

The Senate

Select Committee on Job Security

The job insecurity report

February 2022

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Secretariat

Tas Larnach, Acting Committee Secretary

Emma Banyer, Principal Research Officer

James Strickland, Principal Research Officer

Jason See, Acting Research Officer

Claire Holden, Administrative Officer

Jessica Heller, Administrative Officer

Department of the Senate

Ph: 02 6277 3472

PO Box 6100

Fax: 02 6277 5809

Parliament House

E-mail: jobsecurity.sen@aph.gov.au

Canberra ACT 2600

Internet: www.aph.gov.au/select_jobsecurity

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Terms of Reference

That a select committee, to be known as the Select Committee on Job Security, be established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

- (a) the extent and nature of insecure or precarious employment in Australia;
- (b) the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- (c) workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- (d) the aspirations of Australians including income and housing security, and dignity in retirement;
- (e) the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
- (f) accident compensation schemes, payroll, federal and state and territory taxes;
- (g) the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
- (h) any related matters.

The resolution establishing the Committee is available in the *Journals of the Senate No. 81*, 10 December 2020.

Chair's foreword

Job insecurity is at a crisis point in Australia. It is damaging the physical and mental health of Australian workers, and it is holding back Australian wages and the Australian economy.

That is the inescapable conclusion of the Senate Select Committee on Job Security, after 230 submissions, 26 public hearings, six in-camera sessions, three interim reports, and responses to almost 1000 questions on notice.

The evidence is indisputable. In 2018, the proportion of employed Australians in permanent full-time jobs with paid leave entitlements fell below 50 per cent for the first time.

The number and proportion of Australians forced to work multiple jobs is at an all-time high.

Within a decade of launching in Australia, Uber has become the second largest employer in the country—although its workers are solely engaged as independent contractors, without access to basic rights including the national minimum wage, superannuation, or workers' compensation.

The scope of the job insecurity crisis in Australia is breathtaking. It affects men and women, older and younger workers, migrants and non-migrants, and white- and blue-collar workers alike. There is no segment of the Australian workforce insulated from insecure work.

The committee heard from aged and disability care workers on part-time contracts whose shifts fluctuate wildly from week to week but who are expected to remain constantly on-call. If they turn down shifts for any reason, their shifts can be cut.

We heard from academics who have been held on casual contracts for more than 20 years, even as they regularly worked full-time hours.

We heard from mining, manufacturing, and construction workers who have spent up to a decade employed by labour hire companies, on rates of pay 24 to 40 per cent less than their directly-employed peers doing the exact same work.

And we heard from temporary migrant workers forced into conditions thought to have been eradicated over a century ago, including gig workers risking their lives on Australian roads for just \$6.67 an hour, and Pacific Islands workers lured into slave-like conditions on Australian farms.

These are just a small sample of the first-hand experiences shared with this committee.

While the forms of insecure work are diverse, their impact on workers is consistent. The committee heard that job insecurity means perennial uncertainty and financial stress, and presents a real threat to physical and mental health.

Academic studies have found job insecurity increases the risk of coronary heart disease by 30 per cent, and the risk of depression by 60 per cent. The Australian Medical Association has identified job insecurity as a stressor associated with a higher risk of coronary heart disease, and an increased likelihood of psychological distress and psychiatric morbidity.

Other studies submitted to the inquiry found that casual workers are seven times more likely, and fixed-term contract workers 11 times more likely, to report unwanted sexual advances at work. These findings echo the recent Respect@Work report, which similarly found that people in insecure or precarious work may be more likely to experience sexual harassment in the workplace.

This evidence demonstrates job insecurity is not just an industrial or workplace issue, it is a public health issue.

Job insecurity is also an economic issue. The committee does not believe it is a coincidence that the steep rise in job insecurity has occurred alongside eight years of record low wage growth.

Australians in insecure work often do not have the bargaining power to obtain wage increases. Through the use of labour hire intermediaries, gig platforms and dependent contracting, many insecure workers do not even have access to bargaining with their true employer.

But for every Amazon, Uber or Qantas driving down security, pay and conditions in their industries, there are many employers who want to do the right thing by their employees. It is essential the Australian Government enables those employers to operate on a fair playing field, and that is what this report's recommendations intend to achieve.

I would like to thank committee members, the secretariat, submitters, and witnesses for their invaluable contributions to this critically important work.

Most of all, I commend the courage and strength of every worker who shared their insecure work experience with the committee. I implore the Australian Government to listen to them.

Senator Tony Sheldon
Chair

List of Recommendations

Recommendation 1

1.27 The committee recommends that the Senate adopt the following resolution:

That the time for the presentation of the final report of the Select Committee on Job Security be extended to 30 March 2022, so that the committee may inquire into possible privilege matters, including to:

- investigate allegations raised in relation to the treatment of seasonal workers who gave evidence at the committee's public hearing on 2 February 2022;
- ascertain the facts in the matter; and
- report any findings to the Senate.

Recommendation 2

2.137 The committee recommends that the Australian Government provides funding and support to the Australian Bureau of Statistics (ABS) to enable the ABS to reconcile information from the Characteristics of Employment, Labour Account, and Jobs in Australia releases in order to provide clearer and more coherent information on labour hire employment in Australia.

The revised labour hire information should be published on the ABS website and include:

- data reconciling the number of people who are registered with a labour hire firm or employment agency with industry level estimates of people employed directly by those businesses; and
- data and graphs/tables showing changes in labour hire employment over time.

Recommendation 3

3.67 The committee recommends that the Australian Government reviews the Model WHS Laws and associated Regulations to provide a greater emphasis on supporting workers' psychological safety in the workplace, and include 'job insecurity' as a workplace hazard in the appropriate laws and regulations.

Recommendation 4

3.68 The committee recommends that the Australian Government provides ongoing support and funding to MATES in Construction, and similar evidence-based, industry-focused suicide prevention and mental health and well-being programs—especially in industries where non-standard work arrangements are common, and those heavily-impacted by the pandemic,

such as health, aged and disability care, hospitality, retail, the arts and tourism.

Recommendation 5

3.69 The committee recommends that the Australian Government commits to providing an adequate financial and social safety net for all, including by:

- ensuring that the JobSeeker payment is sufficient to help unemployed Australians focus on upskilling or obtaining employment;
- ensuring that the industries and cohorts *most* impacted by COVID-19 receive financial and other supports to rebuild and recover; and
- by focussing government funding and policy efforts towards initiatives that address the impacts of the pandemic on mental health and well-being.

Recommendation 6

7.43 The committee recommends that the Australian Government urgently assesses the performance of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*. As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.

Recommendation 7

7.55 The committee recommends that the Australian Government undertakes a review of the current portable leave schemes operating in Australia, and examines where such schemes could be extended to workers in other industries. This should be done in consultation with employer and employee groups, and state and territory governments.

Recommendation 8

7.67 The committee recommends that the Australian Government provides encouragement and incentives for businesses to hire permanent staff instead of casuals through investigating the use of:

- education campaigns around the benefits of ongoing employment for businesses and employers;
- training and employment subsidies with secure, ongoing employment requirements attached to the funding;

- increasing reporting requirements for publicly-listed companies in relation to work status, pay and conditions; and
- introducing a procurement framework to prioritise firms that favour a permanent, directly engaged workforce.

Recommendation 9

7.68 The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman, unions and employer associations to provide tripartite support and education to small businesses about their regulatory obligations—and their employees about their industrial rights—in order to increase the proportion of permanent employment in the small business sector.

Recommendation 10

8.98 The committee recommends that the Australian Government amends the *Fair Work Act 2009*, expanding the scope of the Act to encompass all forms of work, and empowering the Fair Work Commission to:

- determine fair rates and conditions for all categories of workers, including contractors;
- arbitrate on contracts with independent contractors that are unfair or harsh; and
- make orders and determinations for groups or classes of workers.

Recommendation 11

8.100 The committee recommends that the Australian Government support independent contractors who are sole traders by establishing and promoting accessible low-cost pathways for dispute resolution.

Recommendation 12

8.132 The committee recommends that the Australian Bureau of Statistics consults with relevant migrant and international student community groups, community leaders, unions, employer associations and experts to ensure that its methods for data collection in relation to the on-demand platform workforce include effective and appropriate approaches to collecting data from key worker cohorts.

Recommendation 13

9.36 The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers

engaged through on-demand platforms like Mable. The law should make it clear that:

- any platform that engages workers to provide support work under the NDIS, or similar schemes, is a PCBU and owes a duty of care to those workers, regardless of workers' work status (employee or contractor), or their visa status; and
- platform companies cannot transfer their obligations as a PCBU onto other parties.

Recommendation 14

9.66 The committee recommends that the Australian Government amend the *National Disability Insurance Scheme Act 2013* to provide that all workers engaged to provide support as part of the National Disability Insurance Scheme must be covered by the Social, Community, Home Care and Disability Services Industry Award, or receive pay and conditions at least equivalent to that Award.

Recommendation 15

9.71 The committee recommends that the Senate give consideration to the referral of an inquiry to the Community Affairs References Committee, examining:

The extent and impact of on-demand platform employment, increasing casualisation, use of labour hire/agency work, and contract labour in aged care, disability care, social services and health care more broadly, with specific regard to:

- impacts of on-demand platform employment models on care workers' experiences of work and sense of job satisfaction;
- pay and conditions for workers engaged through platforms, labour hire and agency roles, and casual staff, compared with permanent staff;
- training and career progression for on-demand platform workers and labour hire/agency workers;
- impacts of work status and worker experiences on retention and motivation to stay in the sector;
- the interactions of gender and migration/visa status with work status in the care sectors;
- any evidence regarding the impacts of different employment models on pay rates and conditions across the sectors more broadly; and
- any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the

former Select Committee on Job Security appointed during the 46th Parliament.

Recommendation 16

11.15 The committee recommends that the Australian Government amends the *Fair Work Act 2009* by inserting the words 'job security' and 'gender equity' into the principal Object of the Act (section 3), and adding 'job security' and 'gender equity' into the list of matters that need to be taken into account as part of 'The modern awards objective' (section 134) in the *Fair Work Act 2009*.

