

Submission Number: 18
Date Received: 28/03/2013

JE.



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

28 March 2013

Committee Secretary
House Standing Committee on Education and Employment
PO Box 6021
Parliament House
Canberra ACT 2600

E-mail: efairworkamend@aph.gov.au

Dear Committee Secretary,

**Inquiry into the Fair Work Amendment (Tackling Job Insecurity) Bill
2012**

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. Our member network has over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations.

ACCI welcomes the opportunity to participate in this inquiry which is examining the Fair Work Amendment (Tackling Job Insecurity) Bill 2012.

Yours sincerely,

MARIE-LUISE MICK
POLICY RESEARCH ASSISTANT
WORKPLACE POLICY/LEGAL AFFAIRS

LEVEL 3
486 ALBERT STREET
EAST MELBOURNE 3002
PO BOX 18008
COLLINS STREET EAST
MELBOURNE VIC 8003
ABN 85 008 391 795
PH: 61-3-9668 9950
FAX: 61-3-9668 9958
WEB: www.acci.asn.au



ACCI Response
Fair Work Amendment (Tackling Job Insecurity) Bill 2012

1. Introduction

The Fair Work Amendment (Tackling Job Insecurity) Bill 2012 (the Bill) was introduced into House of Representatives on 26 November. The Bill amends the *Fair Work Act 2009* to provide a process for "insecure" workers to move to ongoing employment on a part-time or full-time basis.

2. Key Issues

The Bill entitles a casual or rolling contract employee or their union to ask their employer to move to secure employment arrangements.

A rolling contract employee is defined as an employee who has been employed on a fixed term contract by the same employer doing the same type of work on two or more occasions.¹

If the employer refuses the request, the written response to be given by the employer within 21 days must include details of the reasons for the refusal.

If a request for ongoing employment has been refused by an employer, an application for a "secure employment order" can be made to the Fair Work Commission. Further, the Fair Work Commission may make orders to maintain existing secure employment arrangements. The Bill allows unions to apply directly to the Fair Work Commission for secure employment orders on behalf of eligible persons who haven't had a request refused as well as on behalf of classes of eligible persons.

The Bill would exempt small businesses, as currently defined under the *Fair Work Act 2009*.

ACCI notes that the inquiry of this Bill has to be conducted against the background of a Post Implementation Review (PIR) of the *Fair Work Act 2009*.

By way of background, on 20 December 2011, the Minister for Employment and Workplace Relations, Hon. Bill Shorten MP, announced the details of a review of the Act, including the terms of reference.

The Minister indicated that the Review, which would also satisfy the PIR requirements, would be conducted by Reserve Bank Board Member Dr John Edwards, former Federal Court Judge, the Honourable Michael Moore and Professor Emeritus Ron McCallum AO.

The Fair Work Act Review Background Paper was released on 18 January 2012. It set out a tight timetable with written submissions to be provided by 17 February 2012. ACCI lodged two written submissions and met with the Review Panel in Sydney on 29 March 2012.

Over 200 initial submissions were made to the review and over 30 supplementary submissions were received.

¹ Section 21A and Explanatory Memorandum

Following the announcement of progressing a first tranche legislative response to the Fair Work Review Report, the Minister for Employment and Workplace Relations introduced the Fair Work Amendment Bill 2012 into Parliament on 30 October 2012.

The Fair Work Amendment Bill 2012 passed Parliament on 28 November 2012 and received Royal Assent on 4 December 2012. Most amendments to the Fair Work Act 2009 commenced on 1 January 2013.

ACCI provided a submission and appeared before the Standing Committee on Education, Employment and Workplace Relations which conducted an inquiry into the Fair Work Amendment Bill 2012.

In summary, ACCI responded to the detailed amendments contained in the Fair Work Amendment Bill 2012, whilst reiterating its strong support for implementing the recommendations which have been made by ACCI and its members in their submissions as part of the PIR of the Fair Work legislation.

The Minister for Employment and Workplace Relations announced further amendments to the Fair Work Act 2009 through four media releases on 11, 12, 13, and 14 February 2013.

On 21 March 2013, the Minister for Workplace Relations introduced into the House of Representatives the Fair Work Amendment Bill 2013.

The Fair Work Amendment Bill 2013 proposes further amendments that will disappoint the business community, especially companies and small businesses which expected the Government to fix problems with the laws that both industry and its independent review panel identified over the past 12 months.

ACCI does not believe that the Report, its recommendations and the Government's first and second tranche response will address the problems identified by Australian employers during the PIR and remains disappointed that the Government has delayed the introduction of the small number of beneficial findings/recommendations contained in the Report.

ACCI also strongly opposes these proposed new measures.

It appears that the idea of the proposed measures in this Bill originated from the Australian Council of Trade Unions' (ACTU) "Secure Jobs. Better Future" Campaign. As part of this campaign, the ACTU on 24 October 2011 launched the "Independent Inquiry into Insecure Work". The Inquiry was described as "*the first formal investigation of the growth and spread of casual, contract, labour hire and other forms of insecure work in Australia, and the impact it has on workplace rights, family finances, and society.*"² The inquiry was chaired by former Deputy Prime Minister Brian Howe.

² ACTU Media Release: "*Unions launch new inquiry into insecure work as part of push for better future for Australian workers*", 24 October 2011:
<http://www.actu.org.au/Media/Mediareleases/UnionslaunchnewinquiryintoinsecureworkaspartofpushforbetterfutureforAustralianworkers.aspx>

On 14 May 2012, the report of the Independent Inquiry into Insecure Work titled "*Lives on Hold: Unlocking the potential of Australia's workforce*" was launched at the ACTU Congress. Notably, the Inquiry made the following recommendation:³

Fair Work Australia be granted jurisdiction to resolve disputes about the operation of the above matters, including by making "secure employment orders"

The proposals in this Bill, if passed, would have significant implications for employers and business flexibility. The measures are unworkable, would be impractical and would create legal uncertainty for employers. The Bill would undermine the promotion of productivity and economic growth and would not lead to an increase of employment opportunities.

ACCI notes that the review Report did not make recommendations which would implement such measures.

There is also no regulation impact statement accompanying the Bill.

3. Conclusion

Just as Parliament cannot create secure and viable businesses, it is difficult to understand that the Parliament can create "secure" employment arrangements.

As the proposed measures are unbalanced, unworkable and were not recommended by the Independent Panel in its Post-Implementation Review to the *Fair Work Act 2009*, this Committee should recommend that the Parliament not pass the Bill.

³ The Report of the Independent Inquiry into insecure Work in Australia "*Lives on hold: Unlocking the potential of Australia's Workforce*", p. 33. Accessed here: <http://www.actu.org.au/Media/Mediareleases/UnionspledgetotacklethegrowingcrisisofinsecureworkinAustraliawithanationalcampaign.aspx>