

## SENATE EDUCATION & EMPLOYMENT LEGISLATION COMMITTEE

### FAIR WORK AMENDMENT (Supporting Australia's Economic Recovery) BILL 2020

#### Submission by ACTU RETIRED UNIONISTS' NETWORK – 3 February 2021

The **ACTU Retired Unionists' Network** (RUN) is a large group of union activists who have opted to pursue their activism in retirement. RUN members meet monthly to discuss and to pursue their industrial, social and political concerns and, in this context, we have opted to make this submission which we trust will be carefully considered by Senators. Some of our key concerns are set out below.

#### **SCHEDULE 1 CASUAL EMPLOYEES**

The proposed new definition of '*casual employee*' gives primacy to the designation of 'casual' by the employer at the point of engagement (S. 15A). The new definition and set-off provisions apply retrospectively, so that if an employee is ultimately found not to be a 'casual', any entitlements claimed **must** be offset against the casual loading which has been paid (S. 545A).

The proposed *Casual Conversion* process (S. 66B) is illusory rather than actual, in that it is easily avoided by an employer who claims that '*there are reasonable grounds not to make an offer and the reasonable grounds are based on facts that are known or reasonably foreseeable, at the time of deciding not to make the offer*' (S. 66C).

#### **SCHEDULE 2 MODERN AWARDS**

Part-time workers covered by 12 Awards may be asked to enter into an agreement (*Simplified Additional Hours Agreement – SAHA*) to work extra hours without overtime payment, so long as they are working more than 16 hours per week (S. 168N). The list of 12 Awards can be added to by Regulation.

A two-year extension is proposed (Part 6-4D) of Job Keeper-style '*flexible work directions*' on duties and location of work, where the employer believes it is necessary '*to assist in the revival of an enterprise*'. This test will be easily met and will allow many employers to issue wide-ranging binding directions. There is no arbitration available in relation to these directions.

### **SCHEDULE 3 ENTERPRISE AGREEMENTS**

The proposed changes to the Objects of the **Fair Work Act 2009** (S. 171) include new criteria of *'enabling business and employment growth'* and of *'reflecting the needs and priorities of employers and employees'*. In practice, this tilts the scales substantially towards the interests of employers.

The proposed extension of time for employers to issue the **Notice of Employee Representational Rights (NERR)** from 14 days to **28 days after bargaining commences** (S. 173 (3)). The bargaining may well be over before employees receive their **NERR**.

Permanent changes to the BOOT test which require the FWC to give *'substantial weight'* to the views of employers and employees, even in **circumstances where the proposed Agreement leaves employees worse off (compared with the relevant Award), and where the employees are unrepresented** (S. 193). The FWC is also directed to *consider 'the overall benefits' (including non-monetary benefits)* that the employee would receive under the proposed Agreement, compared with the relevant Award.

### **SCHEDULE 5 COMPLIANCE / ENFORCEMENT**

The proposed new criminal offence (s. 324B) of *'dishonestly engaging in a systematic pattern of underpaying one or more employees'* defines *'dishonest'* as:

- (a) dishonest according to the standards of ordinary people; **and**
- (b) known by the defendant to be dishonest according to the standards of ordinary people

This is a much higher standard of proof than that required by Victorian wage theft laws. It is also proposed (S. 26(2)) that these provisions would override State or Territory wage theft laws.

### **SUMMARY OF CONCERNS**

**Retired Unionists' Network** members are concerned to ensure that their children and grandchildren work in an industrial environment, which is at least as good as the industrial environment in which they themselves have worked. In this regard, we see the problems we have outlined above as contributing to a significantly worse industrial environment in which the interests of employers are given an unmerited primacy.

In addition, we are concerned that the proposed legislation will provide opportunities to target workers in the Aged Care industry who are already characterised by heavy levels of casualisation and who will be placed under further pressure by these proposals. Finally, RUN supports the submission made by the ACTU to this Committee.