Recommendation 17

11.21 The committee recommends that the Australian Government considers developing a tool for evaluating and rating policy proposals in respect of their potential impacts (positive and/or negative) on job security, and makes assessment against the tool mandatory for all relevant new policy proposals. Policy initiatives that are likely to lead to the creation of insecure jobs should be redesigned.

Recommendation 18

11.23 The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman to investigate and penalise employers and companies for contraventions of workplace laws and obligations, drawing on the Ombudsman's enhanced powers provided under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

Recommendation 19

11.24 The committee recommends that the Australian Government accept Recommendation 23 of the National Agricultural Labour Advisory Committee, which read:

'The Committee recommends that the Australian Government require all 417 and 462 visa holders, prior to arrival in Australia, to apply for an Australian tax file number. Information should be provided to 417 and 462 visa holders in their own language, on their rights and entitlements as migrant workers in Australian workplaces, and on how to take action if they are not being treated ethically and lawfully.'

Recommendation 20

11.29 The committee recommends that the Senate give consideration to the referral of an inquiry to the Education and Employment References Committee, examining:

The extent, growth and impact of insecure work in Australia, with specific regard to:

- definitions and measures of insecure and precarious work, and the need to develop national measures, and a national data set, to understand changes over time;
- the growth in insecure work since the 1970s and the impacts of government policies on this growth;
- the impacts of the pandemic on the growth of insecure and precarious jobs, including those in the on-demand platform sector;
- job insecurity among vulnerable workers, including migrants and temporary residents;
- the experiences of workers in insecure jobs, their pay and conditions, and the impacts on their health, wellbeing, social connection and prosperity;
- perspectives of employers on the use of casual, fixed-term contract, labour hire and platform workforce arrangements;
- impacts on the level of casual and insecure work of the reforms made in 2021 to the *Fair Work Act 2009* through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*, particularly those concerning casual conversion;
- the adequacy of existing legislative and regulatory regimes to address the challenges of insecure and precarious work; and
- any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Chapter 1

Introduction

Defining 'insecure and precarious work'

- 1.1 There is no single definition of 'insecure and precarious work'. However, the definition employed for the Australian Council of Trade Unions' (ACTU) 2012 independent inquiry into insecure work in Australia provides an excellent starting point.
- 1.2 In 2012 the ACTU commissioned a panel led by the Hon Brian Howe AO, former Deputy Prime Minister of Australia, to conduct an inquiry into the extent, causes and impacts of insecure work. For the purposes of that inquiry, 'insecure work' was defined as 'that which provides workers with little social and economic security and little control over their working lives'.¹
- 1.3 While the panel acknowledged that *any* worker can experience insecurity from time to time, the inquiry focussed on forms of employment considered to be 'prone to insecure work, including casual work, fixed-term contracts, seasonal work, contracting and labour hire'. It also looked at part-time work, which is not always insecure, but can be.² The 'indicators of insecure work' utilised by the panel for the independent inquiry were:
 - (i) unpredictable, fluctuating pay;
 - (ii) inferior rights and entitlements, including limited or no access to paid leave;
 - (iii) irregular and unpredictable working hours, or working hours that, although regular, are too long or too few and/or nonsocial or fragmented;
 - (iv) lack of security and/or uncertainty over the length of the job; and
 - (v) lack of voice at work on wages, conditions and work organisation.³
- 1.4 This report draws on the above definition, while acknowledging that submitters and witnesses who participated in the inquiry may have defined insecure work in other ways.

¹ Independent Inquiry into Insecure Work in Australia, *Lives on Hold: Unlocking the potential of Australia's workforce*, 2012, p. 1, www.actu.org.au/media/349417/lives_on_hold.pdf (accessed 22 September 2021).

² As demonstrated in Part 1 (on aged care) of this committee's *Second interim report: Insecurity in publicly-funded jobs*, tabled 19 October 2021.

³ Independent Inquiry into Insecure Work in Australia, *Lives on Hold: Unlocking the potential of Australia's workforce*, 2012, p. 1. Emphasis added.

Conduct of the inquiry

- 1.5 The Senate Select Committee on Job Security (the committee) was appointed by resolution of the Senate on 10 December 2020. The committee was established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions.⁴
- 1.6 It was the committee's intention to conduct hearings in capital cities and regional areas across Australia over the course of 2021.⁵ While the committee was able to travel to Sydney, Wollongong and Melbourne early in 2021, the ability to travel for further public hearings was hampered by outbreaks of COVID-19 and associated lockdowns from June onwards.
- 1.7 Technology enabled the committee to hear remotely from workers, employers, industry bodies and non-government organisations, and local community groups in a number of jurisdictions—from Central Queensland and Northern New South Wales, to Western Australia and Tasmania.
- 1.8 A brief reprieve before Omicron impacted in earnest saw the committee travel to Newcastle, where it met with casual teaching staff, aged care workers, representatives from the mining sector and other industries.
- 1.9 By the conclusion of the inquiry, the committee had held 26 public hearings with over 300 witnesses, and published 230 submissions, including a number from individual workers who shared their stories of insecure work.
- 1.10 Through its hearings, the committee collected a broad range of evidence from workers and employers, unions, experts and industry bodies. The committee also held six in-camera hearings, during which it heard evidence from workers on a confidential basis.
- 1.11 The committee sincerely thanks all submitters and witnesses for their input to the inquiry, especially those who shared their personal stories of insecure work.
- 1.12 Additional information—especially on rates of pay and conditions, and the workforce management practices of large employers and government agencies—was collected through questions on notice. The committee published 146 responses to questions on notice, representing almost 1000 individual questions. These responses, along with tabled documents and other additional information, are published on the committee's website.⁶

⁴ *Senate Journals*, No. 81—10 December 2020, pp. 2890–2891. The full terms of reference are included at page xi.

⁵ Senate Select Committee on Job Security, *Media Release*, 21 December 2020, www.apf.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Media_Releases (accessed 21 September 2021).

⁶ See: www.apf.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity.

1.13 The committee acknowledges the time, effort and resources that organisations put into responding to these questions and providing this critical information.

Matters of parliamentary privilege

1.14 Parliamentary privilege refers to the privileges and immunities of the Houses of the Parliament, including the Senate, which 'protect the integrity of their processes', and enable the Houses to perform their functions.⁷ These privileges and immunities are extended to Parliamentary committees when they are conducting parliamentary business.

1.15 A number of issues arose during the course of the inquiry that gave rise to consideration of matters of parliamentary privilege, including:

- a number of precariously-employed workers seeking to give evidence without disclosing their identities, owing to a fear of retribution from their employers; and
- the need to compel the attendance of a number of reluctant witnesses.

Limitations of the protections of privilege: vulnerable witnesses

1.16 Parliamentary privilege provides that Members of the Houses and other participants in proceedings in Parliament, including witnesses giving evidence before committees, enjoy certain immunities. The most well-known of these is the immunity from impeachment or questioning in the courts for anything said during Parliamentary proceedings, including committee hearings.⁸

1.17 Privilege also grants certain powers to the Senate and its committees, including the power to conduct inquiries and to call for persons and documents. To protect this power, section 12 of the *Parliamentary Privileges Act 1987* makes it a criminal offence, punishable by a fine or imprisonment, to 'interfere with a parliamentary witness', including by disadvantaging a witness for giving evidence.⁹

1.18 While the Senate takes any reports of such interference or disadvantage seriously, and will investigate all substantiated reports,¹⁰ *proving* such interference can be difficult.

1.19 During this inquiry, the committee took evidence from a number of individual workers in precarious and insecure employment. While those workers were

⁷ Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 41.

⁸ Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 45.

⁹ Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 82.

¹⁰ Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 550.

entitled to the protections of the Senate, the committee was conscious that, if a worker was to lose their job, *proving* it was related to their participation in the inquiry would be particularly difficult.

1.20 While it was the committee's preference to take all evidence in public and using real names, the committee made an exception to protect the identities of some workers. Authorising the publication of in-camera evidence after-the-fact, and the judicious use of pseudonyms, allowed the committee to place valuable evidence on the record without risking the livelihood of these already vulnerable and precarious workers.

1.21 **Possible privilege matter: seasonal workers**

1.22 A number of seasonal workers gave evidence at a public hearing in Canberra on 2 February 2022. After this hearing, the committee received correspondence alleging that a number of witnesses who appeared at the public hearing may have been disadvantaged by their employer on account of giving evidence to the committee.

1.23 The committee wrote to the employer on Wednesday 9 February 2022 informing the company of the protections afforded to witnesses who appear before committees and seeking an explanation in relation to the alleged conduct.

1.24 The committee is due to table its final report and conclude its activities by the last sitting day in February 2022, which is Thursday 10 February 2022. As the matters described above have been drawn to the committee's attention so close to the reporting date, the committee has been unable to conclude its inquiry into these issues.

1.25 The committee notes that, under Senate Privilege Resolution 1(18), it has a responsibility to examine the matters raised in relation to these workers and report its findings to the Senate:

Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.¹¹

1.26 Whilst the committee presents its final substantive report today, it has formed the view that the matters raised above in relation to possible disadvantage suffered by witnesses as a result of the evidence they provided to the committee warrants a short extension of time. If agreed, the committee intends

¹¹ Senate PR 1(18).

to conduct a targeted inquiry into these possible privilege matters before finally reporting to the Senate.

Recommendation 1

1.27 The committee recommends that the Senate adopt the following resolution:

That the time for the presentation of the final report of the Select Committee on Job Security be extended to 30 March 2022, so that the committee may inquire into possible privilege matters, including to:

- **investigate allegations raised in relation to the treatment of seasonal workers who gave evidence at the committee's public hearing on 2 February 2022;**
- **ascertain the facts in the matter; and**
- **report any findings to the Senate.**

Invoking the power to compel: reluctant witnesses

1.28 Senate committees have the power, conferred by section 49 of the Australian Constitution, to require the attendance of persons and the production of documents, and to take evidence under oath.¹²

1.29 However, the Senate also has range of practices designed to safeguard the rights of witnesses, contained in its Privilege Resolutions. The first of these resolutions provides a code of procedures for Senate committees to follow for the protection of witnesses.¹³

1.30 The procedures for the protection of witnesses stipulates that witnesses 'shall be *invited* to attend a committee meeting to give evidence', and 'shall be summoned ... only where the committee has made a decision that the circumstances warrant the issue of a summons'.¹⁴

1.31 Over the course of the inquiry, the committee encountered a number of companies and organisations that did not want to attend a public hearing and, as such, declined the committee's invitation.

