



Submission to the House Standing  
Committee on Education and  
Employment

*Fair Work Amendment (Tackling Job  
Insecurity) Bill 2012*

By the Australian Mines & Metals  
Association (AMMA)

*March 2013*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

First published in 2013 by

AMMA, Australian Mines and Metals Association

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ABN: 32 004 078 237

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## 1 Introduction

1. The *Fair Work Amendment (Tackling Job Insecurity) Bill 2012* is a Private Members Bill that was tabled by Greens MP Adam Bandt in the House of Representatives on 26 November 2012
2. The bill seeks to amend the *Fair Work Act 2009* (FW Act) to provide employees and unions with the right to pursue 'secure employment arrangements' and enable the Fair Work Commission to make 'secure employment orders' (SEO).
3. AMMA strongly opposes the Bill and urges the Committee to recommend it not be passed.

## 2 What the bill proposes to do

4. The bill seeks to amend the *Fair Work Act (2009)* by inserting a new Part 2-7B, "Secure Employment Arrangements", which would provide that casual or 'rolling contract'<sup>1</sup> workers, regardless of their length of service, could request ongoing employment on a full-time or part-time basis from their employer. Unions would be empowered to do this on behalf of one or more employees. To refuse a request, employers would have to provide a detailed written response to the applicant within 21 days.
5. The bill would also empower the Fair Work Commission (FWC) to make a "Secure Employment Order" (SEO) which would require an employer to provide or maintain ongoing employment to 'relevant persons'. An application might be brought by an individual whose request for ongoing employment was declined, but applications could also be brought by unions in their own right without any prior request having been made by any employee. Nor would there need be any union members onsite or supporting the action.
6. SEOs could be broad in application, and could pertain to casual employees, rolling contract employees, prospective employees and even to a 'class of relevant persons' captured by reference to an industry or type of work performed. The SEO would override an award or enterprise agreement that applies to the employee/s to the extent of any inconsistency.
7. In essence, not only would the bill insert into the FW Act a right to 'casual conversion' for all employees, it would give the Fair Work Commission the power to arbitrate: for a casual or fixed-term employee to become permanent; and to prohibit casual and/or fixed term employees being employed at all by a particular employer or class of employers.

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<sup>1</sup> Rolling contract employees are defined as an employee engaged on a contract which ends on a specified date or after a specified period that an employer has previously employed a contract which ended on a specified date or after a specified period.

### 3 Why the bill should not be supported

8. The bill must be strongly opposed because it:
  - a. Misconceives the notion of 'job security' (3.1)
  - b. Would undermine employment opportunities (3.2)
  - c. Would undermine employee choice (3.3)
  - d. Would increase industrial action (3.4)
  - e. Would marginalise casual and contract workers (3.5)
  - f. Would discourage interactions between employers and employees (3.6)

#### 3.1 The bill misunderstands the concept of 'job security'

9. The stated aims of the bill are to provide increased capacity on the part of so-called "insecure" employees to require their employer to engage them on an indefinite basis; and to provide unions with the capacity to seek restrictions on non-indefinite employment.
10. Such outcomes would not only restrict important flexibility relied on by employers to maintain productivity and competitiveness, but also restricts important flexibility required by employees to meet family responsibilities and lifestyle choices. Employers cannot support such a restriction on employee choices about their working lives.
11. Research prepared for the Department of Education, Employment and Workplace Relations (DEEWR) indicates that the current generation of employees aged 45 years and over indicate that they plan to retire gradually and expect a transition into casual employment to facilitate this<sup>2</sup>. The research concludes that: "Casual employment can, therefore, only be expected to become more important to maintain mature aged workers in the workforce"<sup>3</sup>.
12. It is clear that Australia's future success depends upon the maintenance of flexible workplaces, including maintaining employers' ability to engage casuals and fixed-term employees. The bill would inhibit the ability of businesses to be responsive to market changes. This would only create increased job insecurity for Australian employees as the potential for higher levels of employment and increased workforce participation become more limited.
13. The only true concept of 'job security' for workers comes from ensuring that businesses remain competitive and labour markets generate jobs. Legislating access to "secure employment arrangements" is likely to undermine genuine job security by reducing the propensity of employers to engage or re-engage

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<sup>2</sup> Buddelmeyer H., Wooden M., and Ghantous S., (2006), Melbourne Institute of Applied Economic and Social Research, *Transitions from Casual Employment in Australia*, Report prepared for the Department of Employment and Workplace Relations under the Social Policy Research Services Agreement (2005-2009)

<sup>3</sup> Ibid

individuals because of the threat that their contract could be unilaterally or exogenously altered during its duration.

### 3.2 The bill would undermine employment opportunities

14. By attempting to restrict casual and fixed-term employment, the bill makes the quite erroneous assumption that such work arrangements should be discouraged or dissuaded through new legislative provisions and enhanced powers of the tribunal.
15. The ABS recently reported that while the number of casuals is generally increasing over time, it is not at an equivalent rate to the growth of the entire workforce. This results in an actual fall in the *proportion* of the Australian labour force employed on a casual basis<sup>4</sup>. In addition the ABS found that there has been no decline in the rights and entitlements of casual workers from previous years<sup>5</sup>. Clearly, casual work is being regulated and performed efficiently and there is no evidence in support of the need for this bill.
16. It is not only small businesses, but major resource and construction industries that utilise casual and contract workers. With over \$650 billion of resource project in the investment pipeline at threat from the skills shortage, fixed contract workers are essential in providing the responsiveness to deliver major projects on time and on budget. For example, the time lag between LNG projects has reduced significantly, meaning that fixed-term contracts are essential to move highly specialised workers between major projects in a timely and efficient manner.
17. AMMA members have reported that while the majority of their workforces are permanent, the engagement of contractors is essential for the delivery of large, complex mega-projects. These projects involve various engineering, procurement and construction phases which are labour-intensive and must be delivered before the mine's production comes 'online' to secure ongoing employment opportunities. Fixed contract work is a simple, effective solution to a particular labour need at a particular time. The bill's attempt to restrict or even prohibit these arrangements would jeopardise the 60,000 jobs expected to be created in the resource industry by 2016.

