Australian Government
Attorney-General's Department

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Select Committee on Job Security

Joint submission of the Attorney-General's Department, the Department of Education, Skills and Employment, and the Department of Industry, Science, Energy and Resources

I. Introduction

This is a Joint Submission of the Attorney-General's Department (AGD), the Department of Education, Skills and Employment (DESE) and the Department of Industry, Science, Energy and Resources (DISER) (collectively, 'the Agencies'). The Agencies welcome the opportunity to make a submission to the Senate Select Committee on Job Security (the Committee).

Scope of the submission

This submission responds to the inquiry's terms of reference as they relate to the respective portfolios of the Agencies. A number of issues covered by the terms of reference to this inquiry are matters for other Australian Government agencies as well as state and territory governments.

Attorney-General's Department

Portfolio responsibility for industrial relations matters is held by AGD, which supports the Minister for Industrial Relations to ensure safe, fair and productive workplaces. The submission provides information from AGD that addresses the terms of reference that fall within its responsibilities, specifically (a), (b), (c), (e) and (f).

This submission deals with existing industrial relations laws and provides an overview of Australia's framework for work health and safety (WHS) laws. Where applicable, AGD has referenced the recent reforms to the *Fair Work Act 2009* (Cth) (FW Act) made by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (the FW Amendment Act).[1]

Other relevant agencies within the Minister for Industrial Relations' portfolio include the Fair Work Ombudsman (FWO), the primary agency that regulates compliance with the FW Act, and the Australian Building and Construction Commission (ABCC) which regulates compliance under the FW Act for the building and construction industry. The Fair Work Commission (FWC) has powers to deal with unfair dismissal, general protections, bullying and agreement making matters. Comcare administers the Commonwealth's workers' compensation schemes and is the WHS regulator in the Commonwealth jurisdiction. Safe Work Australia (SWA) is responsible for national WHS and workers' compensation policy, including with respect to the model WHS laws, although individual jurisdictions have responsibility for implementation and regulation of these laws.

Department of Education, Skills and Employment

Portfolio responsibility for education, employment and skills policy is held by DESE, which supports the Minister for Employment, Workforce, Skills, Small and Family Business, the Minister for Education and Youth, the Minister for Regional Education and the Assistant Minister for Youth and Employment Services. Amongst other things, DESE has responsibility for the design and delivery of employment services, including jobactive, as well as vocational education and training (VET). This submission discusses how employment services and

[1] The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 was introduced into the House of Representatives on 9 December 2020. The Bill passed the Senate on 18 March 2021 with the revised title of Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021. The Bill, as amended, passed the Parliament on 22 March 2021 and received Royal Assent on 26 March 2021.

VET assists job seekers into more stable employment and how jobactive has adapted to a higher caseload over the course of the COVID-19 pandemic, relevant to term of reference (h).

Department of Industry, Science, Energy and Resources

DISER has a central role in enabling economic growth and job creation for all Australians. As Australia rebuilds and recovers from the COVID-19 pandemic, it is helping to create a strong, resilient and productive economy that delivers long-term prosperity. DISER is doing this by delivering on a range of Government priorities across a broad and significant agenda for the Australian people.

These priorities include backing a strong resources sector, helping to build high value-add manufacturing and digital industries, supporting small and family businesses as they adapt to an increasingly digitised world, and unlocking the economic potential of northern Australia, including delivering reforms to the Northern Australia Infrastructure Facility that will accelerate its investments and create jobs across northern Australia. DISER is strengthening Australia's national science, technology, engineering and maths capabilities and bringing together expertise across the business and research communities to develop and share new innovations and technologies and help businesses access new markets.

To enable Australian businesses to flourish and create jobs, DISER is fostering the conditions for them to succeed. DISER is supporting a secure, reliable and affordable energy sector that provides businesses with the certainty they need to invest, compete and grow. DISER is doing this while backing the transition to a low-emissions economy and contributing effectively to global action on climate change.

Through this work, DISER is helping to build a resilient and prosperous Australian economy that can create jobs and successfully navigate future challenges. The submission provides information under term of reference (h) that responds to the Committee's request.

Overview of the Australian labour market and economic outlook

The deterioration in Australia's economy and the labour market caused by the COVID-19 pandemic in the first half of 2020 was unprecedented, but the economic recovery is underway. The economy returned to growth in the September quarter 2020, with real GDP increasing by 3.3 per cent. After declining by around 872,800 persons between March and May, employment increased by around 876,400 persons between May and February 2021, meaning that employment has recovered to its pre-COVID level. Additionally, while the unemployment rate peaked recently at 7.5 per cent in July 2020, it has declined to 5.8 per cent by February 2021 compared to 5.2 per cent before the onset of COVID-19 (March 2020).

Going forward, Treasury forecasts from December 2020 indicate that the unemployment rate will reach 5.25 per cent by the June quarter 2024. However, the challenges facing the Australian economy are significant and there remains substantial uncertainty around the domestic outlook.

Reforming industrial relations laws to support Australia's jobs and economic recovery

On 26 May 2020, the Prime Minister announced that the Attorney-General would lead consultation with key stakeholders to develop a new mutually beneficial agenda for Australia's industrial relations system to help support job growth. On 11 June 2020, the Attorney-General announced membership of five working groups, each with five employer and five union representatives chosen for their practical industrial relations experience. Informed by this process, the Government introduced the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (the Bill) on 9 December 2020 as part of its JobMaker Plan.

The amended Bill that passed through the parliament on 22 March 2021 ensures the most urgent and time critical part of the Government's reform package regarding casuals was progressed. These reforms define what it means to be a 'casual employee', gives eligible casual employees a statutory pathway to permanent jobs, and prevent 'double-dipping' by enabling casual loading amounts to be offset against claims for leave and other entitlements. Improving certainty for this form of employment is expected to facilitate an environment more conducive to investment, encourage employment and promote wage growth.

Non-standard forms of work

Referring to the terms of reference of this inquiry, there are no consistent or universally accepted definitions in Australia or internationally of 'insecure', ' precarious' or 'non-standard' work. There are also no agreed statistical definitions that capture work under such terms as a whole. In considering the definition of non-standard work, the Organisation for Economic Co-operation and Development (OECD) explicitly acknowledged methodology often 'lumps together precarious and non-precarious forms of work'[2] and notes that comparing cross-country statistics on non-standard work or temporary work is 'not without problems'.[3]

AGD has collated the latest available data on key forms of work that are most likely of interest to the Committee based on its terms of reference using data from the Australian Bureau of Statistics (ABS). Each of these represent legitimate and important aspects of Australia's labour market. These are provided under terms of reference (a) and (b) of this submission. While existing data sets do not always show specific forms of work, the latest data shows that the relative share of most individual forms of work, as defined by the ABS, has remained relatively stable in the Australian labour market over the last decade with the exception of part-time employment. That is, as per ABS definitions, the number of casual employees as a share of all employees, the number of individual contractors as a share of all employed persons, the number of labour hire workers as a share of all employees, and the number of employees on fixed-term contracts as a share of all employees have all remained relatively stable (notwithstanding the decline in casual employment experienced during the COVID-19 pandemic (refer response under (b)).

Similarly, there is no agreed definition in Australia or internationally of the 'gig' or 'on-demand' economy, which is broadly understood to mean work that is, to some extent, enabled by digital platforms. This cohort is not homogeneous; it includes a spectrum of approaches to sourcing, agreeing and conducting work across a variety of industries and across many different platforms with different operating models. In Australia, 'gig' workers are likely to be either employees or independent contractors. There are a number of terms that refer to this form of work. For ease of reference, this submission uses the term 'on-demand economy'.

Existing industrial relations and WHS regulatory frameworks

The FW Act sets out the entitlements available to employees within Australia's national industrial relations system, including the National Employment Standards (NES), the framework for modern awards and enterprise agreements and the unfair dismissal and general protections regimes. This framework of entitlements balances the interests of employees and employers to support productive workplaces. Under the FW Act, the FWC's powers include dealing with unfair dismissal, general protections, bullying and agreement making matters. The FW Act also includes a civil penalty regime to penalise and deter non-

[2] OECD, 2015, *'In It Together: Why Less Inequality Benefits All',* p 138
[3] Ibid.

compliant employers, including where an employer engages in sham contracting by knowingly or recklessly misclassifying employees as independent contractors.

The denial of workers' legal entitlements is unacceptable. In recognition of the need to safeguard the entitlements of all employees, and protect vulnerable cohorts, the Government has continued to strengthen the compliance and enforcement framework under the FW Act by:

- Committing more than $160 million in new funding to the FWO since 2016, including to provide education to employers and employees (including specific funding for education and advice tailored for migrant and other vulnerable workers), encourage voluntary compliance, and target non-compliance by large corporates and through sham contracting arrangements.[4]
- Introducing the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* which significantly strengthened protections for vulnerable workers in the FW Act. It did this by increasing penalties (up to 10 fold) for intentional and systematic contraventions (i.e. 'serious contraventions') of workplace laws, outlawing 'cashback' arrangements, strengthening the FWO's evidence-gathering powers, and introducing new provisions and penalties so that franchisors and holding companies can be held responsible for breaches within their networks if they knew, or could reasonably be expected to have known, of the breaches and failed to take reasonable action to prevent them.

This industrial relations legislative framework reflects the longstanding common law distinction between employment and contracting arrangements. The *Independent Contractors Act 2006* (Cth) (IC Act) provides for the review of services contracts (as defined in that Act) on either or both of the grounds the contract is 'unfair' or 'harsh'.

Unlike the broadly national reach (subject to referral mechanism, etc.) of the FW Act framework, the Commonwealth, states and territories are each responsible for implementing, regulating and enforcing WHS laws within their jurisdictions. The vehicle for achieving national consistency in WHS regulation is through the model WHS laws administered by SWA. SWA was established in 2009 as the statutory agency responsible for the development and evaluation of national WHS policy and the model WHS laws, which the Commonwealth, states and territories may then adopt. The model WHS laws have been adopted in all jurisdictions except for Victoria and Western Australia, although those jurisdictions have similar laws in place. Western Australia recently passed a new WHS Bill based on the model WHS Act, which is expected to commence later in 2021.

The Commonwealth, states and territories also have jurisdiction over their own workers' compensation schemes, and benefits and coverage rules differ between jurisdictions. A function of SWA is to develop proposals to improve workers' compensation arrangements and to promote national consistency in these arrangements.

[4] Most recently, in the 2020-21 Budget, the Government provided $47.3 million over four years to the FWO under the measure *Helping Australian Businesses Comply with Workplace Laws;* in the 2019-20 MYEFO, the Government provided $6.4 million over three years to the FWO under the measure *Seasonal Worker Program*; in the 2019-20 Budget, the Government provided $9.2 million over four years (and $2.3 million per year, ongoing) to the FWO under the measure, *Sham Contracting*; and $10.8 million over four years (and $2.6 million per year, ongoing) to the FWO under the measure *Protecting Vulnerable Workers*.

II. Responses to the inquiry terms of reference

That a select committee to be known as the Select Committee on Job Security, be established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

a) The extent and nature of insecure or precarious employment in Australia

While the ABS does not collect data on 'insecure' or 'precarious' employment, AGD has collated the latest available data on key forms of work that may assist in understanding the extent to which working arrangements other than full-time permanent employment are utilised in Australia.

The Australian labour market is diverse and flexible in providing various forms of working arrangements to meet a variety of needs from businesses and workers. For many workers and businesses, these forms of work are genuine and legitimate choices that suit their individual and specific circumstances and needs. These forms of work provide greater opportunities for work and can help facilitate recent trends such as increased female participation, more people in education and supporting older workers transitioning into retirement.

As detailed in the data below, the relative share of most of these forms of work has remained stable for at least over a decade, with the exception of part-time employment.