1.32 This was disappointing considering the modest commitment of time and resources the committee was requesting—generally a 45 minute appearance—and the critical importance of job security across all industry sectors in 2021.

¹² Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 550.

¹³ Australian Senate, *Procedures to be observed by Senate Committees for the protection of witnesses*, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Procedures_to_be_observed (accessed 27 January 2022).

¹⁴ Senate Privilege Resolution 1. www.aph.gov.au/Parliamentary_Business/Committees/Senate/Procedures_to_be_observed (accessed 27 January 2022). Emphasis added.

- 1.33 Committee members shared a belief in the Senate's pivotal role in Australia's democracy and the need for the inquiry to be balanced, including through hearing evidence from both employers and employees.
- 1.34 Committee members were in agreement that employers—including private companies—should attend hearings and participate in the inquiry *as a matter of principle*. The committee was willing to draw upon the summons power, but preferred to persuade witnesses of the merits of attending voluntarily.
- 1.35 A number of witnesses who had originally been reluctant to attend chose to do so after discussions, and participated fully during the hearings. Following a rigorous process, the few who remained opposed were issued with orders to attend, and did so, generally providing useful evidence.
- 1.36 While this represents a good outcome overall, it is unfortunate that the committee had to compel *any* witness, let alone multiple witnesses.
- 1.37 As *Odgers' Australian Senate Practice* states, the power of the Senate to conduct inquiries into 'matters of concern' is an essential part of Australia's democracy, and a 'necessary preliminary to debating those matters and legislating in respect of them'. The power to conduct inquiries and, by extension, to insist upon the attendance of witnesses, has 'long been regarded as essential for a legislature'.¹⁵
- 1.38 All Australians should value their democracy and the role their Senate and its committees play in scrutinising legislation and government policies and administration, and in exploring options for reform.

Interim reports

- 1.39 On 24 June 2021, the committee tabled its first interim report, *On-demand platform work in Australia*, which considered employment arrangements in the gig economy, the adequacy of existing legislative and policy approaches and a number of proposed options for reforms.¹⁶
- 1.40 On 19 October 2021, the committee tabled its second interim report, *Insecurity in publicly-funded jobs*. This report presented detailed sector studies into aged care, higher education and the Australian Public Service (APS), and looked at the issue of Commonwealth procurement and job security.
- 1.41 On 30 November 2021, the committee tabled its third interim report, *Labour hire and contracting*. This report looked at the increasing use of labour hire and

¹⁵ Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 78.

¹⁶ The report is available on the committee's website, here: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_Report.

contracting arrangements across a number of industries including mining, agriculture and the transport sectors.

Extension of time to report

1.42 The committee agreed to seek an extension of time to report until the last sitting day in February 2022 to allow time for further consideration of evidence and report drafting. On 19 October 2021, the Senate agreed to the committee's request for an extension.¹⁷

This report

1.43 This report is the committee's final substantive report. It covers a wide range of issues relating to insecure and precarious work—but it is not comprehensive.

1.44 The committee recognises that the topics and sectors covered in this report are not the only subjects worthy of discussion in relation to insecure work. Nor was the committee able to cover all of the evidence collected over the course of the inquiry.

1.45 Given more time, the committee would have liked to delve into more employment sectors, spoken with workers across more occupations, and would likely have published additional interim reports. However, time and resources were limited.

1.46 That said, in this report, the committee has been able to bring together evidence on a number of remaining issues, including—critically—casual work and the impacts of the COVID-19 pandemic on job security. It has explored two of the most insecure sectors in the economy: retail and hospitality.

1.47 This report also returns to the issue of on-demand platform work, reviewing and refining the committee's earlier recommendations, and revisits the issue of job security in publicly-funded jobs.

1.48 Responding to the core question—is insecure and precarious work increasing in Australia?—this report concludes by considering options for *increasing* job security, and for reversing the trend towards insecure work that has dominated the last four or five decades of our history.

Structure of this report

1.49 Chapter 1, the introduction, includes: definitions, conduct of the inquiry and the structure of the report.

Part 1: The prevalence and effects of insecure work.

1.50 Chapter 2, 'The growth in insecure work', presents evidence to show that insecure and precarious work *have* increased and *are* increasing. The chapter looks at the major *categories* and key *indicators* of insecure work, then addresses

¹⁷ *Senate Journals*, No. 123—19 October 2021, p. 4161.

the inadequacy of current data and statistics. The committee's view and recommendations conclude the chapter.

- 1.51 Chapter 3, 'Health and wellbeing impacts', presents empirical evidence that insecure work is harmful to health and well-being, looking at impacts on mental and physical health, relationships and families, and social connection. The chapter includes personal stories from submitters and witnesses, and finishes with the committee's views and recommendations.

Part 2: Casual work in Australia – the largest category of insecure work

- 1.52 Chapter 4, 'Casual work: definitions, demographics and regulation', includes definitions of casual work, key demographics and information on current regulation and policy, including casual conversion.
- 1.53 Chapter 5, 'Key sectors: retail and hospitality', provides brief sector studies of two of the most casualised and precarious sectors in the economy.
- 1.54 Chapter 6, 'Insecure work and COVID-19', discusses the impacts of the pandemic on casual and other insecure workers, along with impacts on women, young people and migrants. The chapter looks at the outcomes of government payments and initiatives, and how insecure work contributed to the spread of COVID-19.
- 1.55 Chapter 7, 'Casual work: proposals for reform', considers arguments for and against reducing the use of casual work in the Australian economy, and looks at options for regulatory reform. The committee's view and recommendations conclude the chapter.

Part 3: The future of work in Australia

- 1.56 Chapter 8, 'Challenging Uberisation and the Amazon effect' considers responses to committee's first interim report on the need to regulate the on-demand platform sector and reduce its impacts on other employment sectors. As well as new evidence and additional recommendations, the chapter includes discussion and refinement of recommendations from the committee's first interim report.
- 1.57 Chapter 9, 'Restoring security in publicly-funded jobs', is primarily focussed on the impact of on-demand platforms in the disability and wider care sectors. The chapter looks at some new evidence, makes new recommendations, and includes discussion and refinement of recommendations from the committee's first interim report.
- 1.58 Chapter 10, 'Reversing the trend towards insecure work: policy options', begins by addressing arguments *against* reform, before considering a number of options for reforming Australia's industrial relations regime so that it can better support secure jobs.

1.59 Chapter 11, 'Conclusions and final recommendations', builds on Chapter 10, by presenting the committee's concluding remarks and remaining recommendations.

Part 1
The prevalence and effects of insecure work

Chapter 2

The growth in insecure work

- 2.1 Over the course of the inquiry, the committee heard a number of views on the prevalence and effects of insecure work—including opposing views.
- 2.2 Inquiry participants representing industry argued in favour of the 'flexibility' offered by casual, contract, labour hire and on-demand employment models, and offered evidence to suggest that work has *not* become less secure, or more precarious, over time.¹
- 2.3 Conversely, unions, labour academics and participants from the social sector argued that insecure and precarious forms of work are damaging to individuals and society, and *have* in fact become more prevalent in Australia, accelerated by the COVID-19 pandemic.²
- 2.4 The committee sought evidence from a variety of sources to understand the true nature and prevalence of insecure work, and its impacts on our health and wellbeing, including our mental health.
- 2.5 In this chapter, the committee goes beyond the widely-quoted headline Labour Force data, which can sometimes present an incomplete picture when it comes to insecure work. Using data and analysis prepared especially for this inquiry, resources provided by the Australian Bureau of Statistics (ABS), and research provided by the Parliamentary Library, the committee looks at the increase in four categories of work that are indicators of increasingly precarious and insecure work:
- part-time jobs;
 - indirect employment, outsourcing and labour hire;
 - on-demand and "independent" contractor jobs; and
 - fixed term contract roles.
- 2.6 The committee finds that insecure and precarious forms of work *have* increased, and *are* increasing. The committee's conclusions are based on a rigorous analysis of the best available evidence.

¹ See for instance: Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [pp. 6–8]; The Australian Industry Group (Ai Group), *Submission 77*, pp. 4–6.

² See for instance: Professor Michael Quinlan & Dr Elsa Underhill, *Submission 2*, p. 4; Australian Medical Association (AMA), *Submission 36*, p. 1; Australian Council of Trade Unions (ACTU), *Media release: Insecure work is a massive work health and safety risk*, 13 October 2021, www.actu.org.au/actu-media/media-releases/2021/insecure-work-is-a-massive-work-health-and-safety-risk (accessed 10 January 2022).

2.7 The next chapter—Chapter 3—will build on this by looking at the impacts of insecure work on physical health and wellbeing, mental health, relationships and family life. Later, Part 3 of this report presents policy options aimed at reversing the trend towards precarious and insecure work.

Insecure and precarious work are increasing

- 2.8 The committee heard conflicting evidence on whether work has become less secure since the mid-1990s. The mid-90s are considered a benchmark period for comparison because there was a clear and dramatic increase in the proportion of total employees who were casuals over the 1980s and early 1990s—from around 13 per cent in the early 1980s, to 24 per cent in 1996.³ Then from 1996 to 2019, the proportion of the workforce employed as casuals remained fairly consistent, hovering around 24 to 25 per cent.⁴
- 2.9 Over the course of 2020, measures associated with COVID-19 dramatically impacted Australia's workforce. The proportion of casuals in the workforce fell from 25 per cent, to around 20 per cent in May 2020.⁵ This was because in April 2020, almost 350 000 people (mostly casuals) 'left or lost a job'.⁶ By May 2021, the number of casual employees had recovered to 2.6 million. However, by August 2021, the figure had dropped again—likely due to the impact of lockdowns associated with the Delta outbreak. In August 2021, there were 2.4 million casual employees, representing 23 per cent of all employees.⁷
- 2.10 According to industrial relations and Occupational Health and Safety academic, Dr Elsa Underhill, the last 15 years has seen a shift in 'the composition of casual employment', with more primary income earners, and more men now employed as casuals. More people who would 'ordinarily have been employed as a permanent worker in the past' are now being engaged on casual contracts: 'So casual employment, in a sense, has become more acute even

³ Geoff Gilfillan, 'Characteristics and use of casual employees in Australia', *Parliamentary Library Research Paper Series, 2017-18*, Canberra, 19 January 2018, p. 1, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia (accessed 23 September 2021).

