recruitment to perma-flexi arrangements, and by ceasing to offer permanent part-time roles on the expiry of current Enterprise Bargaining Agreements (EBAs) and offering only 'flexible part-time' positions under a new EBA.

[9] Not his real name.
[10] We assume that Barry is working 8 hours under the "first two hours" over time rate and 4 hour under the "more than two hours" overtime rate, as an underground mining employee level 3 under the *Mining Industry Award 2010*.

If this became common practice in an industry, workers seeking employment in that industry would have little choice but to accept a perma-flexi position and the insecurity and reduced industrial power that it entails. Permanent staff who move from permanent to perma-flexi under the above scenarios would have lower incomes, no overtime, reduced worker power, reduced capacity for financial planning and would find it harder to secure bank loans.

The proposed amendment contained in the Bill that would ostensibly increase 'flexibility' for part-time workers and their employers effectively shift the risk of operating a profit-making enterprise from the owner of that enterprise to the workers who labour within it. The provisions threaten to increase company profit at the direct expense of workers' take-home pay and, as such, Per Capita does not support either of the proposed options as they currently stand.

PER CAPIT

Bargaining

At the heart of the Bill are proposed changes to the operation and regulation of enterprise bargaining, one which is a thinly disguised attempt to hinder the activities of trade unions. First, the Bill seeks to amend Parts 2-4 of the Fair Work Act (the Act) to make explicit reference to business growth (Porter, 2020, p. lvii), effectively enshrining a lack of business growth as 'reasonable grounds' for rejecting union demands during bargaining. Not only does this amendment explicitly prioritise profits (rather than revenue) over working conditions, it also further restricts trade unions' ability to take industrial action.

Australia already has a long history of suppressing the right to strike (Bornstein, 2018), directly contravening International Labour Organisation (ILO) conventions and international human rights law that enshrines and protects this right. By legislating that enterprise bargaining be conducive to business growth, not only does the Bill leave room for this provision to be used as an excuse to circumvent the intention of the Act through loopholes in a number of clauses (dismissals, redundancy payments, casual conversion, etc) on 'reasonable grounds', but it restructures enterprise bargaining further in the interests of employers. The burden of proof shifts onto unions to show that they are not impeding business growth by bargaining to improve wages and conditions of workers. **This is a tacit admission that, under the provisions of the Bill, the benefits of business growth, which is almost entirely driven by labour productivity, are no longer to be shared with labour, but protected entirely for profit.**

Second, the Bill seeks to double the timeframe for the Notice of Employee Representation Rights (NERR) to 28 days from the date upon which bargaining commences, effectively allowing employers more time to prepare their case before all employees are even aware that bargaining is underway. There are numerous references in the Bill to its intention to 'expedite' or 'speed up' enterprise bargaining; to ensure that the enterprise process is conducted 'quicker' (pp. iv, xxxi, li, lxx, lxxi, lxxv). Yet when it comes to informing their employees of their legislated rights to industrial protection and negotiation, a delay is apparently warranted.

Third, the Bill seeks to reduce the time that casuals must have worked in the period preceding the commencement of bargaining in order for them to be eligible to vote on agreements to just seven days (p. lxviii). This could encourage unscrupulous employers to intimidate newly-hired casuals into voting down union agreements.

Fourth, the provisions of the Bill would weaken the Better Off Overall Test ('the BOOT') to allow an employer's 'overall position' to be considered, and ties the BOOT more tightly to the individual arrangements at the time of bargaining, rather than the potential for future contravention (pp. lx–lxi). For example, employers might argue that removing loadings paid to night shift workers in an award passes the BOOT as they do not currently employ any night shift workers. Then after the Agreement is approved, the employer could offer night shift employment without the need to pay additional loadings for workers on the midnight shift.

Fifth, the provisions of the Bill would remove requirements that EBAs must not contravene the NES (pp. lxi–lxii). For example, when taken in the context of changes to casual conversion, this would mean that an agreement could remove the compulsion to offer conversion after 12 months, or provide additional examples where conversion could not be offered.

Sixth, the provisions of the Bill would allow new franchises to opt-in to existing agreements held by any other franchise (pp. lxii–lxiii). This would effectively allow new sites to be put onto inferior, non-union EBAs (or inferior long term greenfields agreements, as discussed below) or for franchises who were unionised to be shut down and for a new franchise to take its place, opting into a non-union EBA. Effectively, it allows employer pattern bargaining to occur outside of bargaining.

Seventh, the provisions of the Bill would limit the ability of unions to lodge a log of claims if employers have instigated bargaining with non-union representatives (p. lxiii). Under the proposed changes as they are written, employers would be able to enter into bargaining with non-union bargaining representatives as soon as they thought a trade union was organising to enter bargaining, and unions would not be heard by the FWC except in "exceptional circumstances".

Eighth, the provisions of the Bill would limit the approval process for an EBA to 21 days (p. lxiv), shifting the onus back onto unions to prove why an agreement was not reached within the nominated time period when bargaining with employers or businesses engaging in bargaining for the first time. However, this provision fails to recognise the complexity associated with the approval process, or that workloads are variable within the FWC. Instead, it seeks to encourage quick approvals at the cost of due diligence.

Ninth, the provisions of the Bill would remove the requirement for businesses acquiring other firms from taking on existing EBAs during the transfer of business (p. lxv), when workers are seconded to other businesses or when work is contracted out. As currently written, this provision could see businesses setting up shell corporations or other legal bodies to buy out businesses that have good union agreements and put them back onto the award or an inferior long term greenfields agreements (see below).

