



September 2023

Committee Secretary
Senate Education and Employment Committees
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Parliament House
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Dear Committee Secretary

RE: Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

The St Vincent de Paul Society National Council of Australia ('the Society') welcomes the opportunity to provide a submission to the Committee on this Bill.

The Society comprises over 45,000 members and volunteers and 6,000 staff and has provided everyday assistance to those in need in Australia since 1881. Currently, this includes over \$50 million in emergency relief distributed each year to help people cover food, transport, accommodation, medical, educational and utility costs. The Society is also a significant provider of affordable housing options and receives state and territory government funding to deliver a range of social support services.

Why the Bill is needed

The Society supports passage of the Closing Loopholes Bill because every day our members, volunteers and staff witness people struggling to make ends meet, especially now during the current cost of living and housing crises. The Society in New South Wales alone reports that in 2022-23, more than 40,500 people have sought help with food, material items and energy and other bills, totalling \$13.4m. This is a 60 per cent increase in the value of assistance provided last year. The number of people requesting assistance for the first time has also increased by one-third.

The reality is that over many years, the wellbeing of workers continues to decline, despite job market growth. Wages have stagnated for years and have failed to keep up with inflation. In contrast, excessive corporate and business profits have skyrocketed. New forms of work have also emerged with many workers no longer protected by the Fair Work Act. Further, many jobs that were once permanent are now insecure, with few workers' rights.

Why the Society supports the Bill

The Society recently released its policy statement on [secure work](#). Our position is informed not only by the experiences of those we assist but also by the principles of Catholic Social Teaching.

Australian workers in all fields deserve to be treated with dignity and respect. They must be able to pursue their rights and have just working conditions. Everyone deserves a fair, living wage, one that provides job choice and security.

Australia has one of the highest rates of insecure employment in the OECD.

The type of casual employment that exists here is shared by no other country. It is characterised by no guarantee of working hours or continued employment, no entitlements to paid leave and no specification in industrial awards of higher minimum rates of pay than apply to non-casual employees.

We are concerned about the fact that less than half of working Australians now hold a permanent, full-time waged job with entitlements. Insecure work most often means low pay, inferior rights, irregular hours, poor work/life balance, limited job tenure, limited access to leave, skills development and career pathways, and increased risk of injury, harassment, and wage theft.

How the current system disproportionately impacts certain groups of people

People with lower skills, young workers, women, single parents, temporary visa holders and workers with disability unable to access the Disability Support Pension are more likely to be employed in insecure work, especially in the retail, hospitality, health, aged care, childcare, and agricultural sectors.

We support legislative change that improves the conditions of these workers, especially women who are overrepresented in part-time and casual employment and are twice as likely as men to be working part-time and casually from age 35. Change is needed if we are serious about addressing the gender pay gap, which remains persistently high, irrespective of the measure used. Recent data show that the gender pay gap generally increased with age in 2020-21, with gaps favouring men at all ages. Women under 24 years of age earned on average \$1,413 per year less than men, with an average remuneration gender pay gap of 2.5 per cent. The gender pay gap increased at a consistent rate with employee age, peaking for employees aged 55-64 years at 31.9 per cent. The gender pay gap remained high at 25.3 per cent for employees aged 65 years and over.¹

Catholic Social Teaching

In line with Catholic Social Teaching on work, the dignity of the person must be prioritised. Work should be for the common good, with employees treated as people first and not units of labour to be used for purely economic ends. Secure work contributes to the common good by fostering economic stability, reducing poverty and promoting social cohesion. By promoting secure work, we stand in solidarity with the marginalised, ensuring they are not left behind.

As a lay Catholic organisation, the Society continues to advocate for workers' rights to safe working conditions and a fair minimum wage based on justice and equity – a living wage that covers the actual needs of a person, provides them with agency and security for the future.

In the lead up to the last federal election, we called for:

- changes to the statutory definition of casual worker, including a pathway to permanency for works on consecutive fixed term contracts
- a national system of labour hire licencing including same job, same pay provisions.

Since then, we have welcomed the Australian Government's commitment to:

- extend the powers of the Fair Work Commission (FWC) to set minimum standards for new forms of work, such as gig work
- successful passage of the Jobs and Skills Australian Amendment Bill to establish Jobs and Skills Australia with functions to include identification of labour imbalances and analyse skills demand and supply, and develop an annual work plan
- amend legislation to set an objective test for determining when a worker is casual and giving workers the right to challenge unfair contractual terms
- legislate same job, same pay conditions to guarantee labour hire workers receive the same pay and conditions as directly employed workers doing the same job
- establish a national labour hire licensing scheme to ensure minimum legal standards are met
- improve access to jobs and training pathways for women, First Nations people, regional Australians and culturally and linguistically diverse people, including equity targets for training places
- articulate a full employment objective, reduce the structural issues that cause unemployment and manage the economy in a way that maximises opportunities for more Australians

- the Employment White Paper, as it lays the foundations of a policy framework towards full employment. However, more work is needed on defining targets to reduce unemployment, underemployment and poverty. Government investment is also needed in the growth areas of climate change adjustment and care services. Reforms to 'Workforce Australia' and the Local Jobs Program and extending the time that income support recipients could access some benefits upon gaining employment are welcome.
- the current Parliamentary Inquiry into the Workforce Australia program, including employment service providers.

