



A secure and decent living





**VCOSS Submission to the Senate Inquiry
into Job Security**

March 2021

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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This submission was prepared by Charlotte Newbold and authorised by VCOSS CEO Emma King.

For enquiries please contact Deb Fewster at deborah.fewster@vcoss.org.au

A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Introduction

The Victorian Council of Social Service (VCOSS) is the peak body for social and community services in Victoria. VCOSS supports the community services industry, represents the interests of Victorians facing disadvantage and vulnerability in policy debates, and advocates to develop a sustainable, fair and equitable society.

VCOSS welcomes the opportunity to provide a submission to the Senate Inquiry into Job Security. VCOSS has a specific interest in the nature and effects of insecure employment on vulnerable people and their families. Gaining secure and meaningful work contributes to individual and community well-being. Stable paid employment provides people with an income and contributes to their sense of identity and wellbeing. It enables people to put a roof over their head and pay for food, transportation, clothing, energy, childcare, health care, and access to information technology.

Australia's unemployment rate is currently 5.8% and underemployment rate is 8.5%.¹ 442,600 men and 362,600 women are currently unemployed. As the ABS states, underemployment "represents lost opportunities for people to engage more fully in work and derive their desired financial and personal benefits".² The youth unemployment rate remains stubbornly high at 12.9%.³ With JobKeeper payments finishing on 28 March 2021, it is expected that these rates will increase.

The nature of employment is changing, with many Australians now employed insecurely. Insecure work is characterised by "unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and/or uncertainty over the length of the job; and a lack of any say at work over wages, conditions and work organisation".⁴

It is most commonly associated with casual work, seasonal work, fixed term contracts, independent contracting and labour hire.

The emergence of the 'gig' economy following the global financial crisis has seen the entry of new digital platforms organising work 'on demand' across a range of sectors, including the health and community sector.

¹ ABS, Labour Force, Australia, February 2021, <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

² ABS, Spotlight on unemployment, 6202.0 - Labour Force, Australia, Nov 2016, <https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/6202.0Main%20Features5Nov%202016?opendocument&tabname=Summary&prodno=6202.0&issue=Nov%202016&num=&view=>

³ ABS, Labour Force, Australia, February 2021 <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

⁴ Lives on Hold, Unlocking the potential of Australia's workforce: Independent inquiry into insecure work, commissioned by the Australian Council of Trade Unions, 2012

VCOSS acknowledges that there are workers who choose these forms of employment and derive economic and other benefits from such arrangements. Additionally, these forms of employment (particularly 'gigs' in the on-demand economy) have lowered the barriers to entry for some people who have an inconsistent work history, mental or physical health issues, caring responsibilities or other challenges, opening up new opportunities and potential pathways.

However many vulnerable people have no alternative to insecure work. People who face multiple disadvantages are more likely to experience insecure work, underemployment and be at higher risk of unemployment. This includes vulnerable young people, Aboriginal⁵ people, people with disability, single parents, older people, women, people with low levels of education, people from culturally and linguistically diverse communities, migrants, international students, people living in rural, regional, outer suburban areas, or low socioeconomic communities, and those with a history of contact with the justice system.

Barriers to employment can be individual, employer-related or structural. As the Victorian Government's *Inquiry into Sustainable Employment for Disadvantaged Jobseekers* recognised, individual barriers can be vocational such as a lack of skills, work experience or low educational attainment and non-vocational such as caring responsibilities, family violence, housing issues, poor health and a criminal record.⁶ Employer-related barriers may include 'unconscious bias, discrimination, and non-inclusive recruitment and workplace practices.'⁷ Structural barriers refers to the broader environment beyond the individual's control such as 'a lack of transport, poor access to employment and educational opportunities, an unfavourable labour market and deficiencies of employment services.'⁸

The COVID-19 pandemic has highlighted the impact of insecure working arrangements on both the individual and the broader community. Many people working in insecure work arrangements could not afford to isolate whilst unwell, creating a public health risk.

Working across multiple workplaces, as is common in aged, home and disability care and hospitality industries, creates risks to workers and clients.

This issue was recognised by the Commonwealth and Victorian Governments with the creation of a \$1,500 payment to financially support Victorian workers, including guardians or carers, and close contacts of confirmed cases of coronavirus (COVID-19) who were instructed by the Department of Health and Human Services to isolate while contagious or

⁵ The term 'Aboriginal' is used in this submission to refer to both Aboriginal and Torres Strait Islander peoples.