⁴ Geoff Gilfillan, 'Trends in use of non-standard forms of employment', *Parliamentary Library Research Paper Series, 2018-19*, Canberra, 10 December 2018, p. 3, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/NonStandardEmployment (accessed 23 September 2021).

⁵ Australian Bureau of Statistics (ABS), *Casuals hardest hit by job losses in 2020*, www.abs.gov.au/media-centre/media-releases/casuals-hardest-hit-job-losses-2020 (accessed 23 September 2021).

⁶ ABS, *People working fewer hours*, 21 May 2020, www.abs.gov.au/articles/people-working-fewer-hours (accessed 23 September 2021).

⁷ ABS, 'Key statistics', *Characteristics of Employment, Australia: August 2021*, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/characteristics-employment-australia/latest-release> (accessed 21 December 2021).

though the numbers may not reflect that. The impact of it upon those doing the work has become more'.⁸

2.11 Evidence from the Household, Income and Labour Dynamics in Australia (HILDA) Survey report published in 2021 indicates that casual employment is not necessarily the *temporary* form of employment that it is often thought to be. In fact, HILDA data shows that:

- over *half* of people who were employed as casuals in one survey year were still employed as casuals in the following year;
- the 'persistence rate in casual employment appears to have increased in the most recent decade' — rising from 54 per cent to 57 per cent;
- the 'rate of movement' of casuals into permanent employment has been lower in the second decade of this century than the first decade;
- there has been a 'slight rise in the proportion of casual employees exiting to fixed-term employment' (as opposed to permanent employment); and
- the majority of people who were casual employees in any one HILDA survey year were 'still not in permanent employment five years later'.⁹

2.12 Some participants in the committee's inquiry argued the fact that casual employment has not increased in decades indicates that work in Australia is *as secure* (or *as insecure*) now as it was in 1996. The Australian Chamber of Commerce and Industry (ACCI) submitted that:

Despite media and community interest in so-called 'insecure work', **all forms of alternative employment**, be it casual or part-time employment, independent contracting, labour hire arrangements or on-demand work **remain stable and at the margins, non-statistically variable or insignificantly changing** to justify concerns about the Australian labour market.¹⁰

2.13 However, Professor of Employment Relations at Griffith University, Emeritus Professor David Peetz FASSA submitted that '[i]nsecurity does not require casualisation'.¹¹ The National Foundation for Australian Women (NFAW) similarly argued that the 'displacement of secure by insecure work' is not caused by 'a single factor', but is driven by 'multiple strategies' which enable employers 'to maximise numerical flexibility, maintain a constant downward

⁸ Dr Elsa Underhill, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 3.

⁹ Roger Wilkins, Esperanza Vera-Toscano, Ferdi Botha and Sarah C. Dahmann, *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 19* (HILDA Statistical Report 2021), Melbourne Institute: Applied Economic & Social Research, the University of Melbourne, 2021, p. 75, https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0009/3963249/HILDA-Statistical-Report-2021.pdf (accessed 21 December 2021).

¹⁰ ACCI, *Submission 71*, [p. 4]. Emphasis added.

¹¹ Emeritus Professor David Peetz FASSA, *Submission 88*, p. 4.

pressure on wages and side-step the responsibilities of the National Employment Standards'.¹²

- 2.14 Evidence received during the course of the inquiry did not support the ACCI's assertion that 'all forms of alternative employment' are 'stable and at the margins, non-statistically variable or insignificantly changing'. A number of inquiry participants provided evidence to show that these 'alternative forms of employment'—specifically part-time, independent contracting, labour hire, and on-demand work—have increased and continue to increase.
- 2.15 Professor Peetz observed that, while the proportion of those engaged in casual work has remained stable, '[o]ther forms of cost reduction that involve shifting risk to employees ... have grown in prominence (contracting, labour hire, franchising, the 'gig economy'),¹³ and part-time work has increased markedly.¹⁴ There is also evidence suggesting other indicators of insecure work, such as underemployment, underutilisation and multiple job holding have increased, and are increasing. This evidence is detailed below.

Non-standard employment has increased

- 2.16 The NFAW noted that there are many ways to define insecure work, but regardless of how one defines it, 'it is important to note that in 2018—for the first time ever', the proportion of employed Australians in permanent full-time paid jobs with leave entitlements became *less than 50 per cent*.¹⁵
- 2.17 'Non-standard employment' describes 'any form of employment other than permanent full-time dependent jobs'. Not all non-standard employment is insecure. For instance, a permanent part-time job with adequate, predictable hours and fair pay may be 'non-standard employment', but not insecure work. However, the rise of non-standard employment still provides a useful starting point for measuring the increase in insecure work.
- 2.18 According to Melbourne University labour academics, Inga Laß and Mark Wooden:

Evidence suggests the incidence of non-standard employment is on the rise in many Western countries. ... In Australia, the incidence of non-standard employment rose dramatically during the last three decades of the 20th

¹² National Foundation for Australian Women (NFAW), *Submission 11*, p. 3.

¹³ Professor Peetz, *Submission 88*, p. 6.

¹⁴ Geoff Gilfillan, 'Characteristics and use of casual employees in Australia', *Parliamentary Library Research Paper Series, 2017-18*, Canberra, 19 January 2018, p. 8, Data from: ABS, Characteristics of Employment, cat. no. 6333.0, [www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6333.0 August%202018?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6333.0%20August%202018?OpenDocument) (accessed 23 September 2021).

¹⁵ NFAW, *Submission 11*, p. 8.

century, driven mainly by growth in both part-time and casual employment.¹⁶

- 2.19 Laß and Wooden estimated the proportion of employees in non-standard jobs increased from 24 per cent in 1971 to 47 per cent in 2000, and reached just under 57 per cent by 2017.¹⁷ ABS estimates are similar: in 2016 the ABS found 52 per of employees were split among non-standard employment types: casuals (about 19 per cent); self-employed (17 per cent); permanent part-time (about 13 per cent); fixed-term contracts (almost 3 per cent); and fixed-term casuals (about half a per cent).¹⁸
- 2.20 According a 2021 Parliamentary Library Research Paper, there was 'a slow steady decline' in standard employment between 1992 and 2017 (from around 70 per cent to about 60 per cent)—the downward trend can be clearly seen in see **Figure 2.1**. There was a slight increase to almost 62 per cent in 2021. However, the increase was due to 'the pronounced shedding of casual employees [during the pandemic] rather than strong growth in permanent full-time employment', and does not indicate a trend.¹⁹

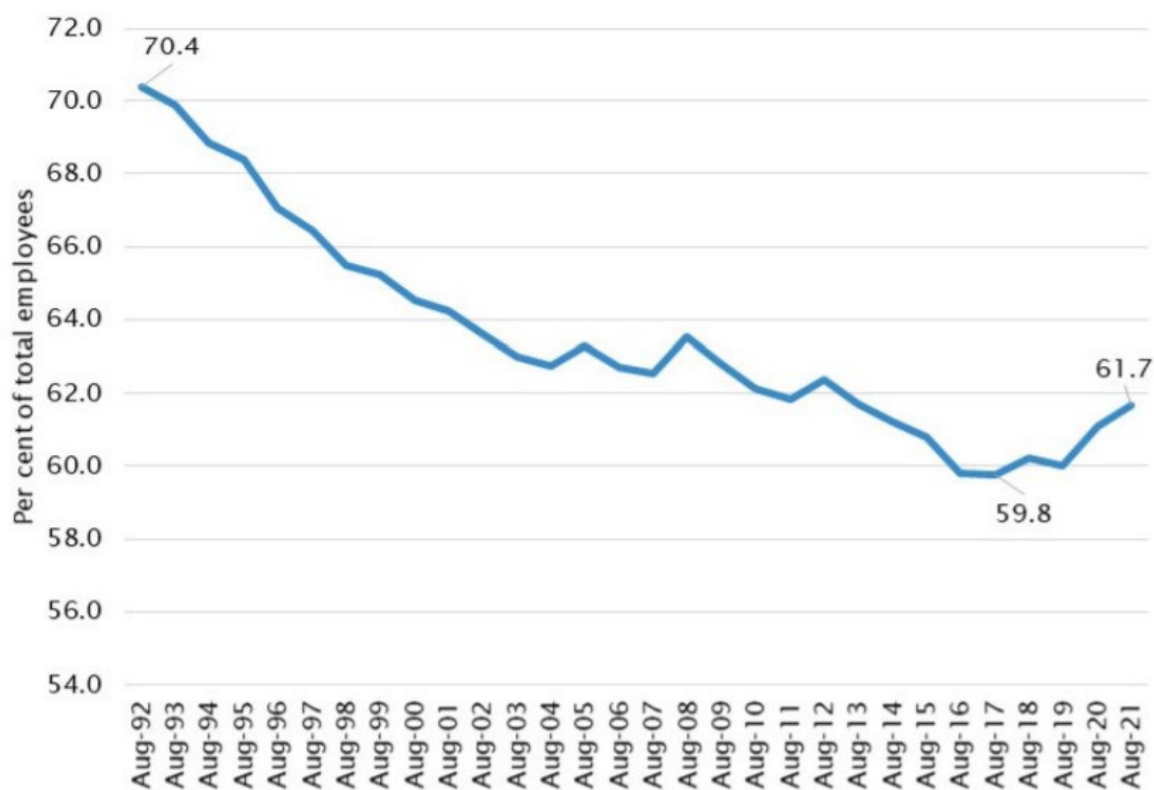
¹⁶ Inga Laß and Mark Wooden, 'Trends in the prevalence of non-standard employment in Australia', *Journal of Industrial Relations* 2020, Vol. 62(1), pp. 3–4, <https://journals.sagepub.com/doi/pdf/10.1177/0022185619873929> (accessed 23 September 2021).

¹⁷ Laß and Wooden, Trends in the use of non-standard employment, pp. 3–4. Research into Household, Income and Labour Dynamics in Australia (HILDA) Survey data from 2001 to 2017.

¹⁸ Laß and Wooden, Trends in the use of non-standard employment, p. 10.