### 3.3 The bill would undermine employee choice

18. Many employees rely on casual employment arrangements to balance study commitments and they enjoy the additional casual loading (typically 25 per cent) that is afforded to them. Research has indicated that women particular are often attracted to casual employment in order to combine work and family responsibilities<sup>6</sup>. Researchers from the Melbourne Institute reported that they were "hard-pressed to find any suggestion that casual employees are

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<sup>4</sup> Australian Bureau of Statistics, '6359.0 - Forms of Employment, Australia, November 2011, Latest ISSUE Released at 11:30 AM (CANBERRA TIME) 20/04/2012

<sup>5</sup> Ibid

<sup>6</sup> Pocock, B, Buchanan, J & Campbell, I 2004, 'Meeting the Challenge of Casual Work in Australia: Evidence, Past Treatment and Future Policy', Australian Bulletin of Labour, vol. 30, no. 1, pp. 16-32

either trapped in casual jobs or do everything in their power to exit casual employment for non-casual employment"<sup>7</sup>.

19. In a resource industry context, the 'term' nature of projects means that fixed-term contracts meet employees' needs very effectively. There is a significant percentage of the workforce that prefers contract work and chooses not to be locked into permanent employment. For people with high-demand skills – in particularly diesel fitters, tradespeople, engineers and project managers – fixed-term contracts provide them with the opportunity to return to the labour market in search for wages and conditions that rewards their experience, keeping the labour market competitive. Contract work therefore increases rather decreases their conditions. Fixed contracts are often up to 18-months in duration and are by no means transient or 'insecure'.

### **3.4 The bill would increase industrial disputation**

20. The bill would expand the definition of 'permitted matters' in s.172 of the FW Act, giving employees the right to take industrial action during bargaining in pursuit of enterprise agreement clauses pertaining to 'secure employment arrangements'<sup>8</sup>. This would be of great concern to employers and follows the increasingly worrying trend of agreement clauses seeking to undermine managerial decision making and freedom of contract.
21. While clauses such as those restricting the use of contractors and labour hire workers purport to be about protecting job security, they are actually about unions controlling who gets to work on projects and under what terms and conditions. This level of unwarranted control by unions over project terms and conditions must not be allowed to continue unchecked.
22. Employers deserve an agreement making system that does not encourage unions and employees to take protected industrial action in support of matters that have nothing to do with the efficient operation of the enterprise, but which serve only to interfere with legitimate managerial decision making and to shore up union power. Agreement matters must pertain to the employment relationship.

### **3.5 The bill would marginalise casual and contract workers**

23. AMMA has seen numerous examples of unions opposing the flexibility valued by a significant minority of employees in the workplace. Casuals and fixed-term employees are in the minority in most workplaces.
24. The bill would enable the majority of the employees in a workplace and their unions to pursue a 'secure employment order' to prevent casuals being employed, or to force casuals to convert to full-time employment. This might occur despite the casuals not wanting or being able to accept a permanent job because of their own unique circumstances. The bill therefore undermines

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<sup>7</sup> Buddelmeyer H., Wooden M., and Ghantous S., (2006), Melbourne Institute of Applied Economic and Social Research, *Transitions from Casual Employment in Australia*, Report prepared for the Department of Employment and Workplace Relations under the Social Policy Research Services Agreement (2005-2009)

<sup>8</sup> Schedule 1, item 10 of the bill

the desires of a number of employees and puts the decision on their employment in the hands of a third party.

25. Of particular concern is that the bill enables unions to apply to the FWC for 'secure employment orders' for a class of relevant persons, including a particular industry, part of an industry, kind of work, type of employment, or employer, without the relevant employees making a request for such an application. In essence the bill enables unions to impose union policy positions, opposing workplace flexibility and productivity, on the entire workplace or even industry.

### **3.6 The bill would discourage direct employer-employee engagement**

26. The bill also discourages direct engagement and discussion between employers and employees. The National Employment Standards at Part 2-2 of the FW Act provides a right to request flexible arrangements. The policy behind the right to request is to encourage discussion between the employee and employer. The policy decision to not make the outcome of a request-based discussion subject to arbitration was intentional. In contrast, this bill is not directed towards encouraging a discussion but rather provides for enforceable requests which, were the applicant or union insistent, could be declined only in very rare circumstances.

## **4 Conclusion**

27. Casual and contract based forms of employment are legitimate and essential work practices that have long played a role in Australian workplaces and they should not be demonised.
28. The bill must be strongly opposed because it: misconceives the notion of 'job security'; would undermine employment opportunities; would undermine employee choice; would increase industrial action; would marginalise casual and contract workers; and would discourage direct interactions between employers and employees.
29. These outcomes are all clearly against the objectives of the Fair Work Act legislation and against the interests of employers, employees and the Australian community.