Part-time employment

People are defined as employed part-time by the ABS if they usually work less than 35 hours per week, and actually worked less than 35 hours in the survey reference week in all of their jobs. Part-time employment includes both permanent employees (with paid leave entitlements) and casual employees (without paid leave entitlements). The latest ABS data shows that 50.6 per cent of part-time employees are casual.[5]

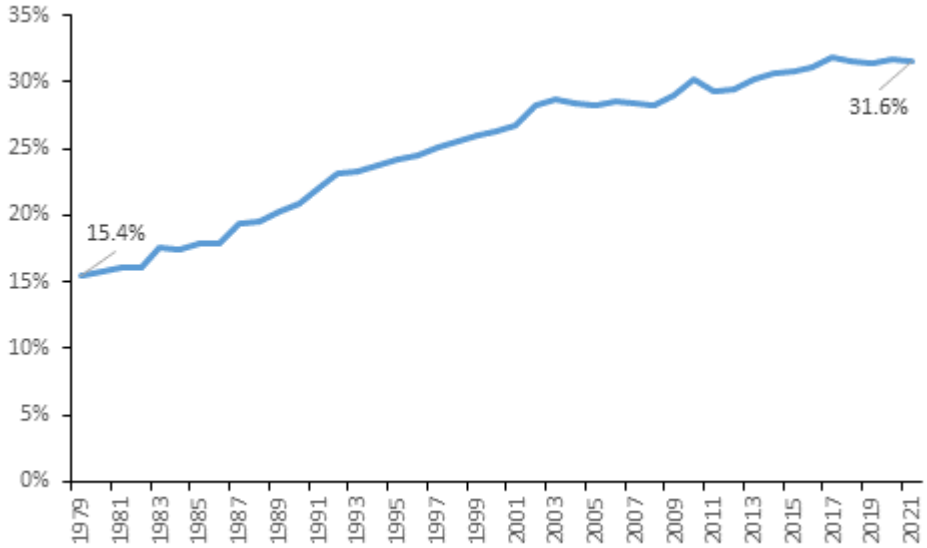
In 2019, Reserve Bank of Australia (RBA) Governor Philip Lowe pointed out many people work part-time because they want to, not because they cannot find a full-time job and therefore "we should not think of part-time jobs as being bad jobs, and full-time jobs as being good jobs."[6] This is in line with ABS data showing that in February 2020, the significant majority (86.8 per cent) of part-time workers either preferred not to work more hours or were unavailable or not looking for more hours.[7]

The part-time share of employment has increased from 15.4 per cent in 1979 to 31.6 per cent in February 2021 (Figure 1).

Research by the RBA attributes the increase in part-time work to an increase in younger workers combining work with full-time study, more women participating in the labour force, older workers looking to transition into retirement, a shift to service-oriented economy with increases in employment in health, education, tourism and hospitality, and businesses using part-time employment to improve flexibility and respond to cyclical fluctuations in demand for their output.[8]

[5] ABS *Labour Force, Detailed, November 2020,* original.
[6] RBA, 'The Labour Market and Spare Capacity', 20 June 2019.
[7] ABS, 'Participation Job Search and Mobility', February 2020.
[8] Cassidy N, Parsons S, 2017, 'The Rising Share of Part-time Employment', RBA Bulletin, September quarter 2017.

Figure 1: Part-time employment as a share of all employment



Source: ABS Labour Force, Australia, February 2021, seasonally adjusted
Note: February data is used for each year.

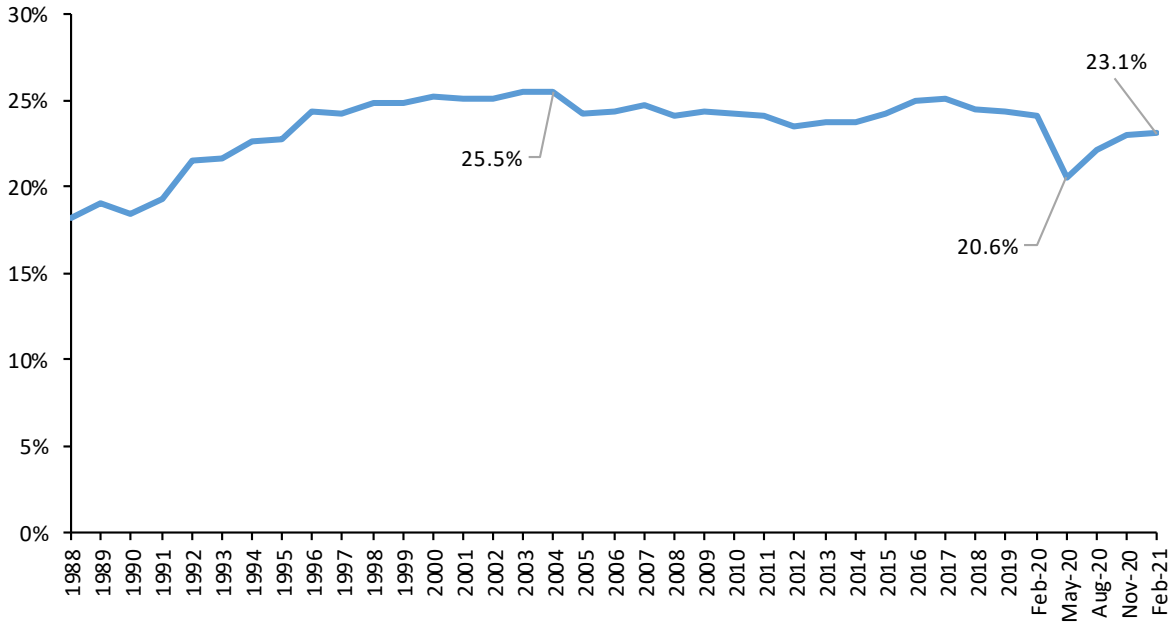
Casual employees

The ABS uses 'employees without paid leave entitlements' as the primary statistical measure of casual employment. An employee is considered to be without leave entitlements if they identify as not having access to either paid sick leave or holiday leave, or did not know their entitlements.

Leading into the COVID-19 pandemic, ABS data shows that the incidence of casual employment has remained broadly stable since 1998, at around 25 per cent as a share of all employees. The incidence of casual employment as a share of all employees was 24.1 per cent in February 2020, which was lower than it was in 1996.

ABS data shows that in February 2021, 23.1 per cent of all employees were casual employees, representing around 2.5 million people (Figure 2).

Figure 2: Casual incidence (% employees), 1988-2021



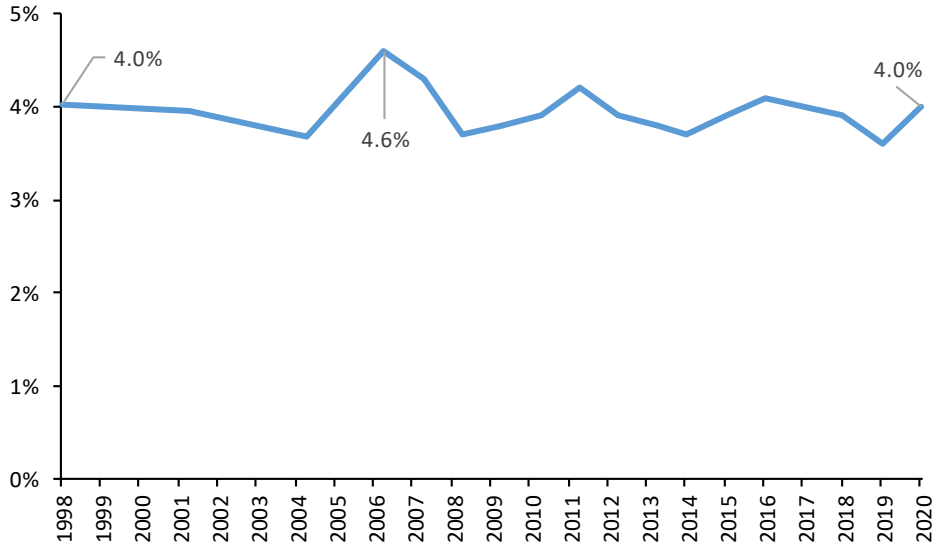
Source: Department of Education, Skills, and Employment estimates using ABS Employee Earnings, Benefits and Trade Union Membership, Aug 1988 - 1991, unpublished data; ABS Labour Market Statistics, July 2014, Aug 1992-2003; ABS Characteristics of Employment, Aug 2020, Aug 2004-2019; ABS Labour Force, Australia, Detailed, February 2021, Feb 2020-Feb 2021.
Note: The data in 2020 is expressed on a quarterly basis, while earlier data points is annual data from August.

Employees on fixed-term contracts

The ABS defines an employee on a fixed-term contract as a person on an employment contract which specifies that employment with the employer is not expected to continue beyond a particular date or event. Employees on fixed-term contracts generally have leave entitlements. The latest ABS data shows that 18.3 per cent of employees engaged on fixed-term contracts are without leave entitlements.

ABS data shows that the proportion of employees on fixed-term contracts has been stable at around 4 per cent since 2007. The latest ABS data shows that in August 2020, 4.0 per cent of employees worked on a fixed-term contract in their main job, representing around 413,000 people (Figure 3).

Figure 3: The share of employees that are on fixed-term contracts, 1998-2020



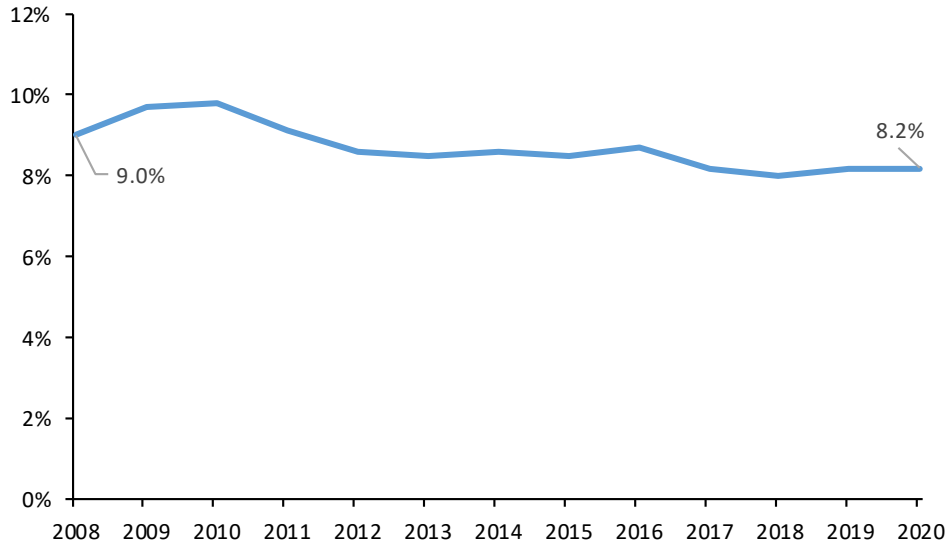
Source: 1998-2013: ABS *Forms of Employment*; 2014-2020: ABS *Characteristics of Employment* (unpublished Tablebuilder).
Note: data from 2001 to 2013 is for November, data from 1998, and 2014-2020 is for August.

Independent contractors

The ABS defines independent contractors as persons who operate their own business, and contract to perform services for others without having the legal status of an employee, i.e. persons who are engaged by a client rather than employed by an employer.

ABS data shows that independent contractors as a share of all workers, which are likely to include independent contractors engaged in the on-demand economy, has remained broadly stable over the last decade with a slight decrease in recent years. Data shows that in August 2020, there were around 1 million workers, or 8.2 per cent of the Australian workforce, who were independent contractors. This is down from 8.7 per cent in 2016 (Figure 4).

