



4 February 2021

Senate Standing Committees on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senate Standing Committees on Education and Employment

**RE: Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery)
Bill 2020 [Provisions]**

The St Vincent de Paul Society National Council of Australia Inc (the Society) welcomes the opportunity to make this submission to the Senate Standing Committee.

The Society is a lay Catholic charitable organisation that comprises just over 50,000 volunteers and members and 6,000 employees who provide on-the-ground assistance in the form of emergency relief and other support and community services across Australia.

The profile of those we assist

The Society's members and staff witness, first-hand, the hardship experienced by those who are unable to secure employment. Many are forced to access emergency relief and other support services. Each year we distribute around \$65 million a year in emergency relief. In NSW, more than half of those assisted have sought help five or more times in a year. Persons living with disability and those who identify as Aboriginal and/or Torres Strait Islander are over-represented. Those at greatest risk have limited employment and no safety net.

During the pandemic, the Society found that the profile of those assisted changed, with most having no history of seeking charitable assistance before. Generally, people had limited means of support and did not qualify for government-funded financial or medical assistance. Many were casual workers who had lost their jobs. Many were asylum seekers on bridging visas and temporary visa holders including refugees, temporary migrant workers and international students. The Red Cross also found that many seeking help were young (half were in their 20s) and over 17 percent were children.¹

We believe that if labour market reform is done well, it is a powerful means of improving not only workers' pay and rights but also their opportunities to access meaningful, long-term employment.

Turning the corner...or falling off the cliff?

Although recent data indicate that the economy is recovering faster than initially projected, it is estimated that it will take four years for unemployment to return to pre-pandemic levels.²

We are by no means out of the woods.

In December 2020, the unemployment rate was 6.6 percent, which is 1.5 points higher than at the same time in 2019. 12,910,800 people were employed, which represents a 0.5 per cent drop from last year, or 63,900 people over the year. Approximately two-thirds of people are working full time and one-third, part-time. Over the year to December 2020, full-time employment decreased by 75,900 people, while part-time employment increased by 12,000 people.³

For every advertised job vacancy, nine people are looking for a job or increased hours.

The uncertainty that lies ahead concerning JobSeeker and JobKeeper, along with a possible return to the base rate of Newstart, means that current, 'faster than expected', economic recovery gains could be rapidly lost.

Within this environment, the Society is particularly concerned about the increasing casualisation of the workforce and what this means for job security and workers' rights.

Job security is needed now

During a period of recovery, job security is needed. During the pandemic, the people most adversely affected were those in insecure jobs; and it will take longer for them to recover.

Research shows that:

- Workers in insecure jobs were more adversely affected than those in standard, permanent positions. Casual workers lost employment eight times faster than those in permanent jobs. Part-time workers lost work three times faster than full-time workers. Insecure self-employed workers lost work four times faster than those in more stable small businesses.
- The rebound of employment since May 2020 has been dominated by insecure jobs. Casual jobs presently account for 60 percent of all waged jobs created since May. Part-time work accounts for almost three-quarters of all new jobs.
- Casual employment grew by over 400,000 positions between May and November, the biggest expansion of casual employment in Australia's history.
- Young people suffered much worse job losses in the initial months of the pandemic. And while workers over 35 have fully recovered to pre-pandemic employment levels, younger workers are still experiencing major job losses.
- Workers in office-based occupations were able to shift their work to home as the pandemic hit, and suffered smaller job losses, with employment either regained or surpassing pre-pandemic levels. However, for other workers, employment remains far lower than before the pandemic including community and personal services, sales workers and labourers. These uneven occupational effects have exacerbated inequality - those who lost work were the people who, on average, earned less and experienced greater job insecurity before the pandemic.
- Some industries are still experiencing lower employment than before the pandemic hit (including hospitality, information and communications, and arts and recreation). Job losses in manufacturing continue to worsen, despite the recovery in the rest of the economy after May.
- The gender picture is complex. Women suffered disproportionate job losses when the pandemic hit, and that gender gap has not been closed during the rebound. Women's employment, unemployment, underemployment, and participation all remain significantly weaker than for men.⁴ However, for those who were working during the pandemic, males lost more hours of work than females.⁵

Unemployment is unlikely to improve in the short term, especially for young people

