



Anglican Church of Australia

Public Affairs Commission

Committee Secretary
Senate Standing Committees on Education and Employment
Department of the Senate
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CANBERRA ACT 2600
AUSTRALIA

By email - eec.sen@aph.gov.au

Dear Committee Members,

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

Introduction

1. Thank you for the opportunity to provide feedback on the ***Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020*** (referred to hereafter as "*the Bill*").
2. This submission is made by the Public Affairs Commission ("the PAC") of the Anglican Church of Australia ("the ACA").
3. The PAC is a body set up, amongst other matters, to respond to aspects of public affairs as referred by the Primate, Standing Committee or General Synod of the ACA or initiated by the PAC. The views expressed in this submission are only the views of the PAC and should not be taken to reflect the opinion of the ACA, the Primate, the Standing Committee or any of the Dioceses. The membership of the PAC is drawn from Anglicans around Australia and the PAC reports to the Standing Committee of the ACA. We also have a role of educating Anglicans around Australia on social issues.

Timing issues

4. We are concerned that the period for submission to the Senate Inquiry has been conducted mainly over the Christmas/New Year period, and with a short timeframe for submission. Many of our organisations, especially church groups, are extremely busy during December and many are then on leave during January. Such a pattern is not unique to church groups. The short timing for submissions has severely restricted the ability of people affected and community organisations to engage meaningfully in this process.
5. Such a rush has the tendency to create a perception that there may be aspects of the Bill that the government does not wish to have fully debated in public before the Bill is passed.
6. **Recommendation:** *For the consultation period to be extended so that any changes can have greater exposure and accountability.*

7. Due to the short time for consideration of the Bill, our submission just highlights some of the positive matters we support but also some of the key issues of concern that have come to our attention so far.

Principles

8. The approach of the PAC to the Bill is guided by our concern for the vulnerable in our society and the social justice imperatives seen in the Bible and Christian social teaching. In relation to matters of employment and industrial regulation, we believe that:
 - (a) industrial relations policies must reflect and enhance values of community and a just sharing of resources;
 - (b) all employees are human beings, not units of production, and entitled to dignity, a fair minimum wage and safe working conditions;
 - (c) workers have the right to form unions to create human connection and community and to pursue and protect their rights and working conditions; and
 - (d) industrial regulation laws must ensure and promote fair and secure working conditions for all employees, including those with little bargaining power.
9. We therefore highlight matters in the Bill not from a political or industrial standpoint but as questions that go to the heart of how we consider each other as human beings and how we structure our society to support fullness of life for people and families.
10. Our faith teaches us that human beings are parts of a whole. We are not simply individual workers and consumers in a 24/7 market society. We are parts of friendship networks, sporting clubs, community groups, worshipping communities and families.

Positives

11. There are some aspects of the Bill which appear to be good initiatives and we congratulate the government on these aspects.
12. We are pleased to see the introduction of a federal crime of dishonestly engaging in a systematic pattern of underpaying employees, with significant penalties that are more likely to act as a deterrent.
13. We are pleased that there will be a simpler process to end so-called “Zombie agreements” created under WorkChoices. This will prevent such examples as the reported case of the Meriton hospitality group in Sydney which used an agreement made in 2007 under WorkChoices legislation until it was terminated by the Fair Work Commission in 2019. This was despite the agreement’s expiry date of 2012. Under this agreement Merivale did not pay 3000 staff for overtime or penalty rates.¹
14. We are also pleased to see the introduction of casual conversion provisions requiring employers to offer casual employees permanent work after 12 months employment, with 6 months of continuous regular hours. However, we would like to see protections that make the implementation of this a meaningful exercise. This includes a clearer definition of “reasonable grounds” of refusal and a right of appeal to the Fair Work Commission.

¹ <https://au.finance.yahoo.com/news/wage-theft-merivale-faces-class-action-grossly-underpaying-workers-004805724.html>

Our Concerns

A. Suspending the “Better Off Overall Test”

15. The “Better Off Overall Test” (BOOT) under current law means that enterprise agreements cannot undercut the minimum standards in an award. However, this Bill ‘instructs the Fair Work Commission to approve agreements even if they fail this test, so long as the deal is nominally supported by affected workers and deemed to be in the “public interest”.’²
16. At the same time the Bill reduces the time period and notice requirements for negotiation of enterprise agreements, so that workers affected by a new agreement are less likely to understand the impacts on them and their families.
17. While this suspension of the BOOT is currently scheduled for 2 years, it will have long lasting consequences because the agreements approved in this period can last until they are replaced. We have referred above to the Meriton case where the agreements made in 2007 lasted until 2019.
18. We are concerned that if these laws are passed then vulnerable workers and their families will still be experiencing reduced income and working conditions possibly into 2030 and beyond, locking them into poverty.
19. **Recommendation:** *Our recommendation is that the Better Off Overall Test needs to be protected. Provisions which relax or lower the bar of the test should be removed from the Bill.*