Figure 4: Independent contractors as a percentage of all employed persons, 2008-2020



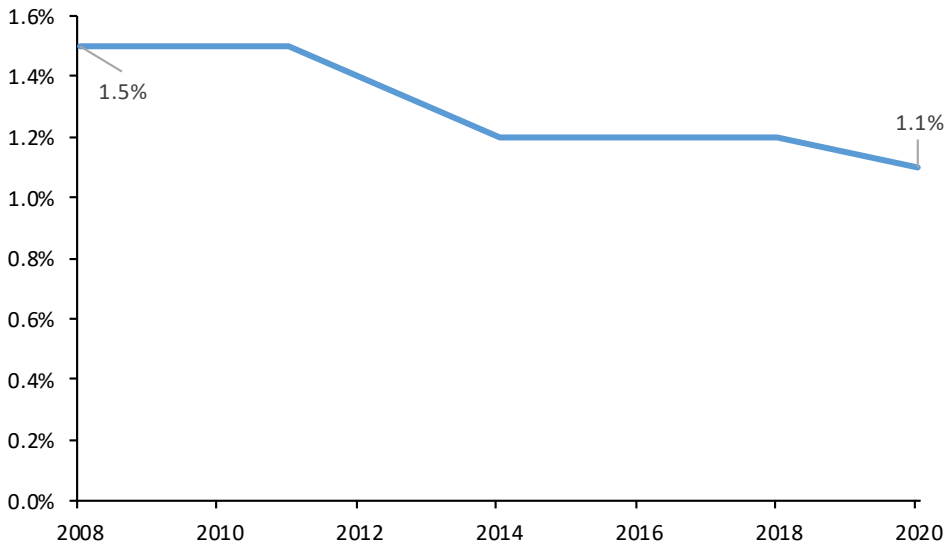
Source: ABS *Characteristics of Employment, Aug 2020* (http://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0)

Labour hire

The ABS defines labour hire workers as employees who found their job through a labour hire firm or employment agency and are paid by a labour hire firm or employment agency. Labour hire employees may be engaged on either an ongoing or casual basis.

ABS data shows labour hire employees as a share of all employees has been around 1-2 per cent over the last decade. In August 2020, 1.1 per cent of employees were labour hire workers, representing around 113,000 people (Figure 5).

Figure 5: The share of employees that are paid by a labour hire firm or employment agency, 2008-2020



Source: ABS *Characteristics of Employment* 2014-2020. ABS *Forms of Employment* 2008-2011.
Note: Labour hire data is not reported each year.

b) The risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis

Labour market impacts of the COVID-19 pandemic

As noted above, the ABS does not collect data on 'insecure' or 'precarious' employment. To assist the Committee, AGD has collated the latest available data on key forms of work other than full-time permanent employment over the last year (to the extent possible) to provide information about the labour market impacts of the COVID-19 pandemic.

It is important to acknowledge that different types of working arrangements provide necessary flexibility to workers and businesses. While the COVID-19 pandemic continues to affect parts of the Australian labour market, the impact on working arrangements other than full-time permanent employment since March 2020 is provided below. Note that the timeliness of this ABS data differs depending on each form of work; data on casual employees is available quarterly, data on independent contractors and fixed-term contractors are available annually, and data on labour hire workers are available biennially. This presents a challenge when examining recent trends.

Casual employees

Casual employees were impacted by the health restrictions associated with managing the public health response to the COVID-19 pandemic. They represented 540,600 of the 757,400[9] employee losses between

[9] This analysis (i.e. decline of 757,400) focuses on the change in the number of *employees* between February 2020 and May 2020. This contrasts with the analysis on page 3 of this submission which examines the change in the number of *employed persons* between March 2020 to May 2020 (i.e. a decline of 872,800). Data on employees (including casual employees) is reported on a quarterly basis (February, May, August and November) by the ABS, while data on employed persons is reported on a monthly basis (January, February, March etc.), hence the difference in reference periods used in the aforementioned analysis. *Employed persons* encompasses employees but also owner managers of incorporated enterprises, owner managers of unincorporated enterprises.

February and May 2020, with most of those (355,700 or 65.8 per cent) being casual employees working part-time hours.

Following the easing of restrictions from May 2020, there has been a recovery in the number of casual employees, though casual numbers are still below where they were before the pandemic. Between May 2020 and February 2021, there was an increase of 419,000 casual employees. This increase accounted for 77.5 per cent of the drop in the number of casual employees that occurred between February and May 2020. Most of the returning employees work part-time hours. By February 2021, 79.9 per cent of the drop in part-time casual employment experienced during May 2020 had recovered (a growth of 284,200 employees), compared with only 72.9 per cent of full-time casual employment (a growth of 134,800 employees).

Table 1: Recent changes in the incidence and number of casual employees

	Feb-20	May-20	Aug-20	Nov-20	Feb-21	Change May 2020 – Feb 2021		Change Feb 2020 – Feb 2021	
Permanent employees ('000)	8,267.2	8,050.5	8,144.8	8,283.9	8,350.9	+300.4	+3.7%	83.6	1.0%
Casual employees ('000)	2,625.0	2,084.4	2,311.7	2,478.8	2,503.4	+419.0	+20.1%	-121.6	-4.6%
Casual incidence	24.1%	20.6%	22.1%	23.0%	23.1%	+2.5 ppts		-1.0 ppts	

Source: ABS Labour Force, Australia, Detailed, February 2021 (original data)

Table 2: Quarterly changes in employment for casuals and permanent employees by full-time/part-time status in main job

		Feb-20 ('000)	May-20 ('000)	Aug-20 ('000)	Nov-20 ('000)	Feb-21 ('000)	Change Feb-May 2020 ('000)	Change May 2020-Feb 2021 ('000)	Change Feb 2020-Feb 2021 ('000)	Share of Feb-May 2020 change that has recovered
Casual employees	Total	2625.0	2,084.4	2311.7	2478.8	2503.4	-540.6 (-20.6%)	419.0 (20.1%)	-121.6 (-4.6%)	77.5%
	Full-time	880.2	695.4	719.6	790.9	830.1	-184.9 (-21.0%)	134.8 (19.4%)	-50.1 (-5.7%)	72.9%
	Part-time	1744.8	1389.1	1592.1	1687.9	1673.3	-355.7 (-20.4%)	284.2 (20.5%)	-71.5 (-4.1%)	79.9%
Permanent employees	Total	8267.2	8050.5	8144.8	8283.9	8350.9	-216.8 (-2.6%)	300.4 (3.7%)	83.6 (1.0%)	100%*
	Full-time	6657.1	6469.1	6413.8	6574.0	6714.5	-188.1 (-2.8%)	245.4 (3.8%)	57.4 (0.9%)	100%*
	Part-time	1610.1	1581.4	1731.0	1709.9	1636.4	-28.7 (-1.8%)	55.0 (3.5%)	26.2 (1.6%)	100%*

Source: ABS Labour Force, Australia, Detailed, February 2021 (original data).
**The number of employees in some cohorts grew more between May 2020 and February 2021 than they fell between February and May 2020.*

While the reduction in the number of female casual employees was considerable during the peak of the pandemic response, numbers have recovered more strongly than their male counterparts. Females represented 56.7 per cent of the fall in casual employees between February and May 2020. As of February 2021, 85.1 per cent of the fall in female casual employment experienced during May 2020 has recovered, compared with only 67.5 per cent of male casual employment. As of February 2021, the incidence of female casual employment is 24.9 per cent, which is lower than any point before the pandemic. Before the onset of the COVID-19 pandemic, the incidence of female casual employment was near the lowest it had been since 1998.

Table 3: Quarterly changes in employment for casuals and permanent employees by gender

		Feb-20 ('000)	May-20 ('000)	Aug-20 ('000)	Nov-20 ('000)	Feb-21 ('000)	Change Feb-May 2020 ('000)	Change May 2020-Feb 2021 ('000)	Change Feb 2020-Feb 2021 ('000)	Share of Feb-May change that has recovered
Casual employees	Total	2625.0	2084.4	2311.7	2478.8	2503.4	-540.6 (-20.6%)	419.0 (20.1%)	-121.6 (-4.6%)	77.5%
	Male	1233.3	999.2	1073.5	1149.1	1157.2	-234.1 (-19.0%)	158.1 (15.8%)	-76.0 (-6.2%)	67.5%
	Female	1391.7	1085.3	1238.2	1329.7	1346.1	-306.5 (-22.0%)	260.9 (24.0%)	-45.6 (-3.3%)	85.1%
Permanent employees	Total	8267.2	8050.5	8144.8	8283.9	8350.9	-216.8 (-2.6%)	300.4 (3.7%)	83.6 (1.0%)	100%*
	Male	4245.5	4146.9	4177.0	4275.7	4296.7	-98.6 (-2.3%)	149.8 (3.6%)	51.2 (1.2%)	100%*
	Female	4021.7	3903.5	3967.8	4008.2	4054.1	-118.2 (-2.9%)	150.6 (3.9%)	32.4 (0.8%)	100%*

Source: ABS Labour Force, Australia, Detailed, February 2021 (original data).
**The number of employees in some cohorts grew more between May 2020 and February 2021 than they fell between February and May 2020.*

The industries that were most adversely affected by the health restrictions have been among those that have seen a strong recovery. The Accommodation and food services, Arts and recreation services and Education and training industries saw a combined 309,800 fall in casual employment between February and May 2020. In the nine months to February 2021, more than three quarters (78.4 per cent) of the lost casual employment in these industries has returned.

Table 4: Casual employment changes by industry

	Feb-20 ('000)	May-20 ('000)	Aug-20 ('000)	Nov-20 ('000)	Feb-21 ('000)	Change Feb-May 2020 ('000)	Change May 2020-Feb 2021 ('000)	Change Feb 2020-Feb 2021 ('000)	Share of Feb-May change that has recovered
Accommodation and food services	522.8	315.2	410.7	462.6	483.8	-207.6 (-39.7%)	168.6 (53.5%)	-39.0 (-7.5%)	81.2%
Education and training	166.5	124.4	166.8	170.6	137.4	-42.1 (-25.3%)	12.9 (10.4%)	-29.1 (-17.5%)	30.8%
Administrative and support services	117.3	83.9	99.0	101.2	92.4	-33.5 (-28.5%)	8.5 (10.1%)	-25.0 (-21.3%)	25.4%
Construction	172.3	180.0	156.4	160.7	149.9	7.8 (4.5%)	-30.2 (-16.8%)	-22.4 (-13.0%)	N/A**
Manufacturing	148.1	113.5	118.6	131.4	132.2	-34.6 (-23.4%)	18.7 (16.5%)	-15.9 (-10.7%)	54.0%
Information media and telecommunications	34.9	26.3	20.1	15.8	19.9	-8.5 (4.5%)	-6.4 (-24.4%)	-15.0 (-42.9%)	-75.3%
Agriculture, forestry and fishing	71.0	67.7	74.7	67.6	60.4	-3.3 (-4.6%)	-7.3 (-10.7%)	-10.5 (-14.9%)	-220.5%
Professional, scientific and technical services	108.3	92.5	89.6	100.9	101.5	-15.7 (-14.5%)	9.0 (9.7%)	-6.7 (-6.2%)	57.2%
Wholesale trade	51.7	54.2	49.9	40.8	46.0	2.4 (4.7%)	-8.2 (-15.1%)	-5.8 (-11.1%)	N/A**
Rental, hiring and real estate services	31.9	25.0	20.7	24.3	26.9	-6.9 (-21.7%)	1.9 (7.6%)	-5.0 (-15.8%)	27.3%
Health care and social assistance	319.7	278.9	313.6	319.5	317.3	-40.8 (-12.8%)	38.3 (13.8%)	-2.5 (-0.8%)	94.0%
Electricity, gas, water and waste services	18.1	19.3	12.6	15.1	16.1	1.2 (6.6%)	-3.2 (-16.5%)	-2.0 (-10.9%)	N/A**
Other services	80.6	61.9	71.2	71.6	81.3	-18.6 (-23.1%)	19.3 (31.2%)	0.7 (0.9%)	100%*
Arts and recreation services	89.3	29.1	59.9	68.9	90.5	-60.1 (-67.4%)	61.4 (210.7%)	1.2 (1.4%)	100%*
Financial and insurance services	22.4	20.1	24.8	24.3	25.4	-2.3 (-10.5%)	5.3 (26.2%)	2.9 (13.0%)	100%*
Transport, postal and warehousing	142.6	108.7	116.4	134.1	146.5	-33.9 (-23.8%)	37.8 (34.8%)	3.9 (2.7%)	100%*
Public administration and safety	75.3	70.0	71.5	82.3	84.2	-5.3 (-7.1%)	14.3 (20.4%)	8.9 (11.9%)	100%*
Mining	28.4	23.4	36.8	44.4	37.9	-5.0 (-17.7%)	14.5 (62.2%)	9.5 (33.4%)	100%*
Retail trade	423.9	390.3	398.3	442.7	453.9	-33.6 (-7.9%)	63.6 (16.3%)	30.0 (7.1%)	100%*
Total	2625.0	2084.4	2311.7	2478.8	2503.4	-540.6 (-20.6%)	419.0 (20.1%)	-121.6 (-4.6%)	77.5%

