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27th 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 an Australian labour-hire business with 400 plus employees, I write to express my deep concern with the Government's proposed *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*.

Talent Quarter is an Australian owned recruitment business providing staff to the Healthcare and Community Services sector across Australia. This includes providing workers for roles in remote and regional Australia (where there are many challenges in the communities to meet the demand for services) 90% of our delivery support the provision of casual and locum staff to cover the many gaps for client organisations that come from the severe shortage of skilled healthcare workers in Australia. The occupations we deliver staff for are Nurses, Doctors, Allied Health workers, Imaging specialists, Pharmacists, Aged care workers, Carers for Youth and Community Services and carers for NDIS participants.

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, I encourage the Senate

to reject the Bill in its entirety.

Same Job, Same Pay measures will create enormous compliance complexity. I am concerned that the Bill does not even consider or contemplate, let alone give clear direction on, the vast number of scenarios where it will introduce confusion and unworkability when it comes to matching a client's industrial instrument.

The government has failed to make a case for the need around 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. The changes make it exceedingly difficult to engage casual employees with any sense of certainty or confidence. Coupled with the recent restrictions on fixed-term contract engagement, the changes will mean that in scenarios where work hours are regular but placements have the potential to be extended, such as maternity leave fill roles and instances in remote locations where casual workers are happy to undertake fixed term contracts but not commit to a permanent role that would require them to move to a remote location permanently, it will be near impossible to employ a worker at all.

The casual changes also have significant implications for the workers my 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 my business choose on-hire 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 that. 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 a casual employee with regular hours. It means that they will be forced to choose between a higher rate of pay, or regular hours at the time of engagement. They will no longer have the option of both as they do now.

Casual Employment

The Government's proposed changes to the definition of casual employment will re-introduce enormous risk around engaging 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 over 350 casual workers, I have many employees that elect to work regular hours as a casual. These hours are often dictated by the demand from both the client, as well as the employee. For example, we have students who require flexibility to meet the changing study calendars across a year, Carers who have other commitments that do not allow them to commit to a permanent role. Partners of Defence personnel who move regularly with their partners role and permanent work does not fit their family demands. Parents and carers of family members who need flexibility in their availability but who also need to work (many parents are not able to work during school holiday periods in order to care for their children. People who have elderly parents who seek to have flexibility to respond to emergency

situations and not have their ongoing employment put at jeopardy. There are many reasons why people like to choose to be engaged on a casual basis.

These individuals also often require the flexibility that casual employment provides, while also valuing the consistency of having fixed shift each week. This group includes university students, parents, caregivers, 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 casual employees for extended periods do so through their own choice. In our process of complying with the current requirements to offer permanent employment to those casual employees who work consistent and regular hours currently we have not had one single employee take up our offer to move to permanent employment/engagement. Over the last 3 years we have made this offer to over 60 employees each year and not one person has accepted or expressed a desired to explore this offer in any one year. Our staff value the flexibity that casual employment offers

These changes will strip the ability of those workers who prefer to work casually to do so, forcing them to choose between irregular and unpredictable hours or a 20% 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 my business to engage casual 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 in my 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 me to engage them.

Because my 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, and would have liked to continue in, simply because there is no longer a way that I can legally employ them.

That has significant implication for industries that depend on the adaptability of a temporary workforce, including Hospitals, Aged Care facilities, Remote and Regional Community Healthcare Centres, NDIS participants, young people at risk who reside in group homes, community service who will be challenged by the prospect of losing valuable talent more regularly as individuals are moved out of their roles to ensure our business remains compliant with employment law.

Same Job, Same Pay

As a labour-hire business, I am extremely 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 that I supply into, most of my workers are already paid the same, if not more, than their direct-hire counterparts. This reflects the 'on demand' nature of their availability and oftentimes their specialised skills and training.

Insert examples here around how you either already meet client EAs or pay higher rates to your own staff than client employees receive.

If there are instances and industries, in which a negative pay disparity exists for labour hire workers, they are very much the exception rather than the rule.

In rare instances where it does occur, that can reflect a lack of professional experience or skill by comparison to a direct-hire workforce. In these cases, labour-hire is typically used 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. The approach of this measure in the legislation is extremely broad and will simply create an enormous raft of new problems across the labour market in areas where there is absolutely no pay parity concerns in the first place.

Not only is there little justification for its broad application, but as proposed it presents an administrative nightmare for my business and will be almost unworkable in practice. Given almost all of my employees are already earning the same or higher rates of pay than their direct hire counterparts, it will result in a substantial administrative increase in costs for my clients and their consumers, with very little of those costs related to higher rates of pay.

I'm concerned the Bill's contemplation of what is involved in matching a client's 'full rate of pay' is superficial and does not reflect or consider the challenges that my business will face in trying to comply with this new law. The proposal in the Bill will not only require me to match rates of pay but will also require me to match bonuses and other separately identifiable amounts.

There are also a range of examples and experiences where we will face significant challenges in ensuring we comply with requirements of

For Example, State based health organisation are offer huge retention bonuses for nurses to take up regional roles. Often, we pay well above award rates so this legislation would require us to reduce some of our workers rates of pay. Some EBA's require fortnightly calculation of hours and treatment of overtime which would penalise our workers who 's calculations are currently undertaken on a weekly basis, and this would result in a pay reduction for our nurse's payment.

The Bill also fails to consider that my workers will potentially be placed on multiple sites in any given year, not just on a single site. Are on-hire workers expected to engage in work in an occupation or industry across multiple host sites not knowing from one placement to the next what their pay and conditions will look like?

Moreover, what happens in scenarios where a worker I on-hire to clients is engaged as a permanent employee with my organisation? Those employees' salaries will be fixed with me but may, in some cases, be greater by the hour than a client's direct employees, but in other instances lower. How am I expected to manage varying rates of pay and leave entitlements for those permanently employed workers ?

It concerns me that the Bill seems to completely disregard the industrial rights and agency of labour hire workers. It essentially strips any on-hire worker subject to Regulated Labour Hire Arrangement Order of 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 I employ people, and the way that my employees are *choosing* to engage with my business. These changes lack the critical understanding of the current employment market, and their likely outcome will be the exclusion of people who are no longer able to access work that works for them.

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. I implore the Committee to reject this legislation on its entirety.

Yours sincerely,

Talent Quarter Pty Limited

Sue Healy

Managing Director

Jennifer Dowd

General Manager – Western Australia, South Australia & Northern Territory