⁶ Parliament of Victoria, *Inquiry into sustainable employment for disadvantaged job-seekers*, https://www.parliament.vic.gov.au/images/stories/committees/eic-LA/Disadvantaged_Jobseekers/Report/LAEIC_59-01_Sustainable_employment_disadvantaged_jobseekers.pdf, p.3-4.

⁷ Ibid, p.4

⁸ Ibid, p.4.

potentially contagious.⁹ A \$450 Coronavirus (COVID-19) Test Isolation Payment was also made available to Victorian workers to enable them to receive financial support while they self-isolate to wait for the results of a coronavirus (COVID-19) test.¹⁰

These government policy interventions were notable because people in insecure employment generally experience less protection from termination, have limited entitlements and receive lower pay.¹¹

Around 20% of employees are casual and around 8% are employed as independent contractors (gig workers would be a subset of this group).¹² This means that nearly 30% of Australia's workforce do not receive paid leave entitlements.

Independent contractors are not covered by the 10 minimum entitlements under the National Employment Standards, which include annual leave, maximum weekly hours, sick leave, parental leave and notice of termination and redundancy pay.¹³ Casual employees are also excluded from many of these protections (notably annual leave, paid sick leave, notice of termination and redundancy pay).

Not only does the 'work status' of workers determine their employment entitlements, it also impacts their "protections and obligations under superannuation laws, health and safety, insurance for work injuries and tax".¹⁴

The *Fair Work Act 2009* (Cth) is the most prominent lever to strengthen employment protections for all workers. Significant reforms are needed to ensure that all workers in Australia can access the minimum employment rights to ensure that they can not only meet their basic needs, but can flourish and fully participate in life.

The coronavirus pandemic has reinforced that minimum employment entitlements benefit not just individuals, but the whole community.

⁹ Services Australia, Pandemic Leave Disaster Payment – Victoria, <https://www.servicesaustralia.gov.au/individuals/services/centrelink/pandemic-leave-disaster-payment-victoria>

¹⁰ State Government of Victoria, \$450 Coronavirus (COVID-19) Test Isolation Payment, <https://www.coronavirus.vic.gov.au/450-coronavirus-covid-19-test-isolation-payment>

¹¹ OECD, OECD Employment Outlook 2014, op. cit; International Labour Organization, Digital labour platforms and the future of work: Towards decent work in the online world, Geneva 2018, p.xviii https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_645337.pdf

¹² Department of Premier and Cabinet, Report of the Inquiry into the Victorian On-Demand Workforce, July 2020, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf

¹³ Fair Work Ombudsman, National Employment Standards, <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

¹⁴ Department of Premier and Cabinet, Report of the Inquiry into the Victorian On-Demand Workforce, July 2020, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf

Summary of Recommendations

Ensure ongoing data collection of current platform workers

- Improve national labour market data surveys to ensure that all platform work is captured and reported.

Reform Australia's industrial relations system

- Amend the *Fair Work Act 2009* (Cth) to:
 - create an assumption that all workers are 'employees' not contractors (unless the principal/employer proves otherwise).
 - introduce an objective definition of casual employment that reflects the circumstances of the employment and a conversion scheme that strengthens casual employee's ability to convert to permanent employment.
 - place a cap on the number of consecutive fixed term contracts at 24 months or two consecutive contracts – whichever comes first.

Maximise Australia's superannuation system

- Amend the *Fair Work Act 2009* (Cth) to make superannuation part of the National Employment Standards.
- Provide independent contractors with a legislative mechanism to pursue unpaid superannuation directly.
- Remove the minimum earnings and minimum age restrictions in superannuation.
- Ensure all government funded Paid Parental Leave and Dad and Partner Pay payments receive superannuation.

Improve access to justice and legal education

- Increase funding to community legal centres to deliver employment law case management and community legal education to vulnerable workers.
- Improve Australian students' understanding of their workplace rights and entitlements.

Use procurement as a lever to drive secure work

- Amend the Commonwealth Procurement Rules to require that companies submitting tenders be certified under a new Secure Jobs Code scheme.

- Increase default contract periods in family and community services to seven years to create more secure work opportunities in the sector.

Insecure and precarious employment in Australia

Insecure work has been defined as ‘poor quality work that provides workers with little economic security and little control over their working lives’.¹⁵

Elements of work insecurity exist in different employment arrangements. Insecure work is most commonly associated with non-permanent or non-regular work such as casual work, seasonal work, fixed term contracts, independent contracting and labour hire.¹⁶ Sham contracting, where employers illegally attempt to avoid an employment relationship by misrepresenting employees as independent contractors, means many workers are missing out on their legal entitlements.¹⁷

Many gig workers receive no minimum pay, no superannuation, no protection from termination, no sick or annual leave entitlements, have to supply their own tools or equipment (e.g. car), manage tax and insurance, don’t receive paid travel time, and are required to be on-call without remuneration. They are also more likely to experience irregular work schedules and fluctuating incomes, which they may need to supplement by working for multiple digital platforms or organisations.