Source: ABS Labour Force, Australia, Detailed, February 2021 (original data).
**The number of employees in some cohorts grew more between May 2020 and February 2021 than they fell between February and May 2020.*
***Some industries experienced a growth in casual employees between February and May 2020*

Part-time employment[10]

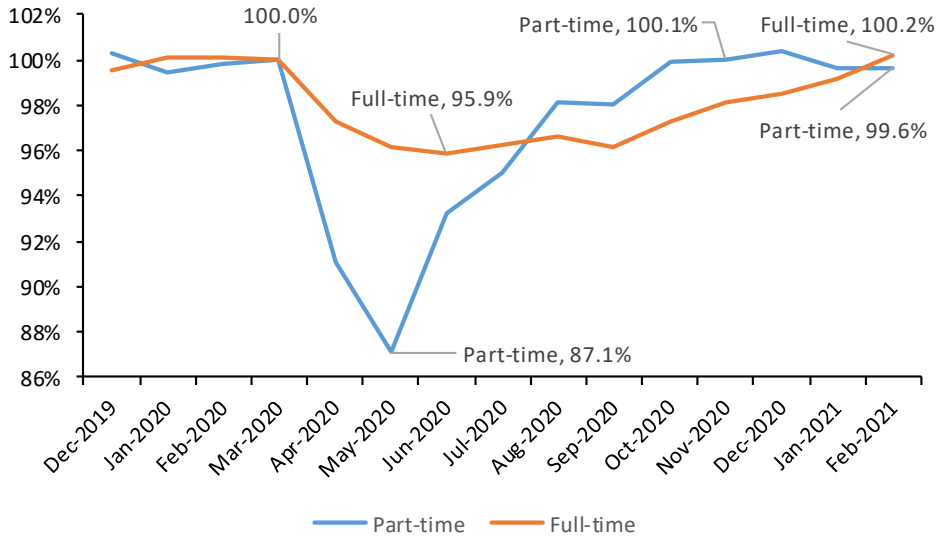
The majority of the employment losses during the health restrictions associated with managing the public health response to the COVID-19 pandemic were from part-time workers. 532,800 of the 872,800 (61.0 per cent) of the fall in employment between March and May 2020 was part-time. Female part-time workers were the hardest hit during the pandemic, with 323,900 females working part-time experiencing employment losses between March and May, representing 60.8 per cent of the part-time employment loss.

[10] Part-time employment is defined by the ABS as all workers that usually work less than 35 hours per week. Thus, changes in part-time employment also includes changes in casual employees working less than 35 hours per week.

However, the following months of labour market recovery has seen part-time employment grow faster than full-time employment. Between May 2020 and February 2021 there has been an increase of 518,100 in part-time employment compared with 358,300 in full-time employment. By November 2020, part-time employment had reached the pre-COVID-19 level, while full-time employment was still 1.8 per cent lower than the March 2020 level (Figure 6).

In aggregate, part-time employment has almost fully recovered compared to its pre-COVID-19 level (currently 0.4 per cent lower than it was in March 2020), while full-time employment has fully recovered and is 0.2 per cent above its pre-COVID-19 level.

Figure 6: Persons employed relative to March 2020 by full-time/part-time status of main job



Source: ABS Labour Force, Australia, February 2021 (seasonally adjusted).

The recovery in employment has been somewhat even across genders with females 0.3 per cent above the pre-COVID-19 level (March 2020) and males just 0.2 per cent below. The recovery has seen a comparative shift in the female workforce to full-time work, with female part-time employment 1.4 per cent below their pre-COVID-19 level while male part-time employment is 2.0 per cent higher than pre-COVID-19 levels.

Independent contractors

Data is released annually. Between August 2019 and August 2020, the proportion of employees that were independent contractors remained stable at 8.2 per cent.

Employees on fixed-term contracts

Data is released annually. While the proportion of all employees on fixed-term contracts increased from 3.6 per cent in August 2019 to 4.0 per cent in August 2020, it has been around 4.0 per cent for over a decade.

Labour hire

Data is released biennially. The latest data shows that in August 2020, around 1.1 per cent of employees were labour hire workers. This compares with 1.2 per cent of employees in August 2018.

Additional support regarding workplace laws during the COVID-19 pandemic

The need for clear advice and certainty about workplace laws for employers and employees has been crucial during the COVID-19 pandemic. The Government is providing $46.3 million (over three years from 2019-20) in new funding to the FWO to ensure businesses and employees can get clear, specific and up-to-date advice about their workplace obligations and entitlements.[11] During 2020, the FWO established a coronavirus webpage to provide up-to-date information about rights and responsibilities at work during the pandemic, in addition to a dedicated coronavirus hotline to prioritise calls relating to COVID-19 and the JobKeeper program. In July 2020, the FWO also updated its Strategic Priorities for 2020-21 and its Compliance and Enforcement Policy to respond to changing economic conditions arising from the COVID-19 pandemic, stating that its main priority is to support workplaces through the COVID-19 pandemic and recovery period.

To support legislative industrial relations reforms announced in December 2020, the Government is providing a further $47.3 million in new funding over four years from 2020-21 to the FWO to help businesses better understand their workplace obligations, improve compliance, and rectify instances of wage underpayments. This includes $12.9 million to establish an Employer Advisory Service from 1 July 2021, to offer small business employers authoritative, written advice tailored to the employer and the individual circumstances of their employees; and $11.3 million to further improve the FWO's visibility and education activities.[12] These measures will give businesses the confidence that their employees are properly classified, and remunerated, in accordance with the applicable industrial instrument, and sustain the FWO's visibility as the national workplace regulator, as the economy recovers from the COVID-19 pandemic.

National COVID-19 safe workplace principles

The COVID-19 pandemic required businesses to implement new practices to ensure the safety of workers and others in their workplaces. On 24 April 2020, National Cabinet agreed the National COVID-19 safe workplace principles which established SWA as the central source of practical WHS guidance and tools for business to manage the risks associated with the COVID-19 pandemic. SWA's guidance has been developed in consultation with its members comprising Commonwealth, state and territory governments, employer groups and unions, and is regularly updated to reflect the latest public health advice and feedback from stakeholders. SWA has published a significant amount of detailed guidance, tailored to 37 different industries, covering 22 topics including physical distancing, cleaning and hygiene. The SWA website had over 18.5 million total web page views in 2020, experiencing a growth in page views of 110 per cent compared with 2019.

[11] In the Economic and Fiscal Update of 23 July 2020, the Government announced $46.3 million in new funding over 3 years for the FWO under the measure, *Helping Businesses to Navigate Coronavirus*.
[12] In the 2020-21 Budget, the Government provided $47.3 million in new funding over 4 years for the FWO under the measure, *Helping Australian Businesses Comply with Workplace Laws* (Australian Government, 'Appendix A: Policy decisions taken since the 2020-21 Budget', *Mid-Year Economic and Fiscal Outlook 2020-21*, Australian Government, 2020, p 147).

c) Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy

Concept of the on-demand economy

The 'gig' or 'on-demand' economy represents just one element of the Australian labour market, though there is no agreed definition of, nor any singular agreed term for, this form of work in Australia.

The Productivity Commission considers 'gigs' to be the transactions of workers or capital owners contracting over a digital intermediary to do small tasks or short-term rentals.[13] The 'gig economy' could be characterised as the economy of such transactions. However, it is not homogeneous: the 'gig economy' includes a spectrum of business models, industries, types of work, arrangements for workers and consumer types. This economy is broadly understood to incorporate two loose categories of work that are enabled by digital platforms. The first is work that is 'on-demand', where a platform allocates work to a registered and available worker, such as food delivery and rideshare services. The second includes a 'crowd-work system' which involves the use of platforms for freelancing individuals to connect with people who require discrete tasks or facilitate the sharing of things.[14]

The 'gig economy' has many forms. As a whole, it can be referred to as the 'digital economy', 'collaborative economy' or 'platform economy'. On-demand delivery work can be referred to as the 'on-demand economy' or 'platform' work, while the performance of discrete tasks by freelancing individuals might be referred to as 'crowd-sourcing', 'freelancing' or 'independent working'. The use of platforms to facilitate the sharing of things might be referred to as the 'sharing economy'. For ease of reference, this submission uses the term 'on-demand economy', which is intended as a catch-all term for the kinds of work described above.

Size of the on-demand economy

To date, there has been no comprehensive measurement or study of the on-demand economy undertaken in Australia. There is also no definitive ABS measure of on-demand economy workers specifically. Generally, digital platforms engage workers as independent contractors, and this would be captured in existing ABS data on independent contractors.

AGD is aware of other, one-off attempts to collect data on workers engaged in the on-demand economy. For example:

- In June 2019, a survey conducted by the Victorian Government found that while 7.1 per cent (or 988) of the over 14,000 respondents self-reported that they were currently working (or offering to work) through a digital platform or had done so within the last 12 months, only 2.7 per cent of current these workers derived their income solely from digital platform work.[15]

[13] Productivity Commission, 2016, 'Digital Disruption: What do governments need to do?', Commission Research Paper, Canberra, p 149
[14] Industrial Relations Victoria, 2020, 'The Report of the inquiry into the Victorian on-demand workforce', Melbourne, Chapter 2.
[15] Ibid., Chapter 4. See also P. McDonald, P. Williams, A. Stewart, R. Mayes and D. Oliver, 2019, 'Digital Platform Work in Australia: Prevalence, Nature and Impact', Melbourne, Queensland University of Technology, The University of Adelaide and the University of Technology Sydney

- In March 2018, the Association of Superannuation Funds of Australia estimated that approximately 150,000 people (or 1.2 per cent of the workforce) use digital platforms to obtain work on a regular basis.[16]
- In April 2016, the Grattan Institute estimated that less than 0.5 per cent of adult Australians work on 'gig economy platforms' more than once a month.[17]

AGD is not in a position to verify any of these surveys or estimates.

The OECD has noted that while there have been attempts since 2016 by official statistical agencies in OECD Member states to estimate the number of workers undertaking platform work, there have been difficulties in conveying to survey respondents what is meant by platform work.[18]

Workers engaged in the on-demand economy

Workers engaged in the on-demand economy, just as is the case for most industries across the Australian labour market, may be engaged as employees or as independent contractors (noting that it is understood that, to date, the on-demand economy has generally operated on an independent contractor basis). The common law has traditionally distinguished between a contract *of* service (employment relationship) and a contract *for* services (independent contractor relationship). Commonwealth workplace laws, including the FW Act and the IC Act, in general do not define the terms 'employee' or 'independent contractor' so ascertaining which category a worker falls into relies on the application of the common law test. In that regard a number of High Court decisions have confirmed that the question of whether a worker is an employee or an independent contractor is answered by an assessment of the totality of the relationship between the parties (see for example, *Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] 160 CLR 16 (*Stevens*) and *Hollis v Vabu Pty Ltd* [2001] 207 CLR 21 (*Hollis*)).

In assessing the totality of the relationship, no single criterion or indicia will necessarily be determinative and the courts have made it very clear that each case will turn on its own facts (*Hollis*; *Damevski v Giudice* [2003] FCAFC 252). However, the courts and the FWC have in some instances placed more weight on some factors as indicative of an employment relationship, including the employer's right to control the way work is performed, and the extent to which the worker is 'integrated' into the business.

The FWC has dealt with a number of matters involving consideration of whether a worker engaged in the on-demand economy was an employee or independent contractor (for example, applications for unfair dismissal remedies, which involve the preliminary question of whether a worker is an employee or independent contractor because that remedy is only available to employees).

Further information about the regulatory framework applying to workers engaged in the on-demand economy is provided under (e).