¹⁹ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Australian Parliamentary Library Research paper series 2021–22*, Canberra, 24 November 2021, p. 10, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/8293428/upload_binary/8293428.pdf (accessed 22 December 2021).

Figure 2.1 Full-time permanent employee or 'standard' employee share of total employees, 1992–2021



Source: Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research paper series 2021–22*, Canberra, 24 November 2021, p. 10. Data from the ABS—see source for details.

2.21 This evidence contradicts the view submitted by the ACCI, that:

... the share of workers engaged in alternative forms of employment, whether it be as casuals, independent contractors, and under labour hire arrangements, has not changed substantially in over a decade.²⁰

2.22 The ACCI argued that the increase in non-standard forms of work is a legitimate and natural result of more women entering the workforce, seeking flexibility, and the changing nature of businesses and technology. The ACCI further argued that these forms of work are 'no less appropriate than other forms of genuine and consensual labour engagement'.²¹

2.23 While women entering the workforce and seeking part-time work is certainly a factor in the increase in the proportion of casual and part-time employment, 'male casual employment' has also been 'gradually increasing'. This is because industries that are 'traditionally male', such as Construction and Manufacturing, have seen 'increasing casualisation', while at the same time,

²⁰ ACCI, *Submission 71*, [p. 12].

²¹ ACCI, *Submission 71*, [pp. 6–7].

'increasing numbers of men' are now 'working in service industries which are characterised by casual work'.²²

- 2.24 While describing non-standard forms of work as statistically 'stable' and 'at the margins', the ACCI also said these forms of work 'have an *increasingly* important role to play in ensuring an agile and productive workplace' in Australia because 'the needs of the modern economy cannot and will not be met by employing only permanent employees working between 9am and 5pm Monday to Friday'.²³
- 2.25 Evidence gathered during the course of the inquiry indicates that the increase in non-standard forms of work is made up by an increasing proportion of jobs in the following categories:
- part-time jobs—which the committee observed are being used in some sectors as 'quasi casual' jobs;
 - indirect employment, outsourcing and labour hire jobs;
 - on-demand, 'gig' and independent contractor jobs; and
 - fixed term contract roles.
- 2.26 The committee asked the Australian Bureau of Statistics and the Parliamentary Library for advice and analysis to assist it in digging deeper into the various data sources on Australia's workforce arrangements. This analysis was combined with the evidence received during the course of the inquiry to paint a more detailed picture. Here are the committee's findings.

Insecure part-time work has increased

- 2.27 At almost a third of the workforce, Australia's proportion of part-time work is the third-highest in the OECD, behind the Netherlands and Switzerland.²⁴
- 2.28 There was 'a surge' in permanent part-time employment between 1996 and 2016. Part-time employment more than quadrupled for men, and more than doubled for women over this period.²⁵ While only 10 per cent of workers were part-time in 1996, by 2018 the proportion had risen to almost a third of all employees, at 32 per cent.²⁶

²² Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research paper series 2021–22*, Canberra, 24 November 2021, pp. 1–2.

²³ ACCI, *Submission 71*, [p. 6]. Emphasis added.

²⁴ Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41*, p. 12. Original data source: OECD, www.oecd-ilibrary.org/economics/the-share-of-non-standard-forms-of-work-in-total-employment_bf6f1810-enAustralia, (accessed 13 January 2022).

²⁵ Geoff Gilfillan, 'Characteristics and use of casual employees in Australia', *Parliamentary Library Research Paper Series, 2017-18*, Canberra, 19 January 2018, p. 8, Data from: ABS, Characteristics of Employment, cat. no. 6333.0.

²⁶ NFAW, *Submission 11*, p. 9.

- 2.29 Professor Peetz observed that the growth in *permanent* part-time work between 2009 and 2016 (an increase of 36 per cent) outpaced the growth in *casual* part-time work (which increased by 13 per cent). This was likely due to retailers switching to this form of employment after realising that permanent part-time workers tend to be 'more committed' to the role, and more reliable, than casuals.²⁷
- 2.30 The NFAW explained that part time work is not 'in itself ... a measure of precarity'. However, 'rapid increases' in part time work, as have been observed over recent decades, are often indicators of 'underemployment and underutilisation'. For instance, in 2017, 27 per cent of part-time workers wanted to work more hours, suggesting that for many part-time work is not a choice but the result of 'a lack of fulltime opportunities'.²⁸
- 2.31 Insecure and precarious part-time work has increased. This is evidenced by an increasing use of permanent part-time workers as a 'quasi-casual' workforce—such as in aged care. The NFAW observed that:
- ... at the same time that massive increases in casualisation began to taper off, the industrial relations system had widened the scope for using permanent part-time employment as casual work without the necessity of a casual loading, and often without overtime.²⁹
- 2.32 The Centre for Future Work at the Australia Institute (Centre for Future Work) submitted that many permanent part-time workers 'do not have week-to-week income security' and have fluctuating and unpredictable hours and pay. While these workers 'fall outside the traditional understanding of "casual" labour', their 'underemployment and week-to-week uncertainty' is ostensibly the same.³⁰
- 2.33 The Centre for Future Work reported that part-time work has increased markedly during the pandemic-related employment recovery, where nearly 60 per cent of new jobs created since May 2020 are part-time positions:
- Part-time employment (both waged and self-employment) increased by over 518,000 positions from May 2020 through February of 2021—compared to 358,000 fulltime positions created in the same period.³¹
- 2.34 The committee's second interim report identified a number of sectors in which part-time employment contracts are being used in a way that denies

²⁷ Professor Peetz, *Submission 88*, p. 8.

²⁸ NFAW, *Submission 11*, p. 10.

²⁹ NFAW, *Submission 11*, pp. 31–32.

³⁰ Centre for Future Work, *Submission 41*, p. 6.

³¹ Centre for Future Work, *Submission 41*, p. 11.

employees 'working time security', economic security and fair pay.³² Many of these sectors are undervalued, low-paid female-dominated sectors—including aged care and disability care—with a high proportion of Award-dependent workers.

- 2.35 The industrial Awards in these sectors allow employers to engage workers on low minimum-hours contracts, then roster additional hours at ordinary rates—'flexing' up and down. This leaves these workers with little job security and inadequate income security. For instance, a worker may be unable to secure a home loan, despite working over 35 hours a week in the same job for many years, because their contract only guarantees them eight or ten hours a week.³³

Indirect employment and outsourcing have increased

- 2.36 A major contributor to the increase in insecure work over recent decades is a rise in 'indirect employment' through contracting and sub-contracting, and outsourcing—practices often adopted by corporations to 'minimise the costs and risks they face, and avoid accountability when things go wrong'.³⁴
- 2.37 According to Professor Peetz, the number of 'franchise business units increased by 80% between 1998 and 2014'. Many corporations have set up 'spin-offs or subsidiaries' or outsourced work to contracting firms, minimising risk for the parent company. This method of outsourcing has the effect of 'enabling companies to avoid accountability, it cuts costs—which means wages are lower—and it transfers risk to workers—which means jobs are more insecure'.³⁵
- 2.38 This outsourcing model negates the need to engage employees casually, because employers are able to make employees redundant 'when the work dries up', and do not have to pay redundancy benefits if 'the contractor firm goes bankrupt'.³⁶ According to Professor Peetz, this model has also led to an increase in 'insecure small business owners'.³⁷
- 2.39 There were differing views expressed during the inquiry as to the appropriateness of these business practices. Professor Anthony LaMontagne from the Institute for Health Transformation at Deakin University was asked

³² See for instance: Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, p. 130, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Second_Interim_Report (accessed 22 December 2021).

³³ Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, p. 51.

³⁴ Professor Peetz, *Submission 88*, p. 3.

³⁵ Professor Peetz, *Submission 88*, pp. 3–4.

³⁶ Professor Peetz, *Submission 88*, p. 5.

³⁷ Professor Peetz, *Submission 88*, p. 13.

to respond to the idea that job security is 'inextricably linked with enterprise security' —he said:

... why should the worker employed by a business bear the risks of that business undertaking if they're not sharing in the rewards? So the businessperson is ... entering the market and taking the risk of surviving and thriving or whatever the case may be for that business, and the employees ... are not sharing in the rewards along with those risks. ... So it's not fair for the business to externalise that risk onto the worker without sharing the rewards.³⁸

Labour hire is more prevalent than the commonly-used data suggests

- 2.40 This inquiry has demonstrated that labour hire is more prevalent than the most commonly relied-upon data indicates. According to IBISWorld, in 2021 there were almost 11 000 labour supply businesses in Australia, with the industry being worth over \$30 billion.³⁹
- 2.41 The data used by most commentators to identify the number of people engaged in labour hire or temporary third-party employment in Australia is the annual Characteristics of Employment supplement from the ABS. Labour hire data is published in the *Working arrangements* release. This survey data provides the number of employees who report being 'registered with a labour hire firm or an employment agency', and 'whether they were paid by a labour hire firm or an employment agency'. According to the ABS, this source is the 'best source of information on labour hire as a *working arrangement* in Australia'.⁴⁰
- 2.42 In August 2021, according to the *Working arrangements* release, 3 per cent of employees reported being registered with a labour hire firm or employment agency, and 30 per cent of those reported they were paid by a labour hire firm or employment agency.⁴¹ Similarly, in 2020, the figures were 3 per cent registered with a labour hire firm, and 33 per cent of those paid by a labour hire firm⁴²—a total of 112 600 individuals.⁴³

³⁸ Professor Anthony Daniel LaMontagne, Professor of Work, Health and Wellbeing, Institute for Health Transformation, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 2.

³⁹ IBISWorld, *Temporary Staff Services in Australia—Market Research Report*, 25 June 2021, www.ibisworld.com/au/industry/temporary-staff-services/570/ (accessed 16 January 2021).

⁴⁰ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021 (received 12 January 2022), p. 1. Emphasis added.

⁴¹ ABS, *Working arrangements August 2021*, 14 December 2021, www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/latest-release#labour-hire (accessed 16 January 2022).

⁴² ABS, *Working arrangements August 2020*, 11 December 2021, <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/working-arrangements/aug-2020> (accessed 16 January 2022).