In the gig economy, workers bear more of the financial and business risk, experiencing inferior conditions and volatile incomes to permanent employees. As a result, insecure work can increase vulnerability and drive inequality by contributing to financial stress, housing instability, poor health and wellbeing, reduced chances of career progression and professional development, and greater risk of unemployment.

¹⁵ Lives on Hold, *Unlocking the potential of Australia’s workforce: Independent inquiry into Insecure work*, commissioned by the Australian Council of Trade Unions, 2012, p.14

¹⁶ Ibid.

¹⁷ Australian Government, Fair Work Ombudsman, Independent contractors and employees, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees>

How COVID-19 exacerbated the risks of insecure and precarious work

The COVID-19 pandemic has exposed and exacerbated the risks of insecure and precarious work.

In the aged care sector for example, the precarious nature of vital care and social assistance roles, has resulted in a highly mobile workforce and increased risk of virus transmission.

According to Sara Charlesworth, Director of the Centre for People, Organisation and Work at RMIT University, many of the staff that work in residential aged care or in client's private homes are employed on a casual basis and those on part-time work contracts are often allocated far fewer hours than they need to work each week.¹⁸

As such, many workers hold multiple jobs in aged care to make a living. This presented real risks to workers and clients during the COVID-19 pandemic, as workers were attending different workplaces and engaging with clients, many with significant underlying health issues that would make them more susceptible to the virus.¹⁹

While this issue has been temporarily addressed, in part by the time-limited \$1,500 and \$450 COVID-19 payments, which have kept sick or at-risk workers safe at home, the emergency measures serve to highlight the way in the health and wellbeing of individuals is inextricably linked with that of the community. When casual aged care workers are not entitled to paid sick leave or part-time workers have run out of their pro-rated 10 days statutory sick leave entitlement and turn up to work, the impacts are felt both within and beyond the sites at which they work.²⁰

This is the case for other parts of the community services system.

For example, in the early childhood education and childcare sector, workers can often work across multiple childcare sites. This may be because their employer operates multiple sites or because they work for different employers. This can impact the ability for workers to build strong relationships with the children they are caring for and provide continuity of care. Young children need regular carers that they know and can trust, and insecure working arrangements in the sector undermines the development of these important bonds. It also poses a challenge for educators as they try to maintain a level of income.

During the pandemic, many early childhood education and childcare staff working across multiple sites experienced significant additional stress, both in terms of the number of

¹⁸ RMIT, COVID-19 spike highlights job insecurity crisis, <https://www.rmit.edu.au/news/all-news/2020/jul/insecure-work>

¹⁹ Ibid.

²⁰ Ibid.

children they were interacting with as well as dealing with concerns of permanent staff about casuals being a higher risk of exposure. Casual staff did not have the protections of personal leave to deal with the mental health impacts of COVID-19.

Many staff had a high level of anxiety, especially where they had pre-existing health conditions or were carers for members of their family with health conditions. This was heightened for insecure workers, where they felt they had no choice but to work and risk exposure and their health and that of their families. While the \$1,500 and \$450 government payments were made available to these workers during the pandemic, this does not address the underlying issues around access to paid leave entitlements.

Similarly, in the disability sector, COVID-19 exposed the risks of a highly mobile workforce. Many workers in the disability sector hold multiple jobs and work several short shifts across multiple work sites.

Research by Natasha Cortis, of the University of NSW Social Policy Research Centre, in the initial phases of the pandemic reported concerns over a lack of safety equipment, high anxiety levels amongst staff over virus transmission and the loss of income and employment as a result of the pandemic.²¹

Recognising the challenges of insecure work, the Victorian Government announced during the pandemic that it would establish a Secure Work Pilot Scheme that would provide up to five days of sick and carers pay at the national minimum wage for casual or insecure workers in priority industries.²²

Commencing in 2022, priority industries that have been identified include cleaners, hospitality staff, security guards, supermarket workers and aged care staff.²³

The pilot scheme in Victoria is welcome – VCOSS commends the Victorian Government's leadership on this issue. However, insecure work is a national problem that requires a national solution. We urge the Commonwealth Government to play its part.

²¹ Cortis, N. and van Toorn, G. (2020). The disability workforce and COVID-19: initial experiences of the outbreak, Sydney: Social Policy Research Centre, UNSW Sydney.