[16] The Association of Superannuation Funds of Australia Limited, 2018, 'Superannuation balances of the self-employed'.
[17] Minifie, Jim & Wiltshire, Trent, 2016, 'Peer-to-peer pressure: Policy for the sharing economy', Grattan Institute.
[18] OECD, 2019, 'Measuring platform mediated workers', OECD Digital Economy Papers, No. 282, OECD Publishing, Paris.

e) The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies

Rights and protections under the FW Act

The national industrial relations system is established by the FW Act and other laws and covers the majority of private sector employees and employers in Australia. As set out in the FW Act, the key elements of the industrial relations framework are:

- a safety net of minimum terms and conditions of employment through the NES and modern awards;
- a system of enterprise-level collective bargaining underpinned by bargaining obligations and rules governing industrial action;
- provision for individual flexibility arrangements as a way to allow an individual worker and an employer to make flexible work arrangements that meet their genuine needs, provided that the employee is better off overall;
- protection against unfair dismissal or unlawful termination of employment;
- general workplace protections, including in relation to workplace rights (and the exercise of those rights), freedom of association and involvement in lawful industrial activities, protection from discrimination; and
- the provision of rules governing the rights and responsibilities of employer and employee representatives.

This industrial relations framework applies to all national system employees and employers, including employees engaged in part-time, casual, fixed-term and labour hire arrangements, as well as individuals engaged in the on-demand economy who are classified as employees.

General protections

The general protections provisions in Part 3-1 of the FW Act provide important protections for workers from adverse action for a prohibited reason. The general protections include:

- protections against a person taking adverse action against another person because the other person has a workplace right, has or has not exercised a workplace right, or proposes to exercise or not exercise a workplace right;
- protections relating to engagement in lawful industrial activities;
- other protections, including protections against discrimination, under which employers are prohibited from taking adverse action against an employee or prospective employee for discriminatory reasons including the person's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- protections against sham arrangements, such as misrepresenting employment as independent contracting.

The term 'adverse action' in the FW Act covers a range of conduct including dismissing or otherwise disadvantaging an employee (for example, demotion or reducing shifts). The general protections prohibit an employer from dismissing a casual employee, for example because the employee is entitled to a higher rate of pay that includes a casual loading compared to another employee.

While the FW Act generally governs the employment relationship between employers and employees covered by the national industrial relations system, s 342 of the FW Act makes it clear that, for the purposes of some of the general protections provisions, adverse action can occur in the context of various employment relationships, including between a principal and an independent contractor or a person employed or engaged by the independent contractor. This is the case in relation to the application of:

- protections against a person taking adverse action against another person because the other person has a workplace right, has or has not exercised a workplace right, or proposes to exercise or not exercise a workplace right (Division 3 of Part 3-1); and
- protections relating to freedom of association and engagement in lawful industrial activities (Division 4 of Part 3-1).

The general protections provisions incorporate a reverse onus of proof, which means, for example, that if an employee alleges that an employer's conduct was taken for a prohibited reason, it will be presumed that the conduct was taken for that reason unless the employer proves otherwise.

Only courts can decide if the general protections laws have been breached. Remedies for a contravention of the general protections include reinstatement, compensation, or any other order the court considers appropriate. In broad terms, the FWC's role in dealing with general protections matters is to help the parties resolve their dispute without the need for a more formal court hearing.

There is a 21-day time limit to make a general protections application to the FWC if the alleged adverse action involves *dismissal*. The timeframe for lodging an application for a non-dismissal dispute is up to six years from the date the adverse action occurred.

A two stage complaints process applies for general protections claims involving dismissal from employment. The dispute is dealt with at first instance in a conciliation conference conducted by the FWC. If the dispute does not settle at conciliation, the FWC will issue a certificate on the dispute's reasonable prospects of success. The dismissed employee can proceed to court if they file the certificate within 14 days, or consent to arbitration by the FWC if both parties agree. In cases of adverse action falling short of dismissal, participation in a FWC conference is voluntary and a person can instead elect to proceed directly to court. General protections applications can be made by a person affected by the contravention, an industrial association or a Fair Work inspector.

In 2019-20, applications for general protections involving dismissal were the second most common type of application to the FWC, making up 4,823 out of 33,989 total applications (14 per cent). There were 1,050 applications for general protections not involving dismissal (3 per cent of total applications to the FWC).

Unfair dismissal

The unfair dismissal provisions in Part 3-2 of the FW Act provide remedies for certain employees where a dismissal is found to have been harsh, unjust or unreasonable.

- A dismissal will not be unfair, however, if a small business employer (that employs fewer than 15 employees) has complied with the Small Business Fair Dismissal Code.
- An employer can also defend an unfair dismissal claim if the dismissal was a case of genuine redundancy.

Unlike the general protections provisions which provide some relief for independent contractors in some circumstances, these provisions are limited in their application to dismissal disputes between those in an employer-employee relationship.

The unfair dismissal provisions aim to balance the need for employers to fairly and efficiently manage their workforce with the rights of employees to be protected from unfair dismissal. The object of the provisions is to provide 'a fair go all round'.

In relation to workers engaged in the on-demand economy, their access to these provisions and remedies depends on the characterisation of their employment relationship and whether they are classified as an employee or an independent contractor. This is likely to come down to the individual circumstances of each case and be determined in accordance with the multi-factorial test described above. [19] However, most workers engaged in the on-demand economy are regarded by platforms as independent contractors.

A national system employee[20] who has been dismissed is protected from unfair dismissal and eligible to make an application for unfair dismissal remedy if:

- they have completed the minimum period of employment (12 months continuous service for small businesses with less than 15 employees and six months for businesses with 15 or more employees);
- they earn less than the high income threshold (which is currently $153,600 per year), or they are covered by a modern award or enterprise agreement; and
- for casual employees, they were employed as a regular casual employee and had a reasonable expectation of ongoing employment.

In considering whether a dismissal was harsh, unjust or unreasonable, the FWC must take into account a range of factors, including whether there was a valid reason for the dismissal related to the person's capacity or conduct and a range of procedural fairness considerations, such as whether the person was given an opportunity to respond to any reasons. The FWC must also take into account any 'other matters' it considers relevant. For example, the FWC might consider whether the employee is able to find other comparable work.

An unfair dismissal application must generally be lodged with the FWC within 21 days after the dismissal takes effect, unless there are exceptional circumstances warranting the acceptance of an application after this time has elapsed.

If the FWC is satisfied that a person has been unfairly dismissed, it may order that the person be reinstated or compensated.

In 2019–20, unfair dismissal applications were the most common type of application to the FWC, accounting for 49 per cent of total applications (16,558 out of 33,989). A large majority of unfair dismissal applications are finalised without a formal hearing – either resolved or discontinued before staff conciliation, resolved at conciliation, or resolved after conciliation and before a formal hearing. Of the unfair dismissal applications finalised in 2019–20, 848 applications (less than 5 per cent) were resolved by a decision of a Member of which 132 were resolved by a decision of a Member that the dismissal was harsh, unjust or unreasonable. This is broadly consistent with results in previous years. While there has been a recent increase in unfair

[19] In *Klooger v Foodora Australia Pty Ltd [2018] FWC 6836*, the FWC found that a Foodora delivery rider was an employee, as well as satisfying the other legislative requirements that established that he was a person protected from unfair dismissal. In *Gupta v Portier Pacific Pty Ltd & Uber Eats Australia Pty Ltd [2020] FWCB 1698*, the Full Bench majority held that whilst there was a work/wage relationship between Ms Gupta and Uber Eats, Ms Gupta was a contractor and not an employee and therefore was not protected from unfair dismissal. In three separate cases involving the Uber passenger business, the FWC found that the Uber workers were independent contractors ([2017] FWC 6610; [2018] FWC 2579; [2019] FWC 4807).

[20] A national system employee is an individual employed (or usually employed) by a national system employer. A person on a vocational placement is not included in the definition.

dismissal applications (43 per cent increase between March and June 2020), no changes in outcomes are apparent.

Anti-bullying provisions in the FW Act

There are a range of remedies for bullying and harassment available at both the Commonwealth and state or territory level.

At the Commonwealth level, workers who experience workplace bullying while at work in a constitutionally-covered business[21] can apply to the FWC for assistance to resolve the matter. Part 6-4B of the FW Act permits a worker who reasonably believes that he or she has been bullied at work to apply to the FWC for an order to stop the bullying. The FWC's anti-bullying measures aim to help people resume normal working relationships and prevent further episodes of bullying in the workplace.

The term 'worker' takes its meaning from the *Work Health and Safety Act 2011 (Cth)*, and includes an employee, contractor, apprentice, trainee, work experience student or volunteer. As such, this part of the FW Act has broader coverage than those parts which solely cover national system employers and national system employees.

In 2019–20 there were 820 applications to the FWC for stop bullying orders.

Role of the Fair Work Commission in Australia's modern award framework

The FWC has responsibility for setting modern award wages and conditions, including those for part-time and casual employees. Employees, employers and registered organisations, such as unions and employer organisations, can apply to the FWC to vary terms of a modern award.

For example, regarding casual employment, under the FW Amendment Act, the FWC is required to review modern award terms dealing with casual employment or casual conversion within 6 months after commencement. The FWC will vary any terms that are inconsistent with the new casual conversion entitlement or statutory definition, taking into account the new and strengthened safety net provided by the FW Amendment Act. As per the usual process, parties will be able to put forward their views for the FWC's consideration.

In relation to part-time employment, in 2021, the FWC is considering proposals to vary the *General Retail Industry Award 2020* (Retail Award), from unions and employer groups, to introduce more flexibility for part-time employees to agree to work additional hours at ordinary rates of pay.

The FWC's decision states its objective is to ensure that the Retail Award provides a simple, clear and easy to understand means whereby a part-time employee can agree with their employer to work additional ordinary hours by clarifying the relevant terms in awards which currently are confusing and uncertain. The Full Bench of the Commission also issued a *provisional view* that there may be merit in introducing a mechanism whereby a part-time employee who regularly works additional hours may request that their guaranteed hours be reviewed and increased, and their employer cannot unreasonably refuse such a request. Any

[21] Under part 6-4B, a constitutionally-covered business is a business or undertaking (within the meaning of s 5 of the WHS Act) which is a "constitutional corporation", the Commonwealth, a "Commonwealth authority", or a body corporate incorporated in a territory; or a business or undertaking principally in a territory or Commonwealth place.

decision to vary a modern award rests with the FWC, who must be satisfied any variation is necessary to meet for maintaining a fair and relevant safety net, consistent with the modern awards objective in the FW Act.

Casual employment, including reforms under the FW Amendment Act

Casual employment has a long industrial history in Australia but was, until recently, not defined in the FW Act.

The FW Amendment Act defines casual employment for the first time to provide certainty to employers and employees on their entitlements and obligations at all times. Casual conversion entitlements are also, for the first time, enshrined in the NES, providing a robust and enforceable pathway to ongoing employment for those who want it.

As indicated under terms of reference (a), as at February 2021, 23.1 per cent of all employees were casual employees, representing around 2.5 million people. ABS data shows that the incidence of casual employment has remained broadly stable since 1998, at around 25 per cent as a share of all employees.

Casual employees are paid a loading of generally 25 per cent in compensation for the absence of paid entitlements received by ongoing employees. For award and agreement free employees covered by the national system, s 294 of the FW Act requires the FWC to make a 'national minimum wage order' that includes a default casual loading. This default casual loading is currently 25 per cent.[22]

On 5 July 2017, the FWC decided to insert a model casual conversion clause in most modern awards after considering the nature of casual employment comprehensively, based on evidence submitted by stakeholders over several years.[23]

This decision improved access to the right to request casual conversion for award reliant employees. However, seven modern awards, including the *Black Coal Mining Industry Award 2010*, do not have casual conversion clauses. Further, the right did not extend to award/agreement-free employees or those employed under an enterprise agreement that does not contain a casual conversion provision. For example, analysis by AGD indicates around two-thirds (61.6 per cent) of existing current enterprise agreements (across all industries) do not have a casual conversion clause.[24]

Reforms under the FW Amendment Act

The FW Amendment Act reforms casual employment, with key changes in three areas:

- A clear statutory definition of 'casual employee' which incorporates the key common law principle that a casual is an employee who has no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.[25] The absence (or existence) of a firm advance commitment is assessed at the time of the offer and acceptance of employment, having regard to specified criteria.
- A new casual conversion entitlement in the NES that will provide a pathway to full-time or part-time employment for regular casuals.

