



Submission to the Education and Employment Legislation Committee

Inquiry into the Fair Work Amendment (Right to Request Casual Conversion)

Bill 2019

Dear Committee Members,

About JobWatch

Job Watch Inc. (**JobWatch**) is pleased to contribute to this inquiry into the *Fair Work Amendment (Right to Request Casual Conversion) Bill 2019 (Bill)*. JobWatch is an employment rights community legal centre which is committed to improving the lives of workers, particularly the most vulnerable and disadvantaged. It is an independent, not-for-profit organisation which is a member of the Federation of Community Legal Centres (Victoria). This submission is based on the experiences of callers to and clients of JobWatch and the knowledge and experience of JobWatch's legal practice.

JobWatch was established in 1980 and is the only service of its type in Victoria. The centre is jointly funded by the Victorian and Federal Governments to do the following:

- (a) Provide information and referral to Victorian, Tasmanian and Queensland workers via a free and confidential telephone information service;

- (b) Engage in community legal education through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other organisations;
- (c) Represent and advise disadvantaged workers; and
- (d) Conduct law reform work with a view to promoting workplace justice and equity for all workers.

Since 1999, we have maintained a comprehensive database of our callers. To date we have collected over 200,000 records (we start a new record for each new caller or for callers who have contacted us before but who are calling about a new matter. One record may canvass multiple workplace problems, including, for example, unfair dismissal, discrimination, bullying and underpayment of wages). Our database allows us to report on our callers' experiences and enables us to track any changes in demographic trends. Since 1999, JobWatch has recorded the details of over 30,000 callers who have identified themselves as casuals, fixed term contractors or independent contractors. That is, approximately 20% of our callers are engaged in precarious employment arrangements.

The Right to Request Casual Conversion

JobWatch welcomes the proposed amendments to the *Fair Work Act 2009* (**FWA**). It is our opinion that these amendments benefit vulnerable workers by granting casual employees a right to request work arrangements that accurately reflect the ongoing and stable nature of their employment and afford them greater security in their employment.

The Right to Request Casual Conversion gives casual employees a right to request that their employment terms be altered to permanent to receive entitlements such as annual leave and notice periods for termination. JobWatch understands that many employees prefer the security afforded to permanent employees and believe that workers should have the right to request more secure employment arrangements from their employer where reasonable.

Nevertheless, JobWatch believes the Bill could be improved to better ensure that the Right to Request Casual Conversion is not merely aspirational, as all employees obviously already have the “right to request” changes to their employment conditions, but enforceable.

We take this opportunity to comment on elements of Parts 1 and 2 of the Bill.

Part 1—Main amendments

JobWatch believes that the Bill should require only the employee’s consent for a matter to proceed to arbitration at the Fair Work Commission (**FWC**). The requirement that both parties to the dispute must consent to arbitration at FWC under *section 66G(5)(b)* allows employers to refuse to settle at conciliation or mediation or to not act on a recommendation by FWC, knowing that FWC will not be able to order the completion of a casual conversion without the employer’s consent to arbitration. This gives the employer an unfair advantage at conciliation or mediation talks and may allow employers to approach these dispute resolution procedures in bad faith. In other words, the Right to Request Casual Conversion is not enforceable if arbitration can only occur with the agreement of the employer.

Recommendation 1: That FWC arbitration be available without the consent of the employer.

Recommendation 2: Clarify in the Bill that at arbitration the FWC can order that the employee be converted from casual to permanent.

Part 2—Other amendments

JobWatch suggests the Committee also consider the following recommendations:

JobWatch is concerned that employers may agree to a request for conversion to permanent on the basis that the permanent role be for a fixed term, e.g. 6 months, after which, unbeknownst to the employee, their employment will come to an end due to the effluxion of time.

Recommendation 3: Make it clear that an employer can't agree to conversion to permanent on the basis that the permanent role will be for a fixed term.

Section 66A(4) of the Bill says that “for the purposes of this Division, a reference to full-time employment, or part-time employment, does not include employment for a specified period of time, for a specified task or for the duration of a specified season.”

JobWatch has noticed an increase in calls from casual employees who are also employed on a fixed term basis. See below case study:

Sonika: I have been employed for almost 4 years as a canteen assistant in a public primary school. Since I started there, I have worked 2 days a week. I am paid casual rates and I don't get any paid annual leave or personal leave. Each year, I have been given fixed term contracts which last for 48 weeks at a time (with four weeks in between contracts when I haven't been paid). In the past I have never had to re-apply for my position: I would automatically receive a new contract. This time, instead, I have been told that my services will not be required in 2012 and accordingly my contract will not be renewed. The canteen

will continue to operate: the school has employed two new people to run it in 2012.

Whilst the concept of a casual employee engaged for a fixed term is not envisaged by the FWA or at common law, JobWatch is concerned that *section 66(4)(a)* and/or the “ongoing basis” requirement in *section 66 (3)(b)* could be used by employers to unfairly exclude the kinds of casual employment highlighted by the above case study. In JobWatch’s opinion, the Bill should make it clear that casuals who are ostensibly engaged for a fixed term are not automatically ineligible to request to convert to permanent employment by, for example, inserting the words in *section 66(3)(b)* after “ongoing basis”, “whether or not under contiguous fixed term contracts”.

Recommendation 4: Make it clear in the Bill that casual employees on contiguous fixed term contracts are eligible to request to convert to permanent employment.

Please contact Ian Scott on ian.scott@glasgow.ac.uk if you have any queries.

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Per: Ian Scott

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