29th September 2023

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: eec.sen@aph.gov.au

Dear Committee Secretary,

As a Tasmanian labour-hire business directly engaging over 300 on-hired workers each week and an employer of 48 permanent part & full-time employees engaged in the support and management of this on-hired workforce, I write to express my deep concern with the Government's proposed *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*.

Searson Buck is a Tasmanian owned and operated end-to-end recruitment, on-hired staffing, and consulting services provider, who has focused on the recruitment of staff for private, government and NFP clients for more than 35 years. As a local business, Searson Buck is unrivalled in its ability to attract and engage talent, create opportunities, and facilitate career pathways across all employment categories and disciplines including temporary (on-hired), contract, surge workforce projects, permanent recruitment, and executive search.

As a privately operated recruitment and on-hired staffing agency, we operate three Tasmanian offices; Hobart, Launceston, and Burnie. These offices support the needs of our internal staff and act as hubs for the training and development requirements of our on-hired workforce and clients.

Each week Searson Buck employs and deploys more than 300 on-hired workers across multiple employers and a variety of awards or industrial agreements throughout the State. Each year the Group also creates employment opportunities for up to 800 candidates into a new permanent or contract career opportunity. Importantly, a contract or on-hired assignment can often lead to a permanent employment opportunity with a direct hire employer.

We understand the Tasmanian employment environment and collaborate actively with industry peak bodies and associations to help build workforce capacity and provide employment opportunities across the engineering, civil construction, health, social services, nursing, advanced manufacturing, and government sectors. This involvement creates placement opportunities for the on-hired worker.

As a local employer, we believe, the Closing Loopholes Bill will inject greater uncertainty and complexity into Australia's already complex industrial relations system. The Bill creates new and unnecessary challenges for both business and workers and has will negatively impact wages and job creation. For that reason, we encourage the Senate to reject the Bill in its entirety.

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The proposed Same Job, Same Pay measures will create enormous compliance complexity and we are concerned the Bill does not consider nor contemplate, let alone provide clear direction on, the vast number of scenarios an on-hired agency must administer, and the on-hired worker may preference. Additionally, it will introduce confusion and unworkability when it comes to matching a client's industrial instrument for clients.

The government has failed to make a case for the need for changes to casual employment. Instead, it has, without justification, proposed to re-create a substantial problem that was addressed effectively by legislation and high court decisions in recent times.

These changes will make it exceedingly difficult to engage casual employees with any sense of certainty or confidence in scenarios where work hours are regular, but placements have the potential to be extended, such as inter-governmental secondments, maternity leave coverage, extended periods of sick leave or clients which an irregular funding cycle. In these instances, it will be near impossible to employ an on-hired worker at all.

The casual employment changes will have significant implications for the on-hired workers our business employs. Once in operation, this Bill will force casual workers to either accept a substantial reduction in take home pay, or have regularity and certainty stripped from their working hours.

The people who work for our business often choose on-hired work because it provides a higher rate of pay coupled with the flexibility to manage work around their lifestyle or life stage.

The government claims that decision around casual versus permanent employment will be employee-driven, but there is nothing in the legislation to reinforce this statement. Instead, the legislation proposes to impose decisions around what can be casual work and what cannot, removing choice from workers and undermining the employment contracts between them and their employers.

The introduction of a post contractual conduct test is extremely challenging for workers who prefer to work as an on-hired casual employee with regular hours. It means they will be forced to choose between a higher rate of pay, or regular hours at the time of engagement and will no longer have an option.

Casual Employment

The Government's proposed changes to the definition of casual employment will re-introduce enormous risk around engaging on-hired casual workers. The Bill disregards recent High Court rulings and works to undermine the contract between an employer and their employee, instead forcing Courts to consider post-contractual conduct, including if the employee is working in a regular way.

As an employer of 300+ on-hired workers, we have many employees that elect to work regular hours in a casual capacity. These hours are dictated by the demand from the client, but also often by on-hired worker preference.

For example, registered nurses in regional areas where sourcing on-going clinical staff is difficult, engineering design projects with defined design phases, "project-based" engineers whose preference is to move from project to project, professional "temps" who prefer the flexibility of an on-hired arrangement, FIFO, or DIDO workers at various stages of construction within the minerals and extraction sectors.

These individuals and companies often require the flexibility that casual employment provides, while also valuing the consistency of having shift availability each week. A typical on-hired worker cohort can include the under-employed migrant, university students, parents, caregivers, the older or retired worker and even people returning to the workforce after a period of long-term unemployment.

Current casual conversion laws provide strong evidence that most people working regular hours as a casual employee for extended periods do so via their own choice. In our organisation, only one (1) on-hired worker has chosen to accept the offer of permanent employment within the last 12 months.

The proposed changes strip the ability of those workers who prefer to work casually, essentially forcing them to choose between irregular and unpredictable hours or a 25% cut in take-home pay.

The new definition, combined with new civil penalty provisions for misrepresenting casual employment, will make it extremely high risk for our business to engage casual on-hired workers where there is any chance, they will be working the same hours or shifts week to week.