[22] Annual Wage Review 2019-20 [2020] FWCFB 3500 [452]
[23] Fair Work Commission, [2017] FWCFB 3541, 5 July 2017.
[24] Attorney-General's Department, Workplace Agreements Database (December 2019).
[25] *Fair Work Act 2009* (Cth), section 15A.

- After 12 months of employment, employees (except for those employed by a small business employer) who have worked a regular pattern of hours in the last 6 months, will receive an offer of full-time or part-time employment or reasons why not.
- Employees employed by a small business employer will be able to request conversion after 12 months of employment, if they satisfy the eligibility requirements, including the same pattern of hours requirement.
- All casual employees who choose not to convert, or are not able to convert (due to reasonable grounds for refusal or ineligibility) can access a residual right to request conversion every six months provided they meet the eligibility criteria.
- Enforceability of conversion entitlements will be strengthened through the new small claims process which will allow for disputes to be settled by the Federal Circuit Court (FCC) efficiently and effectively.

- A statutory offset rule that requires a court to reduce compensation awarded by an amount equal to any identifiable casual loading amount paid to an employee who is found not to be a casual employee, so as to avoid employers having to pay the same entitlements twice.

Statutory definition

The statutory definition incorporates common law principles established by courts while ensuring certainty of employment status at all times. The statutory definition applies to the terms of the offer and acceptance of employment. If the terms of the definition are met at the commencement of employment, the employee will remain casual unless the employee converts to full-time or part-time employment or the employee accepts an alternative offer of employment (other than casual) with the employer.

The statutory definition makes clear it is not just enough to simply describe an employee as 'casual'. It is an objective definition that reflects the key principle recognised by the Courts in *WorkPac Pty Ltd v Skene* [2018] FCAFC 131 (*Skene*) and *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 (*Rossato*) that the essence of casual employment is the absence of a 'firm advance commitment to continuing and indefinite work according to an agreed pattern of work'.

The definition includes an exhaustive list of factors to assess this common law principle and help employers and employees determine if the offer will meet the statutory definition. In determining whether the employer's offer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work, regard must be had only to the following considerations:

- whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- whether the person will work as required according to the needs of the employer;
- whether the employment is described as casual employment; and
- whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.

As such, where an employment relationship provides for guaranteed hours on a continuing and indefinite basis with no flexibility for an employee to accept or reject hours offered, this is unlikely to meet the statutory definition, in which case the employee would not be a casual employee. If an employee believes their employment has been mischaracterised as casual, it remains open to the employee to make an

application to have their legal status determined by a court, as has been the remedy in place since, and before, the FW Act's introduction in 2009.

Casual conversion

The casual conversion provisions in the FW Amendment Act, modelled on the model casual conversion clause developed by the FWC, significantly strengthen conversion entitlements for employees. The FW Amendment Act introduced a statutory obligation for employers to offer regular casual employees conversion to full-time or part-time employment, unless there are reasonable grounds not to do so, with a residual right to request conversion that operates after the offer process has occurred. Small business employers (those with fewer than 15 employees) are exempt from this obligation to offer[26], with the right for employees to request casual conversion operating as the primary conversion mechanism for small business employees.

The FW Amendment Act amended the NES to include the following casual conversion entitlements:

- Employers (other than small business employers) must offer casual employees conversion to full-time or part-time employment if they have been employed for 12 months and, during at least the last 6 months of that period, have worked a regular pattern of hours on an ongoing basis which, without significant adjustment, could continue to be worked full-time or part-time unless there are reasonable grounds to not make an offer of conversion.
- Casual employees who work for a small business employer, or casual employees who choose not to convert, or are not made an offer (due to reasonable grounds or ineligibility), will have an ongoing right to request conversion provided they meet the eligibility criteria. The right to request is generally available to eligible casual employees every six months, and the legislation does not prevent employers and employees agreeing to conversion outside of the legislative framework.

This entitlement in the NES not only ensures access to casual conversion for all eligible national system employees, it provides an avenue for a timely reassessment of an employee's working arrangements and ensures a genuine and robust pathway to permanent, ongoing employment. Importantly, the decision about whether to accept an offer to convert to full-time or part-time employment rests with the employees themselves, empowering them to work in the form that suits them.

Employers can only decide not to offer conversion or refuse a conversion request if they have reasonable grounds to do so, consistent with the FWC model clause. This includes that the position will cease to exist in the next 12 months or the conversion would require a significant change in working arrangements. This decision must be based on facts that are known or reasonably foreseeable at the time. These grounds for refusal reflect the FWC's model clause and the reasoning during the development of that clause that it would be unreasonable to require the employer to convert an employee; for example, in circumstances where it is known or reasonably foreseeable that the casual employee's position will cease to exist or their hours of work will significantly change or be reduced in the next 12 months.[27] An employee can also decline an employer offer and choose to remain casual if that is their preference, with eligible casual employees able to access a residual right to request conversion should their preferences change in the future.

Employers and employees can use the dispute resolution procedures available to them under their modern award or enterprise agreement to resolve any disagreements about casual conversion. If the employer and

[26] *Fair Work Act 2009* (Cth), s 66AA.
[27] Fair Work Commission, *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [380].

employee do not have a dispute resolution procedure available to them in their award or agreement, or their employment contract, the default dispute resolution provision in the FW Amendment Act will apply.

The default dispute resolution provision broadly mirrors existing standard dispute resolution procedures in modern awards which typically require the employer and employee to try resolving the dispute through discussion at the workplace level in the first instance. If workplace discussions do not lead to a resolution, the FWC can assist through processes such as mediation and conciliation including making a recommendation or expressing an opinion on the issue. If both parties consent, the FWC can arbitrate the dispute.

The FW Amendment Act also strengthens the available dispute resolution mechanisms by expanding the existing small claims jurisdiction to allow casual conversion disputes to be dealt with by the FCC as a small claim. An employee who disputes an employer's refusal can access a small claims process in the FCC.[28] The FCC can make orders it considers appropriate, which may include, for example:

- requiring an employer to consider whether the employer must make an offer or accept a request to convert on the basis that the employee meets the eligibility criteria; or
- preventing an employer from relying on a particular reasonable ground to not offer conversion or to refuse a request.

In order to increase awareness amongst employees about their entitlement to convert, the FW Amendment Act requires that the FWO prepare and publish a Casual Employment Information Statement which employers must give to all casual employees before or as soon as practicable after the employee starts as a casual with the employer. This ensures greater understanding of their casual employment status and consequential rights and entitlements, including casual conversion.

The conversion provisions in the FW Amendment Act, along with the definition of a casual employee, will address the longstanding uncertainty around casual employment, provide a stronger pathway to full-time or part-time employment for casual employees and ensure that employers and employees understand their obligations and entitlements at any point in time.

The Government will be required to conduct a review of the FW Amendment Act 12 months after commencement.[29] The review must consider whether the operation of the amendments is appropriate and effective, identify any unintended consequences, and consider whether further amendments are necessary.

Casual employees entitlements and protections under the FW Act

The FW Act also provides eligible casual employees with a right to certain entitlements and protections, including:

- the right to 12 months' unpaid parental leave following the birth or adoption of a child;
- the right to request flexible working arrangements, such as changes to hours, patterns or locations of work in a range of circumstances; and
- protection from unfair dismissal if the casual employee has completed the required period of employment with the employer (6 months for businesses with 15 or more employees or 12 months for businesses with fewer than 15 employees).

[28] *Fair Work Act 2009* (Cth), subsection 548(1B).
[29] FW Amendment Act, s 4.

The FW Act also provides entitlements and protections to all casual employees, including:

- protection for maximum weekly hours unless the additional hours are reasonable;
- unpaid no safe job leave;
- unpaid pre-adoption leave;
- unpaid carer's leave;
- unpaid compassionate leave;
- unpaid family and domestic violence leave;
- unpaid community service leave;
- long service leave in accordance with any applicable pre-modern award or agreement (noting that long service leave is primarily governed by state and territory legislation, and casual employees are generally entitled to long service leave under these regimes);
- making a general protections application; and
- making an application for an order to stop bullying at work.

Compliance and enforcement framework under the FW Act

A compliance and enforcement framework is set out in the FW Act, to promote compliance with workplace obligations and provide the FWO with appropriate enforcement tools to deal with non-compliance when it occurs. In addition to this framework, the FWO is required by the FW Act to provide education and engage in awareness raising initiatives, to ensure employers and employees understand their obligations. Redress mechanisms also exist to empower employees to take steps to recover unpaid entitlements themselves. A similar framework exists under the FW Act and the *Building and Construction Industry (Improving Productivity) Act 2016* for the ABCC.

The FWO uses intelligence to inform audits and investigations to target non-compliance and outreach in priority sectors, and among vulnerable cohorts. In 2019-20, the FWO recovered a record $123 million for underpaid workers,[30] and has recovered almost $80 million in the first six months of 2020-21.

Civil penalties for non-compliance, including underpayments and sham contracting arrangements

Under the FW Act, the courts can impose civil penalties to deter non-compliance with workplace laws. The maximum penalty a court can award for a particular contravention of a civil remedy provision is set out in the FW Act. Civil contravention provisions relating to the underpayment of entitlements, and record keeping, attract a maximum civil penalty of 60 penalty units (currently $13,320) for an individual and 300 penalty units (currently $66,600) for a body corporate. Knowing and systematic contraventions of workplace laws ('serious contraventions') attract a maximum penalty of 600 penalty units (currently $133,200) for an individual and 3,000 penalty units (currently $666,000) for a body corporate.

The penalty imposed for a contravention of the FW Act is determined at the court's discretion, subject to the maximum amounts prescribed by the FW Act and the application of legal principles. The purpose of any penalty order is to impose a monetary penalty that is proportionately high enough to deter the wrongdoer from repeating the conduct, and generally deter others who may be tempted to engage in similar conduct. In determining an appropriate penalty, the court may take into account a broad range of factors, including the seriousness of the

[30] Fair Work Ombudsman and Registered Organisations Commission, *Annual Report 2019-20*.

wrongdoing, the value of the underpayment, and the wrongdoer's capacity to pay the penalty. In 2019-20, the FWO achieved $4,348,778 in court-ordered penalties.[31]

The FW Act currently prescribes maximum civil penalties of 60 penalty units (currently $13,320) for an individual and 300 penalty units (currently $66,600) for a body corporate for sham contracting conduct, including:

- misrepresenting an employment relationship as an independent contracting arrangement, with a defence for those who can show that they did not know, and were not reckless about whether, the individual was an employee;[32]
- dismissing or threatening to dismiss an employee in order to engage them as an independent contractor;[33] and
- knowingly making a false statement to influence an employee to become an independent contractor.[34]

Sham contracting arrangements deny employees their legal entitlements and, as noted in the *Black Economy Taskforce Final Report*, penalise employers who abide by the law, through the persistence of uneven commercial playing fields.[35]

The FWO's ongoing enforcement activities include a focus on sham contracting arrangements. Employers found to have engaged in sham contracting arrangements can be ordered to back-pay workers for any unpaid entitlements and may also be penalised through court action. In 2019-20, the Government provided $9.2 million to the FWO to establish a dedicated team to investigate and address sham contracting. In 2019-20, the FWO completed 309 disputes relating to sham contracting and misclassification, and recovered $363,976 for 278 employees in respect of this function.[36]

The Government's commitments in respect of sham contracting is aimed at ensuring the differences between employment and independent contracting arrangements are understood,[37] employees receive their proper entitlements, and employers are deterred from deliberate misclassification through targeted enforcement activities.

Regulation of independent contractors

Independent contractors, including those engaged in the on-demand economy, may be covered by the IC Act. The IC Act applies to 'services contracts' that include an independent contractor as a party; relate to the performance of work by the independent contractor; and have the requisite 'constitutional connection' specified in s 5(2) of the IC Act. The IC Act does not define 'independent contractor' (other than to provide that the term is not limited to a natural person).