Tenth, the Bill seeks to remove the current four-year term limit on greenfields projects and create a new maximum of eight years, potentially enabling employers to lock unions out for the life of any major project valued in the range of A$250m-A$500m. There seems little justification for doing this, other than to give large construction contractors the option of avoiding having to negotiate with a unionised workforce within the life of a project.

Finally, the Bill proposes that legacy or 'zombie' agreements (agreements that predate the Act) will be sunset, but businesses will be given the option of negotiating a new agreement during a 'bridging period', giving them the option of negotiating non-union agreements with non-unionised workers. When combined with the lack of the BOOT, removal of requirements to not contravene the NES, the ability of franchises to opt in to other franchises' poor EBAs, and potential to lock out unions from negotiations, this is inherently problematic.

PER CAPIT

Conclusion

As we have outlined, there is real danger that the provisions of this Bill allow for much of the risk inherent in operating a profit-making enterprise, or business, to be shifted off business owners and employers and onto workers.

While some individual changes, such as a casual conversion clause being inserted into the NES, may have apparent benefits for workers, there are further provisions within the Bill that would allow employers to circumvent, avoid or lessen the regulatory requirements the Bill enacts, such as removing the need for EBAs to not contravene the NES.

As it stands, Per Capita does not support the proposed amendments, and urges Senators to vote down this Bill.

If the Government is serious about ensuring sustained prosperity and economic security for all Australians, it must re-start the consultation process and prioritise worker voices in the design process. Only by working together with Australian workers and their unions will effective and sustainable changes be brought that can reverse the decline of job security and wage growth and underpin an economic recovery that will benefit all Australians.

Any future changes to the Fair Work Act must ensure that job security, permanency and fair wages are fundamental, and that workers' rights be protected above all else.

PER CAPIT

Appendix: Case Study Methodology

Helena	**Retail Employee Level 1**	***Retail Industry Award 2010***						
		Hourly Rate	Ordinary hours per week	Monthly ordinary	Overtime hours	Overtime hours	Monthly total	Annual total
			16		3	1		
ordinary		$21.78		$1,393.92				
overtime	First 2 Hours	$32.67			$98.01			
	After 2 Hours	$43.56				$43.56		
							$1,535.49	$18,425.88
	Equivalent without overtime			Monthly			Monthly total	Annual total
				$1,393.92				
				$87.12				
							$1,481.04	$17,772.48
	Loss of overtime						$54.45	**$653.40**

Barry	**Underground Mining Employee Level 3**	***Mining Industry Award 2010***						
		Hourly rate	Weekly hours	Monthly ordinary	Overtime	Overtime	Monthly total	Annual total
			25		8	4		
ordinary		$23.94		$2,394				
overtime	First 2 Hours	$35.91			$287.28			
	After 2 Hours	$47.88				$191.52		
							$2,872.8	$3,4473.6
	Equivalent without overtime			Monthly			Monthly total	Annual total
				$2,394.00				
				$287.28				
							$2,681.28	$32,175.36
	Loss of overtime						$191.52	**$2,298.24**

Bibliography

ACTU. (2018). *The myth of the casual wage premium*.

ACTU. (2019). *ACTU Submission to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Right to Request Casual Conversion) Bill 2019*. Retrieved from https://www.actu.org.au/media/1385466/d7-actu-submission-re-right-to-request-casual-conversion-bill.pdf

Australian Bureau of Statistics. (2018). *Employee Earnings and Hours, Australia*. Retrieved from https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/employee-earnings-and-hours-australia/latest-release

Australian Bureau of Statistics. (2020). *Labour Force, Australia, Detailed*. Retrieved from https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia-detailed/dec-2020

Bornstein, J. (2018). *Requiem for the Right to Strike*. Retrieved from https://www.monash.edu/__data/assets/pdf_file/0008/1441196/Josh-Bornstein-paper.pdf

Buchanan, J. (2004). *Paradoxes of significance: Australian casualisation and labour productivity* (No. 93). Retrieved from https://ses.library.usyd.edu.au/bitstream/handle/2123/12312/WP93.pdf?sequence=1&isAllowed=y

Dawson, E., Lewis, A., & Smith, W. (2019). *"Flexible Ongoing" Employment: Solving a problem that doesn't exist*.

Fair Work Ombudsman. (2020). Minimum wages. Retrieved February 4, 2021, from https://www.fairwork.gov.au/pay/minimum-wages

Forsyth, A. (2019, November 11). No, a "complex" system is not to blame for corporate wage theft. *The Conversation*. Retrieved from https://theconversation.com/no-a-complex-system-is-not-to-blame-for-corporate-wage-theft-126279

Hodges, J., & Bond, M. (2014). *Prepared for the Fair Work Commission*.

Independent Inquiry into Insecure Work in Australia. (2012). *The report of The Independent InquIry Into Insecure Work In Australia*.

Kelly, L. (2021, January 28). Insecure work is a virus, and it's making us all sick – Arena. *Arena Magazine*. Retrieved from https://arena.org.au/insecure-work-is-a-virus-and-its-making-us-all-sick/

Peetz, D. (2020). *What do the data on casuals really mean?* Brisbane.

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

Stanford, J., Hardy, T., & Fitzpatrick, K. (2018). Wage theft and young workers. In *The Wages Crisis in Australia: What it is and what to do about it*. https://doi.org/10.20851/wages-crisis-12

The Australian Small Business and Family Enterprise Ombudsman. (2020). *Small Business Counts*. Retrieved from www.itsanhonour.gov.au