²² Premier of Victoria, Victoria To Take First Big Step To Tackle Insecure Work, 23 November 2020, <https://www.premier.vic.gov.au/victoria-take-first-big-step-tackle-insecure-work>

²³ Department of Premier and Cabinet, Secure Work Pilot Scheme, <https://www.vic.gov.au/secure-work-pilot-scheme>

The ‘gig’ and ‘on-demand’ economy

Whilst much attention has focused on online platforms such as Uber, Deliveroo, Airtasker and Airbnb,²⁴ the emergence of platforms in the health, social and community services sector is a newer phenomenon.

Digital platforms such as Hireup, Mable, Find a carer, careseekers and Newly are seeking to capitalise on the expansion of the disability and aged care sectors driven by increased public funding arising from the introduction of the NDIS and move towards Consumer Directed Care funding in aged care.²⁵ In addition to these gig platforms, online sites such as Gumtree and Facebook are also being utilised to connect workers directly with clients or to directly recruit new workers by agencies.

Some of these platforms employ their on-demand workers, predominantly through casual employment, while others offer care services facilitating independent contracting arrangements.

Whilst research²⁶ and feedback from VCOSS members suggests that the gig economy and on-demand work²⁷ currently represents only a small portion of the health and community services sector, the potential for greater expansion driven by increased public funds, an ageing population and current pricing models and policy frameworks suggests that a regulatory response will be required by the Commonwealth Government to ensure that quality services are delivered.

This is particularly important given that the health and community sector is the fastest growing industry.²⁸ In the case of the aged care and disability support sector, the workforce is expected to grow to 245,000 workers by 2023 (up from 175,800 workers in 2018).²⁹

²⁴ Jim Stanford, The resurgence of gig work: Historical and theoretical perspectives, *The Economic and Labour Relations Review*, 2017, Vol 28(3) 382-401; Dr Tom Barratt, Dr Caleb Goods, Dr Alex Veen, Submission to the Select Committee on the Future of Work and Workers, <https://www.aph.gov.au/DocumentStore.ashx?id=3d4718a5-150d-441f-97dc-52a1f203d70c&subId=563706>; Unions NSW, Innovation or Exploitation: Busting the Airtasker Myth, 2016, https://d3n8a8pro7vnm.cloudfront.net/unionsnsw/pages/3135/attachments/original/1474529110/Unions_NSW_Report_into_Airtasker.pdf?1474529110

²⁵ Australian Government, Myagedcare, Consumer Directed Care, <https://www.myagedcare.gov.au/help-home/home-care-packages/consumer-directed-care-cdc>

²⁶ Frances Flanagan, Theorising the gig economy and home-based service work, *Journal of Industry Relations*, 2018; Christina David and Raelene West, NDIS Self-Management Approaches: Opportunities for choice and control or an Uber-style wild west? *Aust J Soc Issues*. 2017; 52:331-346. Doi: 10.1002/ajs4.23

²⁷ Ian Campbell, Fiona Macdonald and Sara Charlesworth, On-demand work in Australia, in Michelle O’Sullivan et al. (eds.) *Zero-Hours and On-Call Work in Anglo-Saxon Countries*, Berlin, Springer Press.

²⁸ Australian Bureau of Statistics, Labour Force, Australia. Detailed, Quarterly Cat. No. 6921.0.55.003, May 2017.

²⁹ Victorian Government, Report of the Inquiry into the Victorian On-Demand Workforce, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf, p.87.

The Victorian Government's *Inquiry into the On-Demand Workforce* identified that "there are legitimate concerns about the impact of platforms on this sector, particularly in relation to health and safety and insurance, unpaid work and the long term training needs of the workforce."³⁰

The rise of the gig economy can also affect government revenue, for example inadequate and inconsistent collection of payroll tax from on-demand businesses, as well as injured workers falling back on the public health care system for medical treatment, or on social security for income support. Concerns have also been raised with workers not paying the right amount of tax. A Black Economy Taskforce report recommends online platforms report data to the Australian Tax Office and other agencies.³¹

Labour market data surveys conducted by the ABS are not effectively identifying platform work.³² Nearly 14% of respondents to the Victorian Government's *National Survey on Digital Platform Work in Australia – Prevalence, Nature and Impact* indicated they had undertaken platform work at some point. However labour market data surveys conducted by the ABS currently only ask people about their main job and do not capture people who earn secondary income via platforms, if their 'main' job is as an employee.³³

More comprehensive data collection is needed to provide policy makers with important information about current and future platform work.