A party to a 'services contract' can make an application to the Court for review of that contract on the basis that it is 'unfair' and/or 'harsh'. The IC Act does not define 'unfair' or 'harsh'—these terms assume their

[31] Ibid.
[32] *Fair Work Act 2009* (Cth), s 357
[33] *Fair Work Act 2009* (Cth), se 358
[34] *Fair Work Act 2009* (Cth), s 359
[35] Australian Government, 2017, 'Black Economy Taskforce Final Report', p 231.
[36] Fair Work Ombudsman and Registered Organisations Commission, *Annual Report 2019-20*.
[37] To assist employers in distinguishing between employees and independent contractors, and properly classifying their workers, the FWO offers targeted resources on the features of employment relationships and independent contractors which were viewed over 200,000 times in the 2019-20 financial year: *Fair Work Ombudsman and Registered Organisations Commission, Annual Report 2019-20*.

common law meaning. If the court is of the opinion that the contract is 'unfair' and/or 'harsh', then it may set aside all or part of a contract, or vary its terms. Orders must be prospective. Any order must be for the purpose of placing the parties 'as nearly as practicable on such a footing' that the unfairness or harshness 'no longer applies'.

The IC Act effectively ousts the application of state and territory laws from operating in relation to independent contractor arrangements (i.e. 'services contracts'), subject to exclusions in New South Wales, Victoria and Western Australia which essentially pertain to certain owner-drivers in the road transport sector.

Work health and safety laws

Australia has model WHS laws developed and maintained by SWA that have been implemented in all jurisdictions except for Victoria and Western Australia, although those jurisdictions have similar laws in place. Harmonised laws in Western Australia have recently passed and are expected to commence later in 2021. WHS regulation in Australia is primarily the responsibility of the states and territories, with each jurisdiction responsible for implementing and enforcing its own WHS laws.

The model WHS Act was drafted to respond to changes in the standard employment model in Australia identified in the *National Review into model occupational health and safety laws (2008).*[38] The model WHS Act imposes duties on a 'person conducting a business or undertaking' (PCBU) (s 5) rather than an 'employer' and using the definition 'worker' (s 7) rather than 'employee'. Moving from 'employer' to 'PCBU' and 'employee' to 'worker' deliberately broadened the scope of these definitions to ensure the WHS laws cover working arrangements in Australia's modern economy, including arrangements in the on-demand economy.

The model WHS Act includes a primary (general) duty of care imposed on a PCBU for the health and safety of workers and other persons. The PCBU concept covers a broad range of work relationships and business structures, from traditional employee-employer relationships to independent contracting arrangements, including in the on-demand economy; an approach which recognises that WHS hazards and risks do not discriminate based on legal relationships. Broadly, if an entity has substantial influence over the way work is performed, they have an obligation to do what they can to ensure the work is performed safely. The nature of the duty owed will depend on the particular circumstances.

The definition of 'worker' in s 7 of the model WHS Act encompasses employees, contractors, subcontractors, labour hire workers, outworkers, apprentices, trainees, volunteers and others. The model Act imposes WHS duties on workers, including that they must take reasonable care for their own health and safety and others in the workplace, and that they must comply with reasonable instructions of the PCBU and co-operate with any reasonable policy or procedure of the PCBU (s 28). Where a person does not meet the definition of 'worker' under the model WHS Act they will nevertheless be owed a duty of care as an 'other persons' whose health and safety may be put at risk as part of the conduct of the delivery platform's business.

In addition, the model WHS laws were crafted to deal with work being performed in any place and not necessarily at a single, fixed workplace. The definition encompasses a standard workplace and includes any place where a worker goes, or is likely to be, while at work whether on land or water, including a vehicle, vessel, aircraft or other mobile structure (s 8). The principles applying to the duties (ss 13–17) combined with

[38] Department of Employment and Workplace Relations, 2008, 'National review into model occupational health and safety laws: First report', prepared by R Stewart-Crompton, S Mayman & B Sherriff, Australian Government, Canberra, pp 8-17.

the duty of multiple duty holders to consult, co-operate and co-ordinate (s 46) also recognises that the health and safety of workers will often rely on more than one PCBU or organisation.

An independent *Review of the model WHS laws* (the 2018 Review) was commissioned by SWA at the request of WHS Ministers to ensure the laws are achieving their objectives. The 2018 Review found that the model WHS laws are largely operating as intended and noted that they do contemplate non-traditional working relationships. It also noted that WHS regulators generally considered that the current model WHS laws are broad enough to deal with emerging business models, but did recommend that SWA develop criteria to continuously assess new and emerging business models, industries and hazards in the context of considering the need for any legislative change, new model WHS Regulations or Codes.[39] SWA recently considered the model WHS laws and found that they are flexible enough to cover the on-demand economy.

While the model laws have been drafted to anticipate the emergence of new working arrangements, including the on-demand economy, recent events indicate that more needs to be done to protect and promote the health and safety of workers engaged in the on-demand economy. In particular, there have been a number of tragic fatalities of food delivery riders working for several platforms in New South Wales and Victoria.

The Commonwealth's WHS jurisdiction encompasses Australia Government departments and agencies and certain non-government self-insured licensees. On-demand platforms and participants therefore generally fall outside the scope of the Commonwealth's jurisdiction, and instead are within the purview of the states and territories.

Despite this limitation, the former Attorney-General added rider safety as a priority agenda item for the next meeting of Commonwealth, state and territory WHS Ministers, to be held in mid-2021. The Commonwealth will continue to monitor the operation of the WHS framework in relation to workers engaged in the on-demand economy, noting that this is primarily a matter for the states and territories.

It is noted that SWA is currently developing specific guidance on the application of WHS laws to the on-demand economy and is continuing to monitor and investigate issues regarding WHS coverage of workers.

National labour hire registration scheme

The Government accepted in principle the Migrant Workers' Taskforce recommendation[40] and committed to, in consultation with stakeholders, establish a national labour hire registration scheme.

A scheme will provide visibility of labour hire businesses, reduce worker exploitation, improve accountability, provide greater transparency and drive behavioural change among labour hire operators in high-risk sectors.

The Queensland, Victorian and South Australian governments have implemented state-based licensing schemes that regulate the labour hire industry in those states. A licensing scheme is due to commence in the Australian Capital Territory in May 2021. These existing state and territory licensing schemes differ from each other in their scope and application, relying on different definitions of 'labour hire providers', with different application requirements, licence durations, reporting requirements and fees, and applying different

[39] M Boland, *Review of the model Work Health and Safety laws: Final report*, 2019, p. 42.
[40] Migrant Workers' Taskforce, 2019, Recommendation 14.

penalties for breaches of the schemes. A national approach to labour hire regulation will ensure all workers receive the same protections and all businesses receive equal treatment regardless of where they operate.

f) Accident compensation schemes, payroll, federal and state and territory taxes

Workers' compensation laws

In Australia, the states, territories and Commonwealth have jurisdiction over their own workers' compensation schemes, and coverage rules differ between jurisdictions. However, workers' compensation schemes generally cover employees, and employers either self-insure or pay premiums to an insurer to cover their employees. Some schemes deem particular workers to be employees for workers' compensation purposes and, in limited circumstances, independent contractors may be deemed to be employees under statutory schemes. The differences between workers' compensation schemes present significant challenges for national policy efforts.

AGD is responsible for two workers' compensation schemes. The *Safety, Rehabilitation and Compensation Act 1988* establishes the Commonwealth workers' compensation and rehabilitation scheme (the Comcare scheme), which applies to employees of the Commonwealth, Commonwealth authorities and licensed corporations. The *Seafarers Rehabilitation and Compensation Act 1992* establishes a privately underwritten workers' compensation scheme for a small proportion of the maritime sector. Similar to the WHS framework, states and territories have jurisdiction over platforms and participants in the on-demand economy.

h) Any related matters

In response to the Committee's specific requests for information, DESE and DISER provide the following information concerning employment services, VET, digital adaption, Australia's franchising sector and the National Resources Statement.

Employment services

DESE provides a number of programs targeted at assisting job seekers to find sustainable employment. Some of DESE's relevant employment services programs are outlined below.

jobactive

jobactive is Australia's mainstream employment service which assists job seekers to find employment. jobactive has performed strongly since its inception on 1 July 2015, with over 1.8 million job placements being achieved to 31 January 2021. While economic activity is likely to remain impacted by the COVID-19 pandemic, jobactive providers have a range of tools available to them to assist all job seekers on their caseload, to keep them connected with the labour market and to improve their chances of finding work when the labour market improves.

Under jobactive, there are strong financial incentives for jobactive providers to place people into suitable, sustainable jobs. The fee structure for jobactive providers pays the most when participants stay in work the longest, and DESE's assessment of provider performance is also heavily influenced by provider success in achieving sustainable jobs. While the jobactive payment model emphasises placements into sustainable employment, short-term job placements can be a useful stepping-stone to permanent employment. DESE understands that the likelihood of getting longer-term work increases with increasing numbers of short-term

jobs. Experience gained in any job is valuable and demonstrates to potential employers a commitment to work.

Transition to Work (TtW)

The TtW service provides intensive pre-employment assistance to young people, aged 15-24 years old, who have disengaged from work and study and are at risk of long-term welfare dependence. The service is designed to improve the work readiness of young people and help them into work (including apprenticeships and traineeships) or education.

As at 31 January 2021, there were 37,401 participants in TtW, with a total of 142,791 commencements in the service since it was introduced in early 2016.

ParentsNext

ParentsNext is a pre-employment program which aims to help parents plan and prepare for employment before their youngest child starts school. Parents receive personalised assistance to help them identify their education and employment goals, improve their work readiness and link them to activities and services in the local community.

ParentsNext was rolled out nationally on 1 July 2018 and operates across all jobactive employment regions. Between 1 July 2018 and 31 January 2021, 153,176 parents have received assistance through the program.

As at 31 January 2021, ParentsNext had 82,136 participants, of whom 95 per cent (78,007) were women, 20 per cent were Indigenous and 18 per cent were under the age of 25.

Youth Jobs PaTH

PaTH is a three-stage pathway that helps young people develop employability skills and access real work experience they need to get a job. The three stages of PaTH include:

- Prepare element - Employability Skills Training, which helps young jobactive participants understand employer expectations and become job ready. Training ranges from preparing for job interviews to learning workplace skills such as teamwork and computer skills.
- Trial element - Internships of four to 12 weeks that give young participants a chance to show what they can do in a real workplace.
- Hire element - Youth Bonus wage subsidy of up to $10,000, payable to employers who hire eligible young job seekers in ongoing work.

Complementary Programs

There is a wide range of complementary programs to help job seekers, including people from disadvantaged cohorts, to stay engaged in the labour market, build their capability and increase their competitiveness so that they can take advantage of work opportunities as they arise.

For example, the Career Transition Assistance program provides opportunities for mature age job seekers to identify and articulate transferable skills, increase their job readiness and better target their job search to local industries and available jobs. There is also a focus on digital skills to help people to apply for jobs online and use technology in the workplace.

Local Jobs Program

The Local Jobs Program brings together expertise, resources and access to funding at the local level to focus on reskilling, upskilling and employment pathways for people in 25 regions across Australia affected by the COVID-19 pandemic. The program provides:

- 25 Employment Facilitators across 25 regions;
- a Local Jobs and Skills Taskforce in each of these regions;
- a Local Jobs Plan developed for each of these regions; and
- projects funded through a Local Recovery Fund in each of these regions.

Participants in jobactive, ParentsNext, New Employment Services Trial or TtW will be able to participate in activities funded through the Local Recovery Fund.

New Employment Services Model

In March 2019, the Government announced a new employment services model will be introduced from July 2022 to create a better service for job seekers, employers and providers. Following extensive consultation and based on advice from the Employment Services Expert Advisory Panel, the new model will transform the way employment services are delivered.