The Reserve Bank of Australia predicts that improvement in the unemployment rate is expected to be slow and it will take many years to reach four to five per cent. A 'jobless recovery' is likely to occur, as large organisations who retained staff during the pandemic are likely to shed them due to increased digitisation. Annual wage growth is the lowest it has been in the 23-year history of the index (1.4 per cent); and with inflation expected to climb, it will be above wage growth for the first calendar year on record, sending the buying power of wages backwards.⁶

Workers are earning less, compared to profits, than they have in decades. Companies are prospering and keeping the cash. People are working harder but going backwards. Over the last forty years, workers' share of income has dropped to just above 50 per cent, compared to a high of almost 65 per cent (in 1978).⁷

The Productivity Commission has also found that young people (15–24-year-olds) have seen their average income, adjusted for inflation, fall by 1.6 per cent per annum between 2008 and 2018. This means the incomes of Australia's youth have stagnated this century. However, people aged 65 and over have experienced the greatest increase in disposable income per person over this time, with their disposable income now 86 per cent higher than in 2001.

Employment predictions for young people are grim. This is of grave concern to the Society. The imbalance between labour demand and supply means that young people are facing greater competition as job seekers while older workers benefit from the advantage of incumbency. The imbalance between labour demand and supply has also seen an increase in part-time work in sectors with a high absorptive capacity. However, these sectors (such as retail, hospitality, and tourism) are the ones that have been most damaged by the current COVID-19 pandemic crisis, and whose pattern of recovery is most uncertain. Workers affected are primarily young, on low wages and working part-time or as casuals. Unemployment among young people is predicted to remain high for some time as there is unlikely to be strong growth in these sectors.⁸

Growing inequality

Australia continues to demonstrate significant levels of inequality, especially wealth inequality.

Even before the pandemic hit, the highest 20 percent of households, with average after-tax incomes of \$4,166 per week, had almost six times the income of the lowest 20 percent, with \$753 per week. Inequality is even more stark with respect to wealth where the highest 20 percent, with average wealth of \$3.3 million, have 90 times the wealth of the lowest 20 percent, with just \$36,000 on average.

The highest 10 percent of households by wealth owns almost half (46 percent) of all household wealth, followed by the next 30 percent of households, who are comfortably off (with 38%). The lowest 60 percent of households - who are younger and poorer - have just 16 percent of all wealth.⁹

These levels of inequality raise questions about our commitment as a community to tackle the matter of job security and wage parity unfairness.

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

Low-income workers in retail, transport, aged care, cleaning and security services (hotel quarantine) have been in the front line, keeping the community safe and maintaining supplies during the pandemic. We acknowledge the commitment of these workers. They are often paid at or below the minimum rate, employed on a casual basis with no leave entitlements and forced to take on extra jobs to make ends meet.

The workers who have been most disadvantaged and adversely affected by the pandemic are these low-income, casual employees. The very people whose rights should, at the very least, be protected and preferably expanded, will instead have their rights eroded by the Fair Work Bill.

Further, this Bill has been introduced at a time when young people are facing years of unemployment and have already experienced years of stagnant wage growth. They also have less resources to fall back on, with fewer savings (than older people) and depleted resources, having accessed superannuation early. At the same time, income and wealth inequality continue to increase, largely due to favourable superannuation and income tax laws.

It is no surprise that those who are vulnerable, most disadvantaged and with little or no support network are more likely to be exploited in the labour market.

For these people, wage and superannuation theft is a significant issue.

Research shows that more than half of casual workers do not receive the 25 percent loading in their pays. This means that they have fewer rights, no paid leave and lower pay than permanent workers. Australia lags behind almost all other high-income countries that require temporary workers to have the same leave entitlements as permanent workers. Of the 800,000 jobs lost since the beginning of the pandemic, 500,000 were casual workers – insecure jobs were the first to go when the pandemic hit and unfortunately even more are being created during the recovery.¹⁰

The ACTU has found that wage and superannuation theft is rife largely because courts are inaccessible and expensive; and current penalties are not acting as a deterrent. Typically, those who experience wage theft are vulnerable - such as casual or temporary visa workers - and are hesitant to enforce their rights. If a worker complains about a breach of workplace law, they face significant costs and risks, as only the courts can issue a binding order.¹¹

The Society is concerned about the timing of this Bill given that the Senate Standing Committee on Economics' *Unlawful underpayment of employees' remuneration* inquiry's final report is not due until 24 June 2021.