RECOMMENDATION

- Improve national labour market data surveys to ensure that all platform work is captured and reported.

³⁰ Ibid.

³¹ Australian Government, The Treasury, Black Economy Taskforce Final Report – October 2017, https://static.treasury.gov.au/uploads/sites/1/2018/05/Black-Economy-Taskforce_Final-Report.pdf, p.136; Australian Government, The Treasury, Tackling the black economy: A sharing economy reporting regime – A consultation paper in response to the Black Economy Taskforce Final Report, January 2019, <https://static.treasury.gov.au/uploads/sites/1/2019/01/Consultation-Paper-A-sharing-economy-reporting-regime-1.pdf>

³² https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf p.34

³³ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4915/9469/1146/Report_of_the_Inquiry_into_the_Victorian_On-Demand_Workforce-reduced_size.pdf

Aspirations of Australians

Having a safe and secure place to call home is a top priority for both younger³⁴ and older Australians.³⁵ Research has found 80% of older Australians would like to own their home rather than rent.³⁶ While many younger Australians aspire to home ownership, this is often secondary to the immediate pursuit of employment and education related goals.

In order to secure safe and affordable housing, Australians need a steady form of income that enables them to not only meet their housing needs, but also pay for food, energy, clothing, transportation, childcare, health care, and access to information technology.

Workers that are in insecure employment can often struggle to pay for these things that provide the basis for a good life. It can also impact their ability to buy a house as banks are reluctant to lend to people that are not in permanent employment.

While Australia prides itself on having a world-leading retirement savings system,³⁷ not everyone benefits from it. For example, some workers that are falsely engaged as independent contractors rarely receive superannuation contributions despite this being a requirement under the Superannuation Guarantee Ruling 2005/1.³⁸

Gig economy workers may also miss out with lower or no contributions being made to their accounts. Other workers miss out because they do not meet the minimum \$450 earning threshold per month in order to receive the 9.5% Employer Superannuation Guarantee contribution. This is a gendered issue, with more women working in part-time and casual employment. While some workers may hold multiple jobs, they may not earn \$450 per month from one employer, thereby missing out.

³⁴ Sharon Parkinson, Steven Rowley, Wendy Stone, Amity James, Angela Spinney, Margaret A. Reynolds, Young Australians and the housing aspirations gap, Australian Housing and Urban Research Institute, 15 August 2019, <https://apo.org.au/node/253596>

³⁵ James, A., Rowley, S., Stone, W., Parkinson, S. Spinney, A. and Reynolds, M. (2019) Older Australians and the housing aspirations gap, AHURI Final Report 317, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/finalreports/317>, doi: 10.18408/ahuri-8117301.

³⁶ Ibid.

³⁷ Australian Trade and Investment Commission, Sound fundamentals: Australia now home to world's 4th largest pension assets, 14 April 2020, <https://www.austrade.gov.au/news/economic-analysis/sound-fundamentals-australia-now-home-to-world-s-4th-largest-pension-assets>

³⁸ WestJustice, Inquiry into the Victorian On-Demand workforce, https://www.westjustice.org.au/cms_uploads/docs/westjustice-submission--inquiry-into-the-victorian-on-demand-workforce-final.pdf ; Australian Taxation Office, Superannuation guarantee: who is an employee?, SGR 2005/1, 23 February 2005.

Federal Treasury estimates that around 240,000 women and 160,000 men are affected by the \$450 per month threshold.³⁹ To improve the retirement balances of all working people, the \$450 per month threshold should be removed.

Minimum age restrictions also apply with those under 18 years old needing to receive \$450 or more per month and work more than 30 hours in a week in order to qualify for superannuation contributions.⁴⁰ These minimum age restrictions should be removed.

It is also not compulsory for employers to pay superannuation while their employee is on paid parental leave. Women, who are the majority of recipients of the Paid Parental Leave scheme, are therefore missing out on this entitlement. This should be addressed, with superannuation paid on top of both the Paid Parental Leave scheme and the Dad and Partner Pay leave scheme.

While workers can contact the ATO to recover unpaid superannuation, the ATO has discretion as to whether to pursue these claims.⁴¹ Avenues for recovering superannuation are limited once a complaint is made.⁴² Employees can make a claim for superannuation, alongside unpaid wages or entitlements if superannuation is in their applicable Award – but sometimes orders are not made for superannuation.⁴³

By making superannuation a part of the National Employment Standards, this will provide employees with a direct mechanism to pursue their own claims.