For job seekers, the new model will provide a digital platform and online support to find a job, more flexibility to meet mutual obligation requirements, and access to extra support when needed. A new digital platform will help job seekers who are digitally capable and job ready to self-manage their job search online. These job seekers will be able to access online tools to help them make informed choices about their job search, as well as a contact centre to help answer questions and provide advice via phone or email. The most disadvantaged job seekers will receive Enhanced Services delivered through employment services providers. Enhanced Services providers will deliver an individualised service to help prepare and support job seekers into work.

Key elements of the new model have been tested in the Online Employment Services Trial and continue to be tested in the New Employment Services Trial. In response to increased demand for employment services due to the COVID-19 pandemic, Online Employment Services (OES) was created in April 2020 as the Government's mainstream online employment servicing platform on the jobactive website, allowing job seekers to manage their job search and reporting requirements online. The final design of the new model will take into consideration insights from jobactive, the Trials, the OES, as well as user-centred design research and consultation undertaken over 2019 and 2020.

Seasonal agriculture workforce programs

DESE manages a number of programs targeted to assist the agriculture sector to meet seasonal workforce needs in rural and regional areas. These operate alongside jobactive and other employment services programs.

Harvest Trail Services and Harvest Trail Information Service

Harvest Trail Services (HTS) connect workers with employers in harvesting areas across Australia. HTS providers operate in 16 harvest areas covering all major horticulture areas across Australia (expanded from 11 areas on 1 July 2020). jobactive and HTS providers receive a financial incentive when they assist and keep

Australian job seekers in harvest work; helping job seekers to gain work experience, move off welfare, and possibly start a career in agriculture.

Employer demand for the HTS program is strong. In seven months of the new HTS operations (from 1 July 2020 to 31 January 2021), HTS providers sourced more than 17,000 harvest vacancies; made almost 14,000 referrals to those vacancies; and confirmed around 11,000 job seeker placements into harvest jobs.

Funding of $1 million was provided over two years under the 2019-20 Budget for the Harvest Trail Services Industry Collaboration Trial to develop innovative approaches to promote new opportunities in the horticulture sector.

Relocation Assistance to Take Up a Job for short-term Agricultural Work

To support the agriculture sector, the Government has made changes to the existing Relocation Assistance to Take Up a Job program to make it available to individuals who temporarily relocate to take up short-term agricultural work. $15.4 million is provided through the More Relocation Support for Agricultural Workers 2020-21 Budget measure to help eligible job seekers to temporarily relocate for agricultural work. The measure commenced on 1 November 2020 and will terminate on 31 December 2021.

Seasonal Worker Programme

The Seasonal Worker Programme (SWP) offers employers in the agriculture sector and employers in selected locations in the accommodation sector access to a reliable, returning workforce from the Pacific and Timor-Leste when there is not enough local Australian labour to meet seasonal demand.

Seasonal Workers are entitled to the same pay, conditions, and safety at work as Australian workers. DESE has safeguards in place to protect workers, including: oversight of recruitments, monitoring of placements and assurance processes.

Since 2012, nearly 50,000 SWP visas have been granted. The SWP has however been impacted by COVID-19 when Australia's international borders closed on 20 March 2020. To assist in responding to critical labour shortages in the agriculture sector, the Government announced the restart of the SWP in August 2020. As at 31 January 2021, 1,636 SWP workers have arrived under the Northern Territory Trial and Restart, while 7,954 redeployments of SWP workers to new placements have occurred.

Vocational Education and Training

The accessibility and diversity of VET allows individuals to move in and out of training throughout their lives, in a way that best suits them and their skill levels. This flexibility is vital to supporting people to upskill and retrain, including opening up career pathways for people who may otherwise face challenges securing stable employment. The VET sector has become even more important in the COVID-19 economic downturn, supporting those vulnerable to shifting labour market conditions to undertake training to maintain or reengage with employment.

In response to the COVID-19 pandemic, the Government has invested in apprenticeships, skills and training to help people get back into work quickly as the economy rebuilds. This has included investment to:

- increase the availability of free or low fee training places through the $1 billion JobTrainer Fund, so over 300,000 young people and those who are out of work can quickly upskill or reskill for jobs in sectors with identified skill needs; and

- support businesses and Group Training Organisations to take on over 170,000 new apprentices and trainees through the $2.4 billion demand driven Boosting Apprenticeship Commencements wage subsidy.

The Government is also investing in broader reforms to improve the accessibility, quality and relevance of the VET sector to ensure VET continues to provide skills that boost students' labour market competitiveness and chances of gaining secure employment. Key reforms include:

- ensuring training is better linked to current and future skills needs through the work of the National Skills Commission;
- providing students with greater transparency and access to information on VET opportunities through the National Careers Institute;
- improving industry engagement and qualifications development to ensure training is equipping students with the skills they need to take up jobs;
- accelerating reforms to improve the accessibility and quality of the skills sector and its ability to respond to changing labour market demands;
- ensuring that micro-credentials and skill sets are available to support lifelong learning, upskilling and reskilling; and
- negotiating a new National Skills Agreement that will increase real investment in VET and provide a new funding model to improve national consistency, integrate subsidies and loans and is linked with efficient pricing and the skills needed by employers.

A major factor influencing an individual's access to stable employment is their level of foundation literacy and numeracy skills. Those with low level foundation skills are less likely to be employed or more likely to be employed in low-skilled work and at greater risk of redundancy.[41] The latest data indicates that around three million Australians aged 16 to 65 have low literacy and numeracy.[42] Improving foundation skills not only increases the likelihood of labour force participation (by about 10 percentage points), but also increases hourly wage rates by about 25 per cent for women and 30 per cent for men.[43]

The Government has a long-standing commitment to improving adult literacy and numeracy through programs such as the Skills for Education and Employment Program, the Foundation Skills for Your Future Program, the Foundation Skills for Your Future Remote Community Pilots, and the Reading Writing Hotline. Migrants with low English levels are also able to improve their English language skills through the Adult Migrant English Program.

The Australian and state and territory governments have also committed to 'provide stronger support for foundation skills and ensure access for all Australians with low level of language, literacy, numeracy and digital literacy' as a priority under the new National Skills Agreement.

Digital adaptation

Australia's ongoing economic success depends on our ability to harness technological advances to improve existing businesses, create new products and markets, and enhance daily life. The opportunities afforded by digital technologies are not constrained to technology-based companies and start-ups – they can add value

[41] OECD, 2012, 'Survey of Adults Skills, First Results'.
[42] OECD, 2012, 'Programme for the International Assessment of Adult Competencies survey'.
[43] Productivity Commission, 2010, 'Staff working paper: Links between literacy and numeracy skills and labour market outcomes'.

across all parts of the economy. For businesses, these technologies have the potential to help develop new products, access new markets, work more efficiently and improve the bottom-line, better target consumer preferences through use of data, and deliver safer working environments.[44]

By 2040, the way we work and learn will look vastly different from today. Advances in technologies like robotics and artificial intelligence are automating a growing number of tasks previously performed manually by human workers.[45] DISER's *Australia's Tech Future* strategy sets out the opportunities and the challenges in maximising the benefits on offer. It highlights the significant work already happening across Government and identifies further action required to ensure all Australians can thrive in a global digital economy.

The changing demand for skills will transform some jobs Australians have relied on for decades. The key challenge is for Australians to build the skills necessary to evolve with jobs as they change and as new ones are created. Australian businesses' success depends on the skills of their workforce. As technology continues to change what businesses do and how they operate, so too will the skills in demand. While it is hard to predict the skills in demand in the future, employers are looking for workers who have a combination of transferrable digital skills and collaborative, creative, communication and entrepreneurial and problem-solving skills.[46]

That is why on 29 September 2020, the Government announced its investment of almost $800 million to enable businesses to take advantage of digital technologies to grow their businesses and create jobs as part of our economic recovery plan from the COVID-19 pandemic. The Digital Business Plan includes $29.6 million in the Industry portfolio to help Australian businesses keep operating and employing through the COVID-19 pandemic and beyond by supporting them to digitally transform their operations. As part of this plan, DISER is supporting an industry-led Digital Skills Platform, where workers and small businesses will be able to access the digital training they need to remain competitive and grow. DISER is also implementing the $26.5 million Cyber Security Skills Partnership Innovation Fund which is addressing the critical need for over 7,000 additional cyber professionals across the economy to 2024 and beyond, providing pathways into much needed jobs.

Australia's franchising sector

Franchising is a method of growing a business in which a franchise owner (franchisee) is granted, for a fee, the right to offer, sell or distribute goods or services under a business system determined by the business founder (franchisor). The franchisor supports the franchised business group by providing leadership, guidance, training and assistance in return for ongoing service fees.

Franchising is a $154 billion sector in Australia and an important contributor to the economy. With around 1,200 franchisors and 91,000 franchisee units, the franchising sector is estimated to employ around 515,000 people.[47] Many franchisees and franchisors are small businesses and family enterprises, operating in many industries, contributing to both metropolitan and regional economies.

[44] Department of Industry, Innovation and Science, 2018, 'Australia's Tech Future: Delivering a strong, safe and inclusive digital economy', available at https://www.industry.gov.au/sites/default/files/2018-12/australias-tech-future.pdf.
[45] AlphaBeta, 2019, 'Future skills', available at https://alphabeta.com/wp-content/uploads/2019/01/google-skills-report.pdf.
[46] Department of Industry, Innovation and Science, 2018, 'Australia's Tech Future: Delivering a strong, safe and inclusive digital economy'.
[47] IBISWorld Pty Ltd, 2021, 'Franchising in Australia', *AU Industry (ANZSIC) Report X0002*

The sector operates under the Franchising Code of Conduct, a mandatory industry code enforced by the Australian Competition and Consumer Commission. In March 2019, the Parliamentary Joint Committee on Corporations and Financial Services released its *Fairness in Franchising* report which revealed a range of problems in the franchising sector. In response to the report, in August 2020, the Government committed to a suite of reforms (including amendments to the Franchising Code of Conduct) to restore confidence in the franchising sector. With measures to lift franchisor standards of conduct and improve the information available to franchisees, these reforms include:

- increasing the penalties that apply for a breach of the Franchising Code;
- strengthening dispute resolution options through the introduction of conciliation and voluntary binding arbitration, in addition to mediation;
- targeted improvements to disclosure, particularly those relating to supply arrangements, marketing funds, exit arrangements and significant capital expenditure;
- a new mandatory Key Disclosure Information Fact Sheet to improve and simplify upfront disclosure, highlight key information, and assist franchisees to understand obligations and the risks associated with entering a particular franchise agreement; and
- a public register of franchisors, to increase transparency in the sector and increase the ability of prospective franchisees to make an informed decision before entering a franchise agreement.

In March 2021, the Government further committed to further protections for automotive franchise businesses, including:

- further increasing penalties to up to $10 million for wilful, egregious and systemic breaches of the Franchising Code;
- transforming existing voluntary principles into mandatory obligations for vehicle manufacturers; and
- recognising that dealers operating as a manufacturer's agent in relation to new vehicle sales will still protected by the Franchising Code.

The Government also committed to further consultation on protections for automotive dealers from unfair contract terms in their agreements with manufacturers, options for mandatory binding arbitration and the merits of a standalone automotive franchising code.

The Government is working closely with the sector to ensure the franchising reforms are designed and implemented successfully, without imposing undue regulatory burden.

National Resources Statement

The resources sector offers a diverse number of roles throughout the lifecycle of a project. These roles are located across Australia, in both regional and metropolitan areas in all states and territories. They require different qualifications and skill levels, and many are transferable across industries, allowing for career flexibility. The Government is supporting job growth in the sector through the National Resources Statement, which outlines actions to achieve the world's most advanced, innovative and successful resources sector that

delivers prosperity to all Australians.[48] This includes the $225 million *Exploring for the Future* initiative that is dedicated to exploring Australia's resource potential and boosting investment.[49]

[48] Department of Industry, Innovation and Science, 2019, 'National Resources Statement', available at https://www.industry.gov.au/sites/default/files/2019-02/national-resources-statement.pdf
[49] DISER, 2021, 'Australia's National Resources Workforce Strategy', available at https://www.industry.gov.au/sites/default/files/2021-02/australias_national_resources_workforce_strategy.pdf