B. Allowing non-monetary benefits to be used to pass the Better Off Overall Test.

20. The Bill allows for non-monetary benefits to be used to pass the Better Off Overall Test. This is highly concerning.
21. There are dangers of significant “wage-theft” in the community, especially in industries, such as hospitality, where workers are in insecure work. These are people our church and its agencies have deep contact with.
22. We are concerned that should these laws pass, they would essentially legalise “wage theft”. Practices we have seen such as employers paying workers in food and desserts³ would suddenly be allowed. This outcome would not be acceptable to protecting the dignity of each individual.
23. Also of concern in the Explanatory Memorandum is the listing of “training” as a non-monetary benefit that may be provided in exchange for wages. Training of staff to be able to do their jobs effectively should not be considered an optional extra, but a core part of an employer’s responsibility.
24. **Recommendation:** *Our recommendation is to remove any reference to non-monetary benefits in relation to the Better Off Overall Test.*

² Proposed s189(2) in Schedule 3 Part 5 of the Bill.

³ <https://www.abc.net.au/news/2019-10-23/cafe-63-underpay-staff-food-drink-fair-work-ombudsman/11630812>

C. Expansion of Casual and Insecure Work

25. The huge proportion of our Australian workforce engaged in casual work is highly problematic. The latest ABS survey⁴ reports that:
- 22% of all employees are casual with no paid leave entitlements, and
 - 48% of employees working less than full-time hours are casual with no paid leave entitlements.
26. We do recognise the legitimate role of casual work in some business settings for short periods, on a seasonal basis or to fulfil a specific need. However, we submit that casual work is not the best way to advance the human dignity of employees and our community. The uncertainty of casual work makes it difficult to plan a family, participate in religious worship, or be part of a sporting team. The insecurity of this form of work with no sick leave or annual leave means that employees stay just one step away from financial disaster. Throughout the pandemic we have seen the consequences of this for individuals and for public health.
27. We believe that further growth of casual work should be discouraged. Sadly, this Bill does exactly the opposite, encouraging further casualisation through:
- (a) The “casual definition” provisions of the Bill in proposed s15A allow employers to deem whether a position is casual in an employment contract, with no reference to stable employment or regular shifts. This reverses the common-sense court decisions to the contrary.⁵
 - (b) The “part-time flexi” elements of the Bill mean that permanent part-time workers will be able to be treated like casuals, with enormous flexibility for the employer but no corresponding increase in either security or extra pay to compensate the employee.
28. **Recommendation:** *We encourage the committee to remove all aspects of the Bill which will lead to increases in casual work or which enable employees to be classified as casual when they would not be regarded as such under the tests in recent court decisions.*

D. Greenfield agreements to remain in place for 8 years.

29. Employers in new major projects will be able to introduce agreements lasting for 8 years rather than 4 years. For most projects this will mean that it covers the entire project. As such agreements will be created before any workers commence, there will be no input from impacted workers or their unions. In combination with the changes to the BOOT, this means agreements could be created that are under the industry award and can never be renegotiated.
30. Essentially this creates a new class of blue-collar workers who have fewer rights than other workers. The PAC finds this highly problematic. We are concerned both for:
- (a) The employees on these projects and their families who are afforded a lesser standard of justice.

⁴ Australian Bureau of Statistics (August 2020) *Working Arrangements*
<https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/latest-release#data-downloads> accessed 31 January 2021.

⁵ Such as in *WorkPac Pty Ltd v Skene* [2018] FCAFC 131 and *WorkPac Pty Ltd v Rosatto* [2020] FCAFC 84.

(b) All other employees who will have their rights undermined and threatened by these agreements.

31. **Recommendation:** *That this section be removed and the current standard is maintained, where employers can seek Fair Work Commission approval on agreements for new projects after 6 months of bargaining with the relevant union.*

Conclusion

32. Based on the principles outlined above, the PAC support the elements of the Bill that enhance the dignity and the employment conditions of workers as God's children and fellow human beings.

33. We submit that the areas of concern outlined should be reconsidered and positive alternatives put forward that create secure work. This will benefit employees, employers, communities and families.

34. Should the consultation period be extended as requested, we may take the opportunity to examine the Bill further and raise any other matters of concern.

Yours faithfully,

Dr Carolyn Tan,
Chair of the Public Affairs Commission