RECOMMENDATIONS

- Amend the *Fair Work Act 2009* (Cth) to make superannuation part of the National Employment Standards.
- Provide independent contractors with a legislative mechanism to pursue unpaid superannuation directly.
- Remove the minimum earnings and minimum age restrictions in superannuation.

³⁹ ASFA, Tackle women's inequality in super directly, 19 November 2020, <https://www.superannuation.asn.au/media/media-releases/2020/media-release-19-november-2020-2>

⁴⁰ ATO, Your superannuation basics, October 2017, <https://www.ato.gov.au/general/other-languages/in-detail/information-in-other-languages/your-superannuation-basics/>

⁴¹ WestJustice, Inquiry into the Victorian On-Demand workforce, https://www.westjustice.org.au/cms_uploads/docs/westjustice-submission--inquiry-into-the-victorian-on-demand-workforce-final.pdf ;

⁴² Ibid.

⁴³ Ibid.

- Ensure all government funded Paid Parental Leave and Dad and Partner Pay payments receive superannuation.

Reforming Australia's industrial relations system

Australia's industrial relations laws have not kept pace with modern society and changing labour market conditions. The industrial relations system assumes a traditional, full-time employer-employee relationship however only approximately 50% of workers fall in this category. This means that too many workers are not afforded basic rights, entitlements and employment protections that other Australians take for granted.

Sham contracting

VCOSS members have raised concerns regarding sham contracting arrangements, whereby an employer attempts to disguise an employment relationship as an independent contracting arrangement and thereby avoid paying employees their legal entitlements such as paid leave, minimum wage and affording protections from unfair dismissal.

According to the Federation of Community Legal Centres, sham contracting arrangements are prolific through the cleaning, food and goods delivery, home and commercial maintenance (e.g. painters), and building and construction industries.⁴⁴ Community legal centres report that many of their clients are engaged as contractors with Australian Business Numbers (ABNs) when they are in fact employees.

To eradicate sham contracting, the Commonwealth Government should introduce a reverse onus into the *Fair Work Act 2009* (Cth) that presumes all workers are employees not contractors (unless the principal/employer proves otherwise). This would ensure that workers would receive minimum pay and entitlements, unless the employer/principal can show that the worker was genuinely running their own business (or the worker is on vocational placement). By inserting this section, it would help redress the power imbalance between workers and employers, as it would require the employer to demonstrate that this was a genuine contracting relationship.

⁴⁴ Federation of Community Legal Centres, *A Just and Equitable Recovery*, https://d3n8a8pro7vnm.cloudfront.net/fclc/pages/756/attachments/original/1608087671/A_Just_and_Equitable_Recovery_web_Final.pdf?1608087671

RECOMMENDATION

- Amend the *Fair Work Act 2009* (Cth) to create an assumption that all workers are ‘employees’ not contractors (unless the principal/employer proves otherwise).

Casual workers

The COVID-19 pandemic has demonstrated the vulnerability of workers who are employed casually. Casual employees are often the first to be fired, particularly during a downturn in the economy.⁴⁵ According to the Australia Institute, casual workers lost employment eight times faster than those in permanent jobs during the pandemic.⁴⁶ While some casuals do work irregular hours and days, others work regular, full-time equivalent hours, are reliant on their regular income from this work, but are not entitled to redundancy pay if their position is terminated.

Research by the Australia Institute has found that between May and November 2020, casual employment grew by over 400,000 positions – “[t]hat is by far the biggest expansion of casual employment in Australia’s history.”⁴⁷

There are concerns that there will be an even greater increase in casualisation of the workforce as a consequence of recent changes to the *Fair Work Act 2009* through the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2021*.⁴⁸ This bill included a number of provisions relating to casual employment including a new definition of casual employment; a casual conversion entitlement in the National Employment Standards; provision of a Casual Employment Information Statement to casual employees; and offsetting casual loading amounts against claims for leave and other entitlements in certain circumstances.⁴⁹

⁴⁵ Dan Nahum & Jim Stanford, 2020 Year-End Labour Market Review: Insecure Work and the Covid-19 Pandemic, The Australia Institute, December 2020, <https://australiainstitute.org.au/wp-content/uploads/2020/12/Labour-Force-2020-Briefing-Note.pdf>, p.1.

⁴⁶ Ibid.

⁴⁷ Ibid, p.2.

⁴⁸ Parliament of Australia, Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2021, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6653; ACTU, Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020, <https://www.actu.org.au/media/1449370/actu-omnibus-bill-submission-20200118-final.pdf>, p.4; ACTU, Forced to gut IR Bill, Morrison attacks casuals, green lights wage theft, 18 March 2021, <https://www.actu.org.au/actu-media/media-releases/2021/forced-to-gut-ir-bill-morrison-attacks-casuals-green-lights-wage-theft>

⁴⁹ Ibid.