The Society is firm in its belief that labour market reform should not proceed until after this final report has been completed.

Principles that should underpin labour market reform

We regard the Fair Work Bill as an opportunity to 'right the wrongs' that currently exist in the labour market, which have been exposed during the pandemic. The Society believes that:

- workers should not be worse off – either through cuts to pay or removal of rights
- the dignity of the human being must be maintained – everyone is of great value and worthy of respect and protection; and every person is entitled to their rights in justice
- the human dignity of vulnerable people must be enhanced
 - people must not be exploited or devalued

- those most disadvantaged should be assisted, not further penalised or marginalised
- resources must be used appropriately and directed to help those who need it most
- the common good of society must be fostered
- opportunities to address inequality should be capitalised – inequality should not be exacerbated through poor policy, legislation or other mechanisms
- labour market programs and training should enhance self-esteem and preserve human dignity.

This Bill contains provisions that reinforce insecure work and provide employers with greater opportunities to casualise the labour market and pay employees less than the award safety net. It does not improve the working arrangements of vulnerable, casual workers. Further, cuts to pay or loss of workers' rights will make recovery harder and longer.¹²

Of particular concern is:

- the definition of casual. An employer will be able to designate someone as a casual employee at the point of engagement, irrespective of work patterns after engagement. This is contrary to the *Workpac* decisions. As casuals, they will have no leave entitlements or job security at the time employment commences.¹³ Existing casuals will also lose any previous entitlement to leave if they have received the casual loading.¹⁴
- casual conversion. An employer must make a written offer of conversion to an employee after 12 months if, for the last six months, there has been a regular work pattern. However, an employer does not have to make the offer if there are reasonable grounds not to. There also limited rights for an employee to request a casual conversion from an employer if the employer does not make an offer.
- the few opportunities available for arbitration of disputes, other than by agreement.
- a two-year extension of 'flexible work directions' on duties and location of work in circumstances where an employer believes it is needed to 'assist in the revival of the enterprise'. The test will be easily met and provides employers with wide-ranging directions that continue in place until withdrawn, revoked or replaced by the employer. No arbitration is available.
- employers will be able to make agreements with employees that cut their wages and conditions. The Fair Work Commission will be able to approve agreements that do not meet the better off overall test (BOOT) for a nominal term of up to two years and these agreements can remain in force until replaced or terminated.
- the new (national) criminal offence for underpayment of wages, which we assess as being impossible to meet. There must be 'dishonest engagement in a systematic pattern of underpaying one or more employees'. Dishonest is defined as 'dishonest according to the standards of ordinary people' **and** 'known by the defendant to be dishonest according to the standards of ordinary people'. The law overrides state laws which do not have the secondary requirement that dishonesty must be 'known by the defendant to be dishonest.'

Recommendations

The Society concludes its submission with the following recommendations.

1. That the Fair Work Bill not be progressed until the Senate Standing Committee on Economics' *Unlawful underpayment of employees' remuneration* inquiry is completed and its final report tabled (24 June 2021).
2. That consultations recommence with a range of stakeholders, including not for profit organisations. In its current form, the Fair Work Bill strongly favours big business at the expense of already vulnerable workers who will be worse off if this Bill is passed.
3. That on the basis the Fair Work Bill does nothing to restore job security, improve workers' pay and conditions or address wage stagnation, the following aspects should be reviewed:
 - the definition of casual, casual conversion and the extension of 'flexible work direction'
 - provisions that limit employees' access to arbitration
 - provisions that enable employers to make agreements with employees that do not meet the better off overall test, and
 - the introduction of a national criminal offence for underpayment which is almost impossible to meet.

4. That the Fair Work Bill be underpinned by principles that do not leave workers worse off and that build on the wages and rights of all workers but especially the vulnerable and disadvantaged, namely casual workers and young people.
5. That the Fair Work Bill be used as one way to start 'righting the wrongs' that currently exist in the labour market and redress areas of inequality that are increasing in Australia.
 - o The current Bill exacerbates inequality in many ways – not just in terms of pay and conditions but also through the unequal playing field that will be created between employees and employers if the Bill is passed in its current form.

Thank you for the opportunity to provide this submission. Please do not hesitate to contact me should you require further information.

Yours sincerely



Toby oConnor
Chief Executive Officer

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