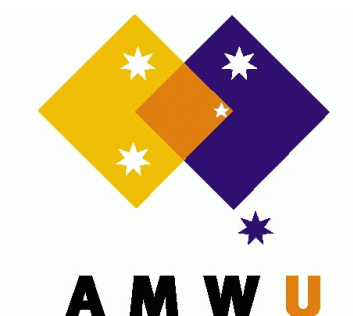


AUSTRALIAN MANUFACTURING WORKERS' UNION



**Submission to the House Standing Committee on Education and Employment
Inquiry into the Fair Work Amendment (Tackling Job Insecurity) Bill 2012**

February 2013

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) welcomes the opportunity to make this Submission to the House Standing Committee on Education and Employment Inquiry into the *Fair Work Amendment (Tackling Job Insecurity) Bill 2012* (“the Bill”).
2. The AMWU represents over 100,000 members working across major sectors of the Australian economy, including food manufacturing, vehicle building and parts supply, engineering, printing and paper products. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across diverse industries including food technology and construction.
3. As such, AMWU members are keenly aware of the pernicious spread of insecure work throughout the Australian workforce, and the AMWU has long sought to provide its members with avenues to reinforce the security of their work and their employment status.
4. Many awards maintained by the AMWU and its predecessors long limited the employment of casual employees, and in 2000, the AMWU successfully applied to the Australian Industrial Relations Commission for the insertion of “casual conversion” clauses into the *Metals, Engineering and Associated Industries Award 1998* (now the *Manufacturing and Associated Industries and Occupations Award 2010*)¹. Although not a formal test case, the decision of the Full Bench in that matter and the mechanisms for casual conversion there adopted were later replicated in respect of many other Federal Awards.²
5. The AMWU therefore welcomes the efforts made in the Bill to legislate and strengthen a right to request conversion to more permanent employment for both casual employees and “rolling contract” employees. These are two of the core groups of employees for whom precarious work undermines the ability to lead stable family lives. Precarious work can and does prevent employees obtaining mortgages for a home, loans for a car and the peace of mind of knowing that workers and their families will have food on the table on a regular basis.

¹ Print T4991, *Application by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union*, 29 December 2000, per Munro J, Polites SDP, Lawson C.

²eg PR935319, *Re Motels, Accommodation And Resorts Award 1998*, 30 July 2003; PR956836, *Re Food Preservers Award 1998, Confectioners Award 2002*, 29 March 2005.

6. The AMWU particularly welcomes the ability of the Fair Work Commission, under the Bill, to make orders for secure employment. One deficiency of current casual conversion clauses in Modern Awards is that employers can quite unreasonably refuse casual conversion requests for longstanding employees, but there is no capacity to arbitrate the unreasonableness of the employer's decision under dispute settlement procedures of those awards. Employees are left with the invidious choice of accepting the employer's unreasonable decision or mounting expensive and prolonged Court action to enforce their right to a reasonable decision. We have elsewhere called for this deficiency to be remedied by restoring arbitration of casual conversion disputes into Modern Awards.³ In the absence of such legislative reform, FWC making secure employment orders may achieve a similar aim.
7. Further legislative change can and should take place to provide casual workers with security in the employment entitlements which should be universal for Australian workers. Entitlements like annual leave, paid sick leave, and long service leave are fundamental to the financial and social security of all workers, and the exclusion of casual workers from those entitlements creates a divided society with an underclass of precarious workers. For these reasons, the AMWU repeats its submissions made elsewhere,⁴ for the introduction of portable entitlement funds for casual workers, building on industry-based long service leave funds that have long existed in particular industries.
8. A further group of precarious workers that this Bill does not address are the increasing number of workers employed in a triangular employment relationship. This situation arises where employees are formally "employed" by a subcontractor or labour hire firm who contracts with the head contractor or operator of the business in which the employee actually works. In many cases, these labour hire employees do not, under Australian law, have an employment relationship with the true operator of the business, despite that operator having the economic power to determine whether the employee of the labour hire firm remains engaged in work. This can mean that the operator of the business can dispense with the labour hire firm at a moment's notice, and an employee of that labour hire firm has none of the methods of legal recourse that a direct employee of the operator of the business would have.

³ AMWU Submission to the Fair Work Act Post-Implementation Review, February 2012:
<http://submissions.deewr.gov.au/sites/Submissions/FairWorkActReview/Documents/AMWU.pdf>

⁴ AMWU Submission to Independent Inquiry into Insecure Work in Australia, January 2012:
<http://www.securejobs.org.au/getattachment/Home/Howe-Inquiry/Submissions/AMWU-National-Office.pdf.aspx>

9. The AMWU would recommend that the Committee consider options whereby the precarious employment of such workers could also be addressed. The Union would not wish to see an unintended consequence of the Bill being an increase in the incidence of labour hire employment – simply shifting the form of precariousness for employees from the mode of their employment to the identity of their employer. Such options include:
 - (a) requiring host employer site industrial instruments to apply to labour hire employees on that site, where the site instruments are superior to those of the labour hire agency;
 - (b) regulating the employment of a wider category of workers under the *Fair Work Act 2009*, including dependent contractors, and having this wider category of worker defined in the Act rather than relying on elusive common law definitions;
 - (c) recognising the role of a head contractor as a potential second employer, in addition to the immediate “common law employer”, of workers covered by the Act, extending the responsibility for workers’ rights and entitlements to such entities which will often be the true operator of the business in which a worker is engaged.
10. Should the Committee request, the AMWU would be pleased to discuss our submissions further in any public hearing in respect of the Inquiry into the Bill.

AMWU

1 February 2013.