Of concern is the new definition of casual employment which essentially provides that employers and employees should decide whether a job is casual or permanent at the start of an engagement. This has been criticised because it does not allow consideration of any subsequent conduct of the parties and goes against established common law precedent.

The proposed casual conversion right has also been criticised as an employer is not bound to make an offer to a casual of permanent employment if it does not consider it reasonable to do so and is able to refuse a request by the worker to have this decision considered by the Fair Work Commission.⁵⁰

Whilst these changes have just been made, it is critical that the legislation be revisited and strengthened. VCOSS recommends that the Federal Government amend its definition of casual employment to enable consideration of any subsequent conduct of the parties, and strengthens the casual conversion clause to enable more casual employees to convert to permanent employment.

RECOMMENDATION

- Amend the *Fair Work Act 2009* (Cth) to revise the new definition of casual employment to enable consideration of any subsequent conduct of the parties and strengthens the casual conversion clause to enable more casual employees to convert to permanent employment.

Fixed term employment contracts

Across the community sector, workers are often employed in fixed term contracts.⁵¹ This is due in part to government funding agreements and short-term project funding.

Fixed term contracts are another form of insecure work as employment will end once the contract is finished and the ability to access unfair dismissal is generally limited.

The use of fixed term contracts in the community sector undermines the ability of organisations to retain experienced workers and deliver the services that vulnerable and

⁵⁰ ACTU, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, <https://www.actu.org.au/media/1449370/actu-omnibus-bill-submission-20200118-final.pdf>, p.4;

⁵¹ McKell Institute Queensland, Understanding Insecure Work in Australia, <https://mckellinstitute.org.au/app/uploads/McKell-Institute-Queensland-Understanding-Insecure-Work-in-Australia-1-2.pdf>, p.5.

disadvantaged members of the community rely on. Workers face uncertainty every time their contract is up for renewal. Some workers can miss out on holiday or leave pay.

In some other sectors – for example, education – it is not uncommon for fixed term contracts to be struck even though the role is not time limited and will need to be performed beyond the life of the fixed term contract.

Legislating that fixed term contracts be for a maximum of 24 months or two consecutive contracts – whichever comes first – would provide an additional pathway for permanency for employees.

RECOMMENDATION

- Amend the *Fair Work Act 2009* (Cth) to place a cap on the number of consecutive fixed term contracts at 24 months or two consecutive contracts – whichever comes first.

Improve access to justice and legal education

Community-based employment law services provided by community legal centres play a crucial role in promoting access to justice and advocating for systemic change that benefits vulnerable workers.

They often fill a gap in the legal system by representing vulnerable workers who are not members of unions or cannot afford private legal representation and help pursue their entitlements under employment law.

There is currently a lack of resources to fund this work. While dedicated Federal and State funding streams exist in other specialist areas of law such as family law, consumer, tenancy, criminal law and housing, VCOSS understands that there is only one stream of funding at a Commonwealth level for employment law, and this funding is insufficient.⁵² This means many vulnerable workers are missing out on the ability to enforce their workplace rights.

The value of Community-Based Employment Advice Services was recognised by the Booth report in 2009.⁵³ The Productivity Commission has also recognised the important role of community organisations in informing migrant workers about their workplace rights and entitlements.⁵⁴

Place-based community legal centres have often developed strong relationships within the communities they work in. In addition to providing legal advice, they often run legal education programs for vulnerable workers and deliver information sessions on workplace rights and entitlements. Such programs not only improve awareness of workplace rights and responsibilities, but also improve job readiness and access to secure work.

The School Lawyer program run by WEstJustice embeds a lawyer in a public school and assists students with a wide range of legal issues including employment law. It also conducts legal education to staff, students and their families on a range of topics including employment law. Only a limited number of schools in Victoria benefit from this program.

Over 50% of WEstjustice's young employment clients are engaged on a casual basis. Some of the employment issues faced by students include underpayment of wages and entitlements, sham contracting, unfair dismissal, bullying, workplace health and safety concerns, and discrimination at work.

⁵² Fair Work Australia, Community Engagement Grants Program, <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/community-engagement-grants-program>

⁵³ Anna Booth, 'Report of the review of community-based employment advice services', Report to the Fair Work Ombudsman, 30 September 2009.

⁵⁴ Productivity Commission, 'Workplace Relations Framework', Productivity Commission Inquiry Report, Vol 2, No 76, 30 November 2015, <https://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume2.pdf>, p.925.