- 2.43 These figures suggest that labour hire in Australia has *not* increased over recent years. For instance, in 2018 the ABS found the total number of employees reporting they were *paid by* a labour hire firm or employment agency was around 126 000 people.⁴⁴
- 2.44 While the Characteristics of Employment supplement represents high-quality, employee-level data collection, this methodology results in figures suggesting there are only around 120 000 people employed in labour hire or temporary agency roles in Australia—and that the sector has not grown, and is not growing. Other sources of evidence suggest this does not reflect the reality of the industry.
- 2.45 While the ABS Characteristics of Employment data does not show an increase in temporary third-party employment across Australia, IBIS World said this of the industry in June 2021:
- Firms across the private and public sectors have favoured outsourcing non-core activities over the past two decades, **fuelling growth** across the Temporary Staff Services industry. **Industry revenue increased over the three years** through 2018–19, supported by low unemployment and increased business outsourcing.⁴⁵
- 2.46 The Characteristics of Employment data is not capturing the true number of labour hire jobs, or workers engaged in the industry, across Australia at any one time. Industry itself quotes higher numbers, and academics regularly question how closely the ABS data represents reality—especially when commentators regularly rely on the number of people who report being *paid by* a labour hire firm or an employment agency as the figure used to estimate the size of the labour hire industry in Australia.
- 2.47 In her report, *Labour Hire & Contracting Across the ASX100*, Dr Katie Hepworth from the Australasian Centre for Corporate Responsibility acknowledged the difficulty in measuring 'the exact size' of the labour hire workforce in Australia. Dr Hepworth said one key reason for the current under-reporting in mainstream datasets is likely to be 'confusion on the part of labour hire workers regarding their employment relationship', with workers not always

⁴³ Source: ABS, Characteristics of Employment, various tables and TableBuilder (original data). Parliamentary Library calculations.

⁴⁴ Geoff Gilfillan and Liz Wakerly, 'Labour market and workplace relations', *Parliamentary Library Briefing Book: Key issues for the 46th Parliament*, Canberra, 2019, p. 82, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/6801783/upload_binary/6801783.pdf (accessed 16 January 2022).

⁴⁵ IBISWorld, *Temporary Staff Services in Australia—Market Research Report*, 25 June 2021, www.ibisworld.com/au/industry/temporary-staff-services/570/ (accessed 16 January 2022). Emphasis added.

- knowing whether they are directly-hired or 'on-hired' to work for a company, and whether they are being paid by a labour hire firm or not.⁴⁶
- 2.48 Program Manager of the Labour Statistics Branch at the ABS, Mr Bjorn Jarvis, provided evidence that supported this view. Mr Jarvis suggested that, alternatively, the *Labour Account* data—a collection of data from industry and other sources—'provide[s] the best indication of the size of the [labour hire] industry' from an industry-level perspective.⁴⁷
- 2.49 Mr Jarvis explained that labour hire falls within the Administrative and Support Services Industry Division, under 'Labour Supply Services', and to get a more accurate picture of growth in the industry, the Labour Account:
- ... gives us the best sense of the size of the industry, how many people are employed by the industry, the jobs within that industry, the hours that are worked within that industry, and also the total remuneration for people employed within that particular industry.⁴⁸
- 2.50 According to ABS Jobs in Australia data, the number of jobs in 'Labour Supply Services' (labour hire) has increased from 584 312 in 2011–12 to 797 710 in 2018–19 (latest available data).⁴⁹ As reported in this committee's third interim report, this figure is higher *in real terms* than the commonly relied-upon Characteristics of Employment data, and even higher than industry estimates, which put jobs in the industry around 360 000⁵⁰ to 430 000.⁵¹
- 2.51 In June 2021, IBISWorld reported that *demand* in the labour hire and temporary staff services industry 'is forecast to rise steadily over the next five years, as the negative economic effects of the COVID-19 pandemic wane':

⁴⁶ Dr Katie Hepworth (Australasian Centre for Corporate Responsibility), *Labour Hire & Contracting Across the ASX100*, 12 May 2020, p. 11, www.accr.org.au/downloads/20200512_accr_labour_hire_contracting_across_the_asx100.pdf (accessed 2 November 2021).

⁴⁷ Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch, ABS, *Proof Committee Hansard*, 4 November 2021, p. 50.

⁴⁸ Mr Jarvis, ABS, *Proof Committee Hansard*, 4 November 2021, p. 50.

⁴⁹ Jobs in administrative and support services between 2011–12 and 2018–19, 'Jobs in Australia', data provided by the ABS. It should be noted that 'these are jobs worked at any stage during the financial year (rather than at a single point of time) and some of the jobs will be worked by people as their 'secondary job' (that is: second, third or fourth job), rather than their 'main job'.' (ABS advice.)

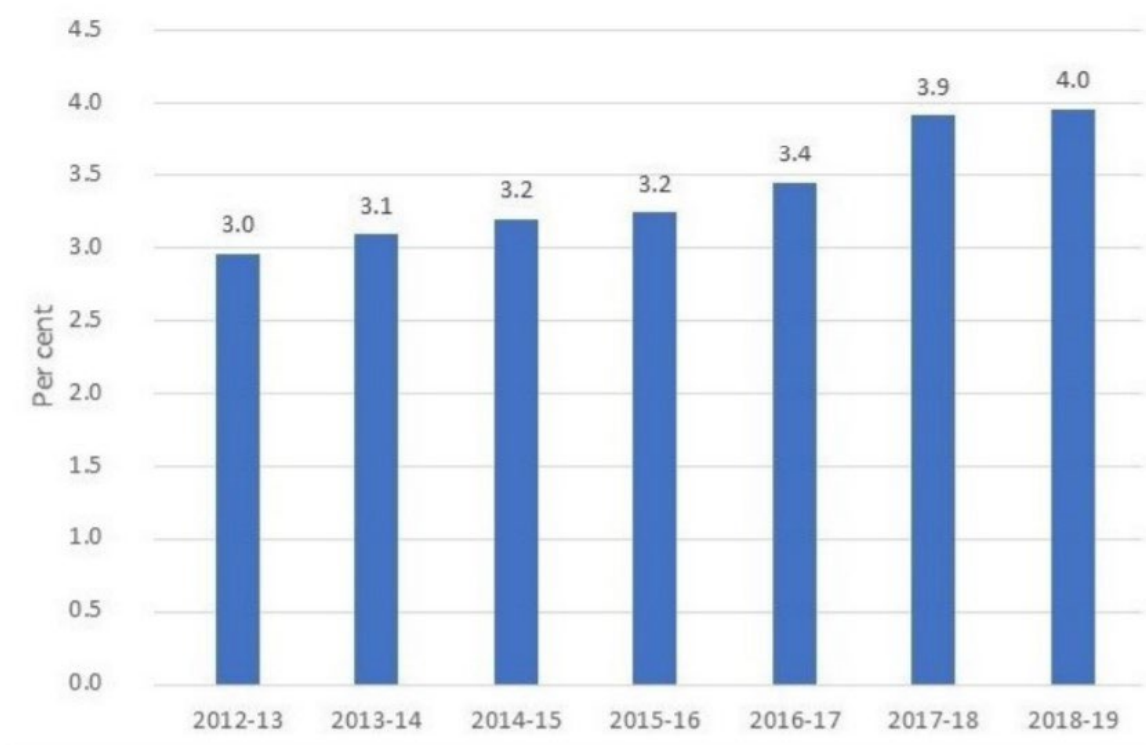
⁵⁰ Recruitment, Consulting and Staffing Association (RCSA), *Submission 73*, p. 4. Note: data quoted is from 2019.

⁵¹ Select Committee on Job Security, *Third interim report: labour hire and contracting*, November 2021, p. 15. While noting the metrics and timeframes are **not** directly comparable, an example of a recent industry estimate can be found in the recent IBIS World report for the temporary staff services industry, which puts 'industry employment at '431 480'. IBISWorld, *Temporary Staff Services in Australia—Market Research Report*, 25 June 2021.

Many firms that require temporary staff do not have the scale or funds to hire specialist full-time staff, and instead rely on industry firms to supply skilled and professional workers on short-term contracts or for project-based work. Using contract and temporary staff provides client companies with greater flexibility, particularly for short-term work and during periods of economic uncertainty.⁵²

2.52 This data also indicates consistent growth in this precarious and insecure form of employment over time. A graph from the committee's third interim report has been reproduced below to again highlight this growth (**Figure 2.2**).

Figure 2.2 Labour Supply Services share of total jobs in the economy, 2012–13 to 2018–19



Source: ABS, *Labour Account and Jobs in Australia* data, Parliamentary Library calculations.

2.53 There are also sources of data specific to certain industries that show a significant rise in the use of labour hire workers over time.

2.54 The Construction, Forestry, Maritime, Mining and Energy Union—Mining and Energy Division (CFMMEU Mining & Energy) (now the Mining and Energy Union) claimed that labour hire in the coal industry 'has grown dramatically as the proportion of workers directly employed by mine operators has fallen'. The union said the ABS Labour Force survey data fails to provide an accurate picture of casualisation in the industry, because:

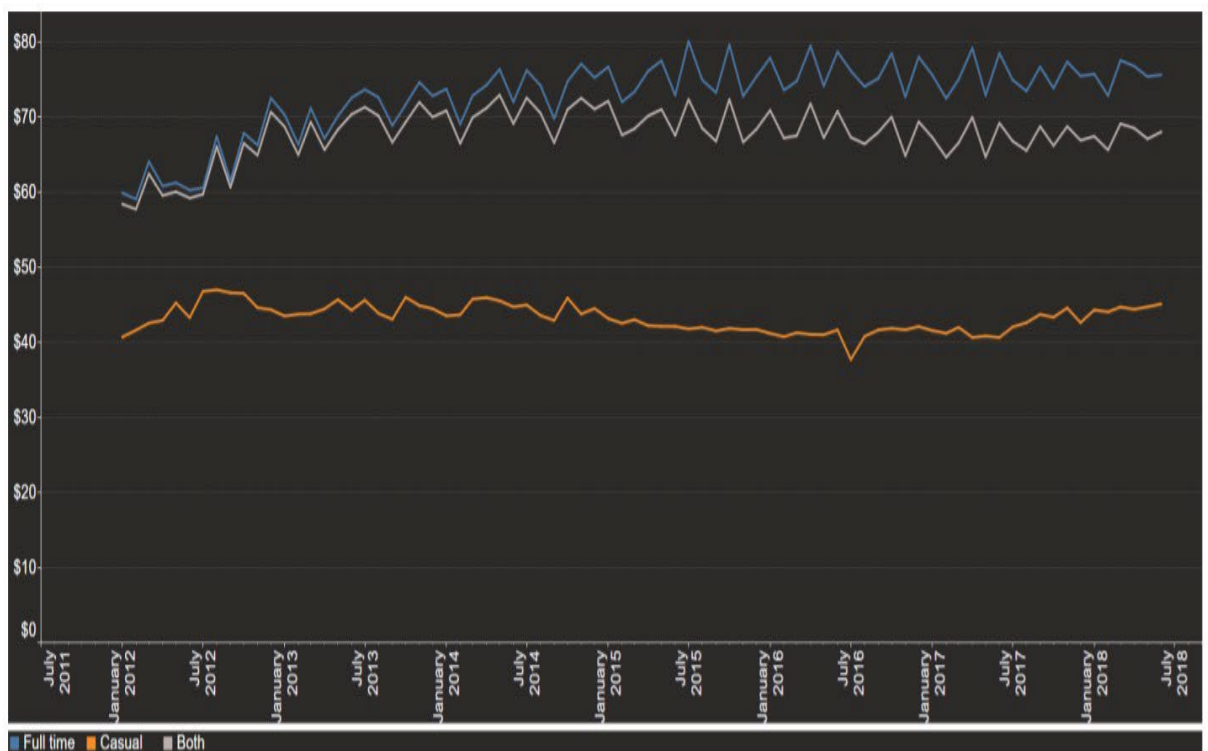
The data comes from the Labour Force Survey, which is around 50,000 workers in 26,000 households. But that's out of a workforce of 13.9 million,

⁵² IBIS World, *Temporary Staff Services in Australia—Market Research Report*, 25 June 2021.

when the coal mining workforce is shown as 43,000 (a number that bounces around a lot too!). To reach that conclusion, the ABS interviewed approximately 138 workers who said they worked for a coal mining company.⁵³

- 2.55 The union was able to supply more accurate, industry-specific data from the Coal Long Service Leave Corporation, which 'is accurate because all employers in the coal mining industry have to supply monthly returns' which include information on the employment category of all employees and their rates of pay. The data shows that yes, over 30 per cent of the total coal workforce are casuals and the hourly rate paid to casuals is around 40 per cent less than that paid to permanent employees (**Figure 2.3**).⁵⁴

Figure 2.3 Wage gap between casual and permanent employees in the coal mining industry, 2011–2018



Source: Coal Mining Industry (Long Service Leave Funding) Corporation data in: *Additional information from the CFMMEU regarding employment statistics following their appearance at a public hearing in Newcastle on 6 December 2021 (received 8 December 2021)*, [p. 3].

- 2.56 The graph shows a consistent and moderately increasing gap between the wages of casual workers—many of whom are labour hire—and permanent workers in the coal mining industry.

⁵³ CFMMEU Mining & Energy, *Fact Sheet—why is it hard to get true data on casuals in mining?*, pp. 2–3, from: *Additional information from the CFMMEU regarding employment statistics following their appearance at a public hearing in Newcastle on 6 December 2021 (received 8 December 2021)*, pp. 9–10.

⁵⁴ CFMMEU Mining & Energy, *Fact Sheet—why is it hard to get true data on casuals in mining?*, p. 3.

2.57 The CFMMEU—Mining & Energy union also highlighted evidence provided at the recent Queensland Coal Board of Inquiry, which heard that in 2017, less than 50 per cent Queensland coal mining workforce were directly employed by mining companies—with the rest engaged through labour hire—compared with rates of 65 per cent in 2002, and 94 per cent in 1996.⁵⁵

On-demand platform work and 'Uberisation' have increased

2.58 While reliable workforce data is not yet available on gig workers, a number of sources indicate that work in the gig economy—precarious by nature—has increased, accelerated by the pandemic.

2.59 As discussed in the committee's first interim report, the 'gig' or 'platform economy' is 'presently small as a portion of the overall workforce', but is growing and 'has the potential to grow'.⁵⁶

2.60 Professor Peetz described this rise in platform work as the 'biggest challenge to the employment relationship', saying 'virtual platforms provide a new, cheap way of control that may replace the need for the employment relationship'.⁵⁷

2.61 In a December 2020 Green Paper, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, the Actuaries Institute estimated that the gig economy had increased 'over nine times in market size' from 2015 to 2019, capturing over \$6 billion 'in consumer spend'.⁵⁸

2.62 The Actuaries Institute used 'transaction data' to estimate the size and scope of the gig economy in Australia. This data is sourced from de-identified 'electronic bank transactions for more than three million individuals in Australia over five years'.⁵⁹

2.63 COVID-19 led to an initial drop in the use of rideshare, then a massive rise in the food delivery sector. The Actuaries Institute mapped an initial decline of around 70 per cent in the overall gig economy during the early COVID-19 lockdown period, due to 'a sharp decline in private transport', then charted 'a surge' in food delivery services from March to October 2020, leading to a recovery in the sector:

⁵⁵ CFMMEU Mining & Energy, *Fact Sheet—why is it hard to get true data on casuals in mining?*, p. 2.

⁵⁶ Professor Peetz, *Submission 88*, p. 13.

⁵⁷ Professor Peetz, *Submission 88*, p. 12.

⁵⁸ Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, December 2020, pp. 4–5. <https://actuaries.asn.au/Library/Miscellaneous/2020/GPGIGECONOMYWEB.pdf> (accessed 13 January 2022).

⁵⁹ Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, December 2020, p. 34.

The gig economy has recovered since the beginning of May 2020, capturing over 40% more consumer spend in October 2020 compared to the pre-lockdown period in February 2020.⁶⁰

- 2.64 This growth has been confirmed by a number of industry research companies. *Hospitality Magazine* reported on IBISWorld data which indicated:

Delivery has experienced a boom across the country. More than 4 million Australians use delivery services to order food ... Uber Eats, Deliveroo and Menu Log continue to lead the market, with new player DoorDash launching earlier in the year.⁶¹

- 2.65 IBISWorld's September 2020 industry report for the 'Online Food Ordering and Delivery Platforms' sector reported annual revenue for the sector of \$847.9 million, with annual growth in revenues of 43.8 per cent between 2016 and 2021.⁶²

- 2.66 The Centre for Future Work referred to ABS data showing that self-employment increased by over 145 000 positions between May 2020 and February 2021, which 'more than offset the decline' in self-employment seen at the start of the pandemic (a loss of around 100 000 positions). However, 80 per cent of the new self-employed jobs are 'owner-managers in relatively insecure situations' (not incorporated, without employees, or both):

This growth of insecure self-employment represents a continuing shift in business practices toward nominally 'independent' contractors and sole providers (including people working through digital 'gig' platforms), who have little infrastructure, support, or security in their jobs.⁶³

- 2.67 Uber itself has reported that the number of drivers on its rideshare platform has exceeded 60 000, with another 59 000 people working on its Uber Eats platform. This combined total would make Uber the second largest employer in Australia, albeit its workers are engaged as contractors without access to rights in the National Employment Standards, rather than hired as employees.⁶⁴

- 2.68 While arguing that gig work is marginal, the ACCI also reported that decreases in unemployment seen in late 2020—with the creation of '110 000 new jobs'—was 'largely driven by non-employees':

⁶⁰ Actuaries Institute, *The Rise of the Gig Economy and its Impact on the Australian Workforce*, December 2020, p. 6.

⁶¹ Annabelle Cloros, '2021 food + beverage trends', *Hospitality Magazine*, 10 December 2020, <https://www.hospitalitymagazine.com.au/2021-trends/> (accessed 4 October 2021).

⁶² IBISWorld, *Online Food Ordering and Delivery Platforms in Australia Industry Report*, p. 4.

⁶³ Centre for Future Work, *Submission 41*, p. 12.

⁶⁴ Adam Creighton and Jess Malcolm, 'Uber takes bigger slice of jobs market', *The Australian*, 6 April 2021, www.theaustralian.com.au/nation/uber-takes-bigger-slice-of-jobs-market/news-story/17b1dbfc1a0d84481c2e7601823d6e9e (accessed 3 February 2022).

During the initial weeks and months of the COVID-19 crisis many workers turned to alternative forms of employment, such as roles through agency work or in the on-demand economy...⁶⁵

- 2.69 The ACCI submitted that, 'Uber alone experience[ed] a 59% increase in delivery workers joining the platform to support themselves financially during the pandemic'. Gig platform, Freelancer, also reported that the number of job ads posted on their site increased by 14 per cent between April-June of 2019 to April-June of 2020—'an increase from 429 000 job posts to 605 000'.⁶⁶
- 2.70 The ABS reported 'strong employment growth for non-employees' during the pandemic, citing an increase in the number of 'owner managers (self-employed people) without employees, most of whom were working in an unincorporated enterprise' (sole traders). Between July and August 2020, the number of sole traders increased by 50 200 people; in contrast, over the same period, there was 'minimal growth in the number of employees'—up by only 2 600 people.⁶⁷
- 2.71 Australian labour academics, Inge Laß and Mark Wooden have noted that the proportion of people working part-time hours 'in their own business without any employees' has been rising 'slowly but steadily', which 'may reflect growth in gig work'. The authors note that 'sole trader status and part-time hours' characterise many of the new on-demand platform sector jobs, such as food and parcel delivery. Existing methods of data collection on employment status can fail to capture some of these jobs, as collection tends to focus on the workers' status in their 'main job', whereas many platform jobs are secondary employment.⁶⁸
- 2.72 The NFAW observed that 'the proportion of self-employed individuals working part-time has grown markedly in recent years, reaching 35 per cent in 2017'.⁶⁹
- 2.73 The problems with enumerating gig workers are well known, and governments are beginning to take steps to resolve these issues. These steps are further discussed in the section on data later in this chapter.

Fixed-term contracting has increased

⁶⁵ ACCI, *Submission 71*, [p. 13].

⁶⁶ ACCI, *Submission 71*, [p. 14].

⁶⁷ ABS, *Strong employment growth for non-employees*, 17 September 2020, www.abs.gov.au/articles/strong-employment-growth-non-employees (accessed 7 October 2021).