The combined impact of casual changes and limitations on fixed-term contracts introduced by the Government in its *Fair Work Legislation Amendment* (*Secure Jobs, Better Pay) Act 2023* is particularly significant and will make it extremely difficult to engage workers to fill gaps to support our clients' permanent workforces.

If a worker cannot be engaged as a casual employee because they are working regular hours and is placed in a role which is extended twice or requires a commitment of more than 24 months, there will be no mechanism left under law for our business to engage them.

Because our clients engage on-hire workers without assurance of ongoing work or continuation of projects, it is impractical to offer these workers permanent employment on an ongoing basis.

Sadly, the on-the-ground outcome will be that individual workers will be removed from roles they may be passionate about because they cannot now be legally employed as on-hired worker.

It also means a potential reduction in the number of permanent staff our business direct employ due to reduced number of on-hired workers and client demand.

There are also significant implications for clients and industries that depend on the flexibility and adaptability of casual workforces. In our own business, this includes:

- nurses for the aged care, disability, community, and acute healthcare clients, many who are NFP and government clients
- engineers who are required to relocate to Tasmania or other regional areas due to worker shortage and will only do so on the commitment of higher pay rates and flexible working employment options
- government clients where hiring "head freezes" mean an increased reliance on an agency on-hired workforce to ensure government continues to deliver on its statutory and legislative and public commitments
- agribusiness clients who have seasonal staffing requirements
- the manufacturing and production sector who have large-scale projects and require a flexible surge workforce

These clients will be significantly impacted and challenged by the prospect of losing valuable talent as the on-hired worker's assignment ceases prematurely to ensure our business remains compliant with employment law.

Same Job, Same Pay

As a labour-hire business, we are concerned by the compliance challenge created by the Same Job, Same Pay elements of the proposal, outlined in the Bill as Regulated Labour Hire Arrangement Orders.

Across the industries our business supply into, all on-hired workers are paid the same, if not more, than their direct-hire counterparts. This reflects the 'on demand' nature of their availability and often their specialised skills and training.

From a business perspective, it also makes no sense not to pay an on-hired worker in accordance with the client's Enterprise Agreement or higher than a direct hire employee.

Not equalling, or even exceeding the nominated pay rate, increases the challenge of attraction, impacts retention, and the risk of losing an on-hired worker to another agency or direct employer. Not providing pay equity in our experience is simply bad business.

Profit in the on-hired agency sector, is driven by the amount of gross profit after paying the on-hired workers casually loaded hourly rate and covering on-costs. Applying a 15% gross profit margin to a causally loaded hourly rate of $45 per hour is better business than applying 15% to a casually loaded hourly rate of $42!

As a business, we also choose not to engage with clients who force a pay differential between the Searson Buck on-hired worker and direct hire employee.

It is important to note, an on-hired arrangement is often also utilised as a pathway for workers to gain the experience required to obtain a permanent role with the client or another business in a similar industry.

If there are concerns or evidence of an issue in niche or specific area of the labour market, regulation should deal with it where it exists. Taking a broad-scale approach as proposed it will present an administrative nightmare for many on-hired businesses and will be almost unworkable in practice.

We are also concerned the Bill's contemplation of a direct hire employees 'full rate of pay' is superficial and does not reflect nor consider the challenges that our business will face in trying to comply with this new law. The proposal in the Bill will also require our business to match bonuses and other separately identifiable amounts. The client will simply not pay this nor is there an avenue to recoup in an on-hired assignment arrangement.

There are also a range of situations where we will face significant challenges in ensuring compliance with requirements of this legislation such as:

- The benefits of NFP salary sacrificing when legislation does not allow access "for profit" entities
- Incentives or bonuses relative to the direct hire worker
- Discretionary benefits such as health care, gym memberships, etc the direct hire worker may receive as an employee of the host employer

Moreover, what occurs in scenarios where an on-hired worker is engaged as a permanent employee by our organisation? Those employees' salaries will be fixed, but may in some cases, be greater by the hour than a client's direct employees, but in other instances lower. How am we expected to manage varying rates of pay and leave entitlements for those permanently employed workers? How in fact, are we expected to operate a profitable business?

We are concerned this Bill seems to completely disregard the industrial rights of an on-hired workers "worker choice". It essentially strips an on-hired worker of choice and subjects them to a Regulated Labour Hire Arrangement Order which impacts their right to engage or influence the industrial instruments that govern their employment.

In this sense, the Bill proposes to make them potentially the only cohort of workers in the country who have no right to vote or have any industrial agency over the terms and conditions of their employment.

This Bill threatens to seriously disrupt the way in which our business employs people, and the way our on-hired workers choose to engage with our business. These changes lack the critical understanding of the current employment market, and the likely outcome will be the exclusion of workers who are no longer able to access work in a manner which suits their personal circumstances.

This Bill strips rights, certainty, and stability from casual and on-hire workers.

For a Government that claims to be committed to 'job security', its actions and direction on industrial relations law have done nothing but strip predictability, stability and security from the millions of Australian workers who choose to work flexibly.

By making employment more uncertain and unpredictable for business, it only serves to make the employment landscape more precarious for workers. The Bill is detrimental to both businesses and employees. We implore the Committee to reject this legislation on its entirety.

Yours sincerely,

Nick Prokopiec
Chief Executive Officer