Ensuring that all students understand their workplace rights and entitlements is an important life skill. A 2009 House of Representatives *Inquiry into combining school and work: supporting successful youth transitions* reported that students are interested in the 'rules' of the workplace and would like this to be better taught in schools.⁵⁵

RECOMMENDATIONS

- Increase funding to community legal centres to deliver employment law case management and community legal education to vulnerable workers.
- Improve Australian students' understanding of their workplace rights and entitlements.

Use procurement as a lever to drive secure work

As federal, state and local government departments and agencies are the largest purchaser of goods, services and construction projects in Australia, they have an important role in driving the use of public expenditure to improve social and economic outcomes.⁵⁶

⁵⁵ House Standing Committee on Education and Training, *Inquiry into combining school and work: supporting successful youth transitions*, 2009, https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=edt/schoolandwork/report.htm

⁵⁶ University of Melbourne, *Maximising the Potential of Social Procurement*, <https://government.unimelb.edu.au/research/regulation-and-design/Home/Maximising-the-Potential-of-Social-Procurement>

In 2019–20, the federal government spent \$53.9 billion procuring goods and services across 81,174 contracts.⁵⁷

Social procurement refers to organisations using their buying power to generate social value above and beyond the value of the goods, services, or construction being procured.⁵⁸

Victoria’s Social Procurement Framework was released in 2018 and was the first whole-of-government commitment to social procurement in Australia.⁵⁹ It sets a clear expectation that social procurement is standard practice for the Victorian Government.

Supporting safe and fair workplaces is one of the government’s seven social procurement objectives. This requires that it purchases from suppliers that comply with industrial relations laws and promote secure employment.

The ACT’s Secure Local Jobs Code objective is to promote job security in the Territory and reduce the incidence of insecure work.⁶⁰ It requires businesses tendering for construction, cleaning, security or traffic management work to meet workplace standards in the Secure Local Jobs Code and have a Secure Local Jobs Code Certificate. As part of this, to obtain Code certification, businesses must engage an approved auditor.

Ensuring that companies are independently verified and demonstrate a track record of compliance with workplace laws will help promote the provision of decent and secure work.

VCOSS recommends that the Federal Government amend the Commonwealth Procurement Rules⁶¹ to require that companies submitting tenders be certified under a new Secure Jobs Code. This Code could require that all companies tendering for government work be independently audited to demonstrate compliance with workplace laws and relevant industry codes.

⁵⁷ Australian Government, Department of Finance, Statistics on Australian Government Procurement Contracts, <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts->

⁵⁸ The State of Victoria, Victoria’s social procurement framework, 2018, <https://content.vic.gov.au/sites/default/files/2018-08/Victorias-Social-Procurement-Framework.PDF>

⁵⁹ Victoria’s social procurement framework, 2018, <https://www.buyingfor.vic.gov.au/sites/default/files/2018-08/Victorias-Social-Procurement-Framework.PDF>

⁶⁰ <https://legislation.act.gov.au/View/di/2020-278/current/PDF/2020-278.PDF>

⁶¹ Commonwealth Procurement Rules, 14 December 2020, <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

Short term funding contracts impact staff retention and service delivery. As the Productivity Commission recognised in its Human Services report, current contract lengths in the family and community services sector (typically three years or less) are “too short”.⁶²

“Three-year contracts do not give service providers adequate funding stability. Short-term contracts can also be detrimental to service users because service providers spend too much time seeking short-term funding, which is a costly distraction from delivering and improving services. Short contracts can be an impediment to service providers developing stable relationships with service users, hindering service provision and the achievement of outcomes for users. The lack of certainty inhibits planning, collaboration between service providers, innovation and staff retention.”

The Productivity Commission also recognised the challenges of attracting and retaining staff where there was uncertainty about whether contracts would be renewed.⁶³

VCOSS members have noted that short term funding contracts drive insecure work arrangements, including short term employment contracts, fixed term contracts and casual employment.

The Productivity Commission recommended that default contract terms should be increased “to seven years, with enhanced safeguards, to achieve a better balance between funding continuity for service providers and periodic contestability”.⁶⁴

RECOMMENDATIONS

- Amend the Commonwealth Procurement Rules to require that companies submitting tenders be certified under a new Secure Jobs Code scheme.
- Increase default contract periods in family and community services to seven years to create more secure work opportunities in the sector.

⁶² Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, <https://www.pc.gov.au/inquiries/completed/human-services/reforms/report/human-services-reforms.pdf>, p.245

⁶³ *Ibid*, p.246.

⁶⁴ *Ibid*, p.235.



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