⁶⁸ Inga Laß and Mark Wooden, Trends in the prevalence of non-standard employment in Australia, *Journal of Industrial Relations*, Vol. 62(1) 3–32, 2020, p. 15, <https://journals.sagepub.com/doi/pdf/10.1177/0022185619873929> (accessed 13 January 2022).

⁶⁹ NFAW, *Submission 11*, p. 42.

- 2.74 According to the ABS, there were 413 100 employees on a fixed-term contract in Australia in August 2020, which accounted for 3.3 per cent of all employment. This represents an increase of 24 600 people, or 6.3 per cent, since August 2019—an increase likely related to COVID restrictions.⁷⁰
- 2.75 The NFAW pointed out that many industries with a high proportion of fixed term contracts are dominated by women.⁷¹
- 2.76 Since 2014, employees on fixed-term contracts have maintained a fairly consistent share of total employment of around 3 per cent of just above. In 2020, *unusually* the number of employees on fixed-term contracts working in the private sector slightly outnumbered those in the public sector—220 600 compared with 193 200). However, a much greater *proportion* of public sector employees were on fixed term contracts than private sector employees—9.9 per cent compared with 2.1 per cent.⁷²

Other indicators of insecurity

- 2.77 As well as an increase in the above insecure or precarious work status categories, evidence shows an increase in certain other indicators of insecurity—from multiple job holding and low wages growth, to increasing underemployment and underutilisation.

Multiple job holding has increased

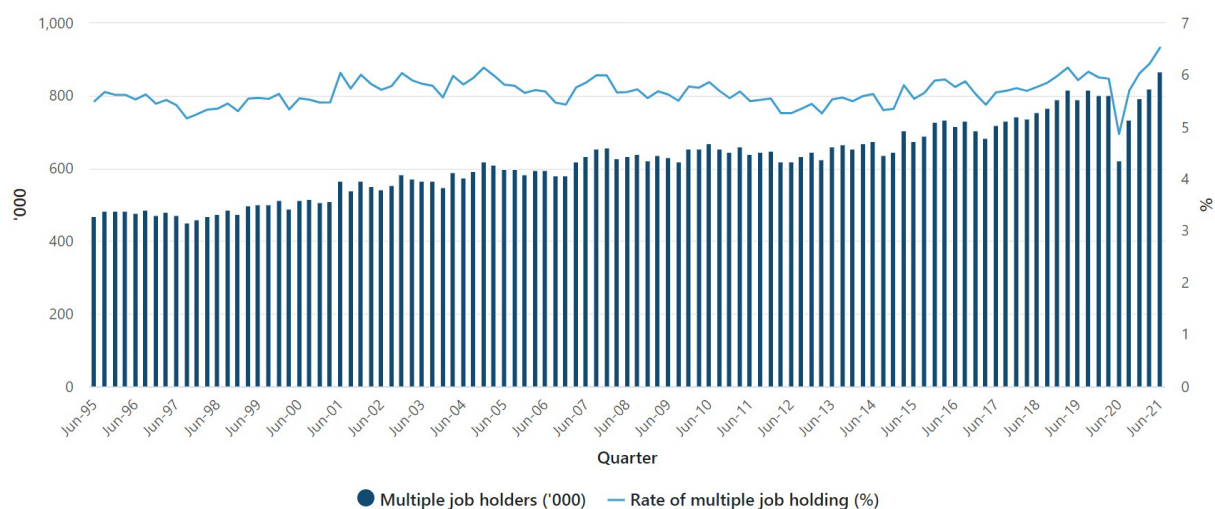
- 2.78 Evidence indicates that an increasing number of Australians are working multiple jobs to make a living.
- 2.79 In September 2021, the ABS declared that multiple job holding had hit a 'record high' in the June quarter, with 6.5 per cent of employed people working more than one job. **Figure 2.4** shows that, aside from a brief dip due to the pandemic, the number of multiple job holders has been increasing since 1995, even if the rate has remained relatively steady.⁷³

⁷⁰ Parliamentary Library research, ABS, Characteristics of Employment, cat. no. 6333.0.

⁷¹ NFAW, *Submission 11*, p. 11.

⁷² Parliamentary Library research, ABS, Characteristics of Employment, cat. no. 6333.0.

⁷³ ABS, *Media release: Multiple job holding at record high in June quarter*, 8 September 2021, www.abs.gov.au/media-centre/media-releases/multiple-job-holding-record-high-june-quarter (accessed 13 January 2022).

Figure 2.4 Multiple job holders, seasonally adjusted, 1995–2021

Source: ABS, Media release: Multiple job holding at record high in June quarter, 8 September 2021. Data: Labour Account Australia, June 2021.

2.80 According to Mr Jarvis, the biggest increases in multiple job holding were in Administrative and Support Services (incorporates labour hire), Arts and Recreation Services (heavily-impacted by the pandemic), and Education and Training. However, Mr Jarvis also noted that the rate of multiple job holding 'was higher than pre-pandemic levels' across 'all industries':

The growth in multiple job holding coincided with a faster increase in secondary jobs, which increased by 1.4 per cent during the June quarter, compared with 1.2 per cent for main jobs.

Secondary jobs increased by 33 per cent over the 2020-21 financial year, from a low in the early stages of the COVID-19 pandemic in the June quarter of 2020. By June quarter 2021 they were 9 per cent above pre-pandemic levels.⁷⁴

2.81 The NFAW argued that the official ABS data on multiple job holding may not include gig economy workers, most of whom could be said to hold multiple jobs, and as such is under-counting multiple job holders.⁷⁵

2.82 The committee asked the ABS about the limitations of its data in relation to multiple job holding and the ABS replied that it is 'confident' that its Labour Account data 'provides a comprehensive picture of the number of multiple job holders and the industries in which main and secondary jobs are worked'.⁷⁶

⁷⁴ Mr Jarvis, quoted in ABS, Media release: Multiple job holding at record high in June quarter, 8 September 2021.

⁷⁵ NFAW, Submission 11, p. 12.

⁷⁶ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021, p. 4.

- 2.83 However, the ABS also acknowledged gaps in its data collection, saying it 'will be undertaking additional data collection activities to address data gaps', including in relation to 'on-demand/digital platform workers'.⁷⁷

Low wages growth is a side effect of insecure work

- 2.84 Professor Peetz submitted that record low wages growth observed since the Global Financial Crisis (GFC) is another sign of job insecurity:

The growing insecurity of workers, including through underemployment, and the concentration of economic power on the other side of the table help explain why wage growth is stagnating. Indeed, that successful 'war on wages' may be the biggest single sign of worker insecurity.⁷⁸

- 2.85 The NFAW made a similar claim, saying casualisation 'arguably exerts downwards pressure' on wages and conditions, the quality of jobs for 'all employees, not just casuals'. In addition, the NFAW identified a 'clear association' between increasingly precarious employment and deteriorating wages and working conditions.⁷⁹
- 2.86 According to the NFAW, many workers feel uncertain 'about their economic future' due to Australia's stagnating wages, with annual wage increases decelerating 'to their slowest pace in decades' since 2012: 'Among women working casually, for example, wages increased by only 1.7% between 2010 and 2016'.⁸⁰

De-unionisation is linked to job insecurity

- 2.87 A number of inquiry participants cited research showing the link between de-unionisation and job insecurity.
- 2.88 The Australian Institute of Employment Rights pointed to international research which has established a link, and said that de-unionisation 'has undermined workers organising protection'.⁸¹
- 2.89 Professor Paula McDonald from the Queensland University of Technology Business School explained that 'decreasing density of union membership' makes 'collective efforts' to improve the conditions of work for the benefit of employees more difficult:

If we think about young people, for example, in tourism, hospitality, retail et cetera, there are really low rates of unionisation and hence problematic opportunities for them to exercise voice in a way that doesn't personally

⁷⁷ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021, p. 2.

⁷⁸ Professor Peetz, *Submission 88*, p. 10.

⁷⁹ NFAW, *Submission 11*, pp. 10–11. Emphasis added.

⁸⁰ NFAW, *Submission 11*, p. 14.

⁸¹ Australian Institute of Employment Rights, *Submission 6*, p. 11.

disadvantage them in the workplace or such that no punitive consequences come as a response.⁸²

2.90 A reduction in union power and influence over recent decades has also led to 'a pronounced increase in [income] inequality'.⁸³

Unemployment is higher than headline figures suggest

2.91 Prominent economist, Mr Saul Eslake said the definition of 'unemployment' used by the ABS in its monthly Labour Force survey 'is often criticized as being too narrow':

It's certainly not the definition used by Centrelink to determine eligibility for the JobSeeker payment: single people can currently earn up to \$1,217 a fortnight ... from casual employment and still be eligible for at least some payment whilst looking for work ... It's also increasingly recognized, by economists and others, as being an inadequate and incomplete measure of labour market 'slack'—especially given the greater flexibility which employers now have to manage variations in their labour requirements by adjusting hours worked, as opposed to 'head-count'.⁸⁴

2.92 Mr Eslake provided evidence showing that, in the wake of the initial COVID lockdowns in 2020, the official unemployment statistics 'resulted in an unusually large number of people being recorded in the monthly labour force surveys as being 'employed'', who fell into categories that could be otherwise considered unemployed. These categories were:

- People working 'zero hours' because there was 'no work, or not enough work available' or because they had been 'stood down'—never higher than 80 000 over the five years before the pandemic, this number 'shot up to almost 767 000' in April 2020.
- People working zero hours but 'counted as "employed" for the reference week of the survey because they 'began, left or lost a job' during that week—never more than 27 000 people 'in any month' since this category was first measured in 2014, 'it leaped to 357 000' in April 2020.
- People who became unemployed during COVID but did not 'actively look for work' because 'they were precluded from some forms of doing so ... by restrictions', 'saw little point in doing so given the apparent economic situation', or were ('temporarily') not required to look for work in order to

⁸² Professor Paula McDonald, Queensland University of Technology Business School, *Proof Committee Hansard*, 10 June 2021, p. 12.

⁸³ John Addison, University of South Carolina, USA, University of Durham, UK, and IZA, Germany, 'The consequences of trade union power erosion', *IZA World of Labor*, February 2020, <https://wol.iza.org/articles/consequences-of-trade-union-power-erosion/long> (accessed 4 February 2020).