We have welcomed the passage of the Fair Work Legislation Amendment Bill 2022 particularly:

- strengthened access to flexible working arrangements
- inclusion of job security and gender equity in the Objects of the Act and at the heart of the FWC's decision-making
- limited use of fixed-term contracts used for the same role over an extended period (of two consecutive terms or a maximum duration of two years)
- prohibition of pay secrecy clauses and sexual harassment in connection with work
- strengthening of protection for workers against discrimination to bring the Fair Work Act into alignment with other Commonwealth anti-discrimination legislation.
- a new statutory equal remuneration principle including equal pay for female-dominated industries and the establishment of two expert panels in the FWC covering women and the care and community sectors. This will help address the global gender gap where Australia has fallen in rankings from 12th to 43rd
- changes to flexible work arrangement processes where employers are obliged to consult with employees and the FWC may intervene, enforce or make a determination
- amendments to support more than one form of bargaining (enterprise level) which now represents just 15 per cent of employee agreements compared to 27 per cent in 2012. Enterprise bargaining has been promoted at the expense of other forms of collective bargaining (such as multi-employer) or other means of regulating wages and conditions and no longer delivers pay rises with productivity growth.

Conclusion

The Society therefore supports this Bill as another important step towards addressing the many pressing issues in Australia's wage growth and workplace laws and improving our chances of a fairer and more just labor market, while protecting the rights of all workers.

The Society supports

- a new, fairer definition of casual work that grants workers the right to apply to their employer for permanent status if their work arrangements change. Workers will also be able to seek independent resolution if issues arise or choose to stay casual if they wish. This provides workers with great job security and paid leave.
- a definition of employment that restores courts to look to the reality of how work is performed to determine whether a worker is an employee.
- the introduction of a more objective test for sham contracting, rather than the current reliance on the subjective view of the employer.
- independent contractors under a threshold being able to access justice through a low-cost jurisdiction in the FWC. Currently independent contractors may be presented with contracts that are unequal in terms of bargaining positions (such as unfair termination without recourse), with the only remedy available through the expensive Court system. These provisions are supported but should be extended to cover all independent contractors.

- providing the FWC with the power to grant rights to gig workers' after considering the views of both workers and companies. Employers are increasingly using digital platforms, leading to the exploitation of gig workers who often earn less than the minimum wage, have no safety net or compensation (if injured) and no rights for unfair dismissal. Growing operational costs mean gig workers, who are technically 'self-employed', are working many hours per week just to earn a living wage. These provisions are supported but should be extended to include all gig economy workers, not just those engaged through a digital platform.
- provisions that prevent businesses from re-organising their staff employment structures (ie contracting to a labour hire company) to avoid paying the agreed-upon rates set in Enterprise Bargaining Agreements (EBA). This leads to unequal pay and job insecurity and undermines bargaining. We support labour hire companies paying no less than the EBA, with disputes resolved independently by the FWC. However, these provisions should apply in most circumstances where labour hire is used, not just where there are EBAs.
- provisions that enable unions to check union members' pay records where wage theft is suspected, support workplace representatives while upholding workers' rights and increase penalties to incentivise investment in payroll systems. Research shows that wage theft in Australia exceeds a billion dollars annually, with most cases going undetected. However, reform of the court system is also needed to enable quick and cheap access to justice for workers to get their wages back.
- provisions that enhance protections for volunteer workplace delegates, including protecting their rights under the Fair Work Act, requiring the FWC to insert specific provisions into Awards in respect to these rights and requiring all EBAs to contain provisions relating to these rights. These provisions are a good start and will promote mutual respect and facilitate dispute resolution. However, more needs to be done to improve the culture in Australia's workplace relations system.
- an equal approach for all workers, including those in small business. We oppose the exclusion of small businesses from many of the new provisions as this will simply lead to two classes of workers – one with rights and one without.

Please don't hesitate to contact me if you require further information.

Yours sincerely

Toby oConnor
Chief Executive Officer

ⁱ Workplace Gender Equality Agency. 27 June 2022. *Wages and Ages: Mapping the Gender Pay Gap by Age*. Accessed at: <https://www.wgea.gov.au/publications/wages-and-ages>