

**Senate Education and Employment Legislation Committee**

**Inquiry into the  
Fair Work Amendment (Equal Pay for Equal Work) Bill 2022**

**Submission by the  
Construction, Forestry, Maritime, Mining and Energy Union (Construction and  
General Division)**

**20<sup>th</sup> September 2022**

## Introduction

1. On 28 July 2022, the Senate referred the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022 (the **Bill**) to the Education and Employment Legislation Committee (the **Committee**) for inquiry and report by 24<sup>th</sup> October 2022. On 2 August 2022, the Committee issued a media release calling for submissions on the Bill.
2. The Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) (the **CFMEU**) welcomes the opportunity to make this submission on the Bill.
3. The CFMEU supports and adopts the concerns about the Bill set out in the Australian Council of Trade Unions' (**ACTU**) submission to the Committee.
4. The matters set out below are intended to supplement those already raised by the ACTU.

### **The Bill does not apply widely enough to achieve its objectives**

5. The CFMEU represents tens of thousands of workers in building and construction.
6. Unscrupulous participants in the building and construction industry are increasingly resorting to labour hire as a device to undermine workers' rights.
7. This leads to the perverse situation where two workers with the same qualifications are hired to do the same job under the same supervision, but the one who works for a labour hire company gets paid much less, with vastly inferior conditions and no job security to speak of.
8. Given that widespread problem, the CFMEU supports the broad objectives of the Bill, namely:
  - a. to "limit the use of labour hire contracts by removing the incentive for employers to do so, which is lower wages"; and
  - b. to encourage "employers to make improved provision for their labour requirements by retaining existing staff in permanent work arrangements, while training new staff through apprenticeships and traineeships".<sup>1</sup>

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<sup>1</sup> Explanatory Memorandum, Fair Work Amendment (Equal Pay for Equal Work) Bill 2022 (**Explanatory Memorandum**), p 2.

9. The CFMEU has adopted this position consistently over many years.<sup>2</sup>
10. However, the Bill does not go anywhere near far enough to address the rampant abuse of labour hire by Australian employers.
11. In particular, the Bill does nothing whatsoever to address the abuse of labour hire in the building and construction industry.
12. Proposed section 333B(4) expressly confines the Bill’s application to an extremely narrow section of the overall workforce.<sup>3</sup>
13. Further, most of the awards that are specified in that provision apply to industries where the proponents of the Bill expressly consider the abuse of labour hire has “not become a problem”.<sup>4</sup>
14. By contrast, the Bill does not apply to numerous industries where the abuse of labour hire has become a significant problem.<sup>5</sup>
15. In particular, the Bill does not apply to workers covered by:
  - a. the *Building and Construction General On-site Award 2020* (the ***Construction Award***);
  - b. the *Joinery and Building Trades Award 2020*; or
  - c. the *Mobile Crane Hiring Award 2020*.
16. So, for example, the Bill would not provide any assistance to the workers involved in the recent High Court case of *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (***Personnel***).<sup>6</sup>
17. The *Personnel* case involved an “Odco-style” labour hire arrangement under which workers were engaged by a labour hire company (Personnel Contracting Pty Ltd),

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<sup>2</sup> See, eg, the CFMEU’s Submission in response to the Senate Select Committee on Job Security, March 2021; CFMEU, *Labour Hire and Insecure Work: The Need for a New and Fairer Victorian Framework*, November 2015; CFMEU Construction & General, *Race to the Bottom: Sham Contracting in Australia’s Construction Industry*, March 2011.

<sup>3</sup> Specifically, employees covered by the *Aircraft Cabin Crew Award 2020*; the *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016*; the *Black Coal Mining Industry Award 2010*; the *Fire Fighting Industry Award 2020*; the *Maritime Offshore Oil and Gas Award 2020*; and the *Seagoing Industry Award 2020*.

<sup>4</sup> Explanatory Memorandum, p 4.

<sup>5</sup> Including meat processing and horticulture, as noted in the ACTU’s submission.

<sup>6</sup> (2022) 398 ALR 404.

purportedly as independent contractors, and then supplied as labour to a host employer (chiefly Hanssen Pty Ltd).

18. Each of the workers so engaged was paid at least 25% less than the minimum rates prescribed by the *Construction Award* for the work they were hired to perform, on the basis that they were independent contractors and not award-covered employees.<sup>7</sup>
19. The CFMEU took the workers' case to the High Court and succeeded in establishing that they were employees, not independent contractors, and that they were entitled to the minimum rates of pay and other entitlements under the *Construction Award* as a result.
20. By contrast, the Australian Building and Construction Commission (ABCC), the regulator supposedly responsible for enforcing minimum standards across the building and construction industry, took no action in respect of these egregious breaches of the law.
21. The ABCC has continued to do nothing to protect the interests of the workers involved in the *Personnel* case, even following the High Court's decision.
22. By sitting on its hands in this case, the ABCC has effectively condoned and facilitated a large-scale, systematic wage theft perpetrated against construction workers.
23. Similarly, although well-intentioned, this Bill would also do nothing to protect those workers, because they were not covered by any of the very few awards listed in proposed section 333B(4).

## **Recommendation**

24. The Albanese Government has committed to ensure that workers employed through labour hire companies, or other employment arrangements like outsourcing, receive no less than direct employees.<sup>8</sup>
25. It would be redundant to attempt to address the problems with the Bill while the Government separately pursues the same objectives through its own legislation.

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<sup>7</sup> It goes without saying that there was an even greater shortfall between what these workers were paid and the industry rates paid to workers covered by enterprise agreements.

<sup>8</sup> See *Labor's Secure Australian Jobs Plan*, accessed 14 September 2022  
<<https://www.alp.org.au/policies/secure-australian-jobs-plan>>.

26. Instead, the CFMEU suggests that Senator Roberts and One Nation work cooperatively with the Government to develop legislation that will be most likely to achieve their common objectives.

27. The CFMEU therefore recommends that the Committee

**Encourage Senator Roberts and One Nation to work with the Government to develop legislation that can best give effect to the goals of the Bill, particularly with respect to the building and construction industry.**