



# *Australian Education Union*

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



1 February 2013

Inquiry into the Fair Work Amendment  
(Tackling Job Insecurity) Bill 2012  
House Standing Committee on Education and Employment  
House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Email: [EEFairWorkAmend@aph.gov.au](mailto:EEFairWorkAmend@aph.gov.au)

Dear Sir or Madam,

**Re: AEU Submission to the Inquiry into the Fair Work Amendment  
(Tackling Job Insecurity) Bill 2012**

Please find attached a submission from the AEU to the Inquiry into the Fair Work Amendment (Tackling Job Insecurity) Bill 2012.

The AEU would be happy to expand on these and any other relevant matters to assist the Committee inquiry should it consider appropriate to conduct further consultations.

Please contact me if you have any questions in relation to this submission.

Yours sincerely,

Federal Secretary



## **Australian Education Union**

### **Submission to the House of Representatives Standing Committee on Education and Employment**

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

**1 February 2013**

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# Australian Education Union

## Submission to the Inquiry into the Fair Work Amendment (Tackling Job Insecurity) Bill 2012

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### Introduction

The Australian Education Union welcomes the opportunity to provide a written submission to the House of Representatives Standing Committee on Education and Employment Inquiry into the *Fair Work Amendment (Tackling Job Insecurity) Bill 2012* [the Bill].

The AEU is an organisation of employees registered under the provisions of the *Fair Work (Registered Organisations) Act 2009*. It has approximately 190,000 members employed in government schools and public early childhood work locations, in public institutions of vocational and/or technical and further education and training, in Adult Multicultural or Migrant Education Service centres and in Disability Services centres as teachers, school leaders and education assistance or support work classifications.

Job insecurity, as indeed are all forms of insecure work, is a pressing issue for Australia. A recent inquiry into insecure work, the Independent Inquiry into Insecure Work in Australia, has released a report providing ample evidence of the nature and extent of the problem and proposing a number of recommendations to address it. Expressly enabling the Fair Work Commission to make secure employment orders is one of those recommendations. The report of that Inquiry can be found at: [http://www.securejobs.org.au/getattachment/Home/Howe-Inquiry/Report/lives\\_on\\_hold.pdf.aspx](http://www.securejobs.org.au/getattachment/Home/Howe-Inquiry/Report/lives_on_hold.pdf.aspx).

The AEU made an extensive submission to the Insecure Work Inquiry which can be found at: <http://www.securejobs.org.au/getattachment/Home/Howe-Inquiry/Submissions/Australian-Education-Union-National.pdf.aspx>.

Rather than traverse the nature and extent of the problem of job insecurity, the AEU commends the above mentioned Report and Submission to the Inquiry.

The AEU has read, in draft form, the ACTU Submissions to this Inquiry and supports and adopts them.

Subject to the issues and proposed amendments raised below, the AEU supports the Bill while recognising it as but an initial legislative response and more will be required to effectively address the unacceptable incidence and increasing rise of insecure work in Australia.

## **A Fundamental Object**

Enhancing security in employment should be a fundamental principle underpinning industrial relations regulation.

To this end, the AEU supports or recommends:

- The inclusion of an Object concerning facilitating more secure employment arrangements within section 3 of the Fair Work Act [the Act];
- Amending s134 of the Act to provide for the inclusion of a requirement upon the Fair Work Commission [FWC] to ensure that the safety net of Modern Awards and National Employment Standards takes into account measures that promote the need to enhance employment security;
- Removal of the ‘matters pertaining’ formulation in section 172 of the Act and substituting a generalised requirement that enterprise agreements contain terms that regulate the relationship between employers, their employees and their representatives concerning their economic and social or other interests generally.

The AEU notes that the Bill, at Item 10, proposes amending section 172 of the Act to expressly provide that security of employment provisions are amongst the ‘permitted matters’. However, the AEU believes a better approach would be as outlined above; and

- The proposed amendment, at Item 14, to section 576 to expressly provide that security of employment arrangements is one of the matters the FWC may deal with generally.

## **Legitimacy of casual or fixed-term employment**

The Bill as it presently stands fails to adequately recognise circumstances where casual or fixed-term employment is legitimate or, conversely, where it is – or should be – illegitimate.

It does this by enabling any casual employee (proposed s306L), other than a small business exempt casual employee, or any fixed-term contract employee (proposed s306M) on their second contract to apply for more secure employment arrangement.

The AEU supports amending the Bill to remove the small business exemption and the concept of ‘rolling contract employee’.

The test of whether an engagement on a casual or a fixed term basis is legitimate should not depend on the size of the employer or the length or number of actual engagements.

Rather, primacy should be attached to eligibility criteria where, should the nature of the work to be performed be ongoing, then the engagement of employees on a casual or fixed-term basis would, without more, be illegitimate.

The result would be that the employer who rejected an employee application for more secure working arrangements would bear the onus of establishing the reasons why it is thought the casual or fixed-term engagement is legitimate.

## **Content of Orders**

It is important that the Bill adequately describe the content of orders as they pertain to both a single employee as well as to more than one employee. While the Bill currently recognises that orders can cover both classes of employees (s306N), content matters relate only to orders covering more than one employee (s306R).

Of particular concern here is the absence of any content specification concerning the hours of work. Where an application for more secure working arrangements is successful, it should be the prima facie or default position that the order/s specify hours of work at least the same as when the applicant was in less secure work.