

Submission Number: 1  
Date Received: 1/2/2013

*FE.*



SUBMISSION BY THE  
Housing Industry Association

to the  
**House Standing Committee on Education and  
Employment**  
on the  
**Fair Work Amendment (Tackling Job Insecurity) Bill 2012**  
1 February 2013



# CONTENTS

1	Executive Summary .....	1
2	Casual employment .....	1
3	The Bill .....	2





**HIA :**

[Redacted text block]

[Redacted text block]

---

HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 30,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.





# 1 Executive Summary

- 1.1.1 HIA welcomes the opportunity to make submissions to the House Standing Committee on Education and Employment on the *Fair Work Amendment (Tackling Job Insecurity) Bill 2012 (Bill)*.
- 1.1.2 HIA have in excess of 30,000 members operating in the residential building sector of the Australian economy. The residential building sector and HIA's membership includes builders, trade contractors, design professionals, kitchen and bathroom specialists, manufacturers and suppliers.
- 1.1.3 HIA notes that the Bill amends the *Fair Work Act 2009 (Cth) (FWA)* to provide a process for casual and "rolling contract" employees to move to ongoing employment on a part-time or full time basis.
- 1.1.4 The Bill also gives the Fair Work Commission jurisdiction to make secure employment orders.
- 1.1.5 **HIA strongly opposes the Bill.**
- 1.1.6 If enacted the Bill would:
  - (a) significantly reduce the availability of casual employment as a viable mode of engagement;
  - (b) distort the direct employer- employee relationship;
  - (c) would reduce firm productivity and competitiveness and undermine one of the stated intentions of the FWA, namely the creation of "*a national workplace relations system that is fair to working people, flexible for business and promotes productivity and economic growth*"; and
  - (d) ultimately threatens ongoing engagement for all current casuals with employers preferring to downsize than bear risk of having all staff engaged on a permanent basis.
- 1.1.7 It is therefore vital that the concept of casual employment be retained as a legitimate form of employment.

## 2 Casual employment

- 2.1.1 Casual employment has long been recognised as a legitimate form of engagement. Such a position is evidenced from the Secure Employment Test Case<sup>2</sup>, various iterations of industrial relations legislations, and awards generally.
- 2.1.2 These instruments already recognise the need to provide employees an opportunity to access full time or part time employment (or the benefits associated with these forms of employment) and recognise the need for a balance between the needs of employers and employees. This Bill disregards the need for this balance.
- 2.1.3 Unlike current arrangements, under the Bill the right to request secure employment is not contingent on the period of time an employee has been engaged as a casual. However the period of time the individual is engaged as a casual is fundamental to understanding how an individual's access to entitlements arises.
- 2.1.4 Simply being employed as a casual is not sufficient justification for the triggering of an entitlement to another form of employment (as outlined in the Bill).
- 2.1.5 Further, the Bill disregards yet another fundamental component of the current ability of a casual employee to access certain entitlements; that being the recognition of similarities

---

<sup>1</sup> Explanatory Memorandum, Fair Work Bill 2008 (Cth).

<sup>2</sup> [2006] NSWIRComm 38



between a casual employees actual work arrangements and those of a full time or part time employee. It is this nexus that enlivens certain entitlements.

- 2.1.6 The industrial relations framework already identifies and provides compensation for any disadvantages associated with casual employment through the payment of a casual loading payable on top of the minimum wage. This compensation remains fair and relevant.

## 3 The Bill

### **Secure employment arrangements**

- 3.1.1 The Bill proposes the introduction of the concept of a 'secure employment arrangement'. A secure employment arrangement is defined as *'ongoing employment on a part-time or full time basis'*.
- 3.1.2 The Bill enables an employee to make a request for such an arrangement. This request must be made to the employer in writing and the employer must respond in writing within 21 days. In the event that the employer refuses the request reasons must be provided<sup>3</sup>.
- 3.1.3 HIA questions the legitimacy of this process.
- 3.1.4 It is clear that a union can make an application under section 306P regardless of whether or not the employee has made a written request to their employer. Such a provision essentially removes the employer from the process forcing that employer to defend or justify their employment arrangements in front of the Commission.
- 3.1.5 Further to this, the Bill appears to disregard the institutional effect such a formal process will have on the employment relationship; not only is the decision on workforce arrangements firm specific, the potential for ongoing interference in the direct relationship between employers and their employees is likely to undermine the employment relationship. Both the employer and the employee would benefit from no interference from the Commission on an issue so specific to individual businesses.

### **Secure employment orders**

- 3.1.6 As mentioned above the Bill provides the Fair Work Commission (**FWC**) jurisdiction to make secure employment orders.
- 3.1.7 HIA is fundamentally opposed to this power.
- 3.1.8 To empower the FWC to dictate the way work is arranged within a business and to enable those terms to be applicable to all current and potentially future employees goes well beyond the powers of any court or tribunal. It must remain fundamental management prerogative to enable employers to choose those lawful working arrangements that best suit the needs of the business.
- 3.1.9 Further to this, HIA has significant concerns with the potential broad scope of such orders. In cases where a union makes an application, FWA must consider whether the order should apply to the same employees and prospective employees, and require the same employer to comply with it as are covered by the relevant modern award.
- 3.1.10 Orders of this nature have the potential to prevent the engagement of casual employees across a whole industry.
- 3.1.11 The Bill also contains provisions which enable the FWC, when making orders that affect more than one employee, to specify the phasing out of casual loadings on a conversion of employment so as *"to avoid a sharp drop in employee remuneration"*<sup>4</sup>. Such a provision would lead to the absurd continuation of payment of compensation for a disability that no longer exists.

---

<sup>3</sup> Section 306L

<sup>4</sup> Section 306R(c)



### ***Interaction with Modern Awards***

- 3.1.12 The Bill does not provide an exemption for businesses already covered by casual conversion clauses within modern awards and expressly states that terms in a modern award or enterprise agreement will have no effect to the extent that it is less beneficial than what is provided for within the Bill.
- 3.1.13 Such a provision, if enacted, would undermine certainty under all negotiated Enterprise Bargaining Agreements and all casuals currently engaged in the building industry.
- 3.1.14 It is arguable that the provisions of the Bill will always be more beneficial as a casual employee can make a request for secure employment arrangements regardless of their length of service.
- 3.1.15 As mentioned above it is HIA's submission that provisions within Modern Awards already provide sufficient opportunities for casual employees to covert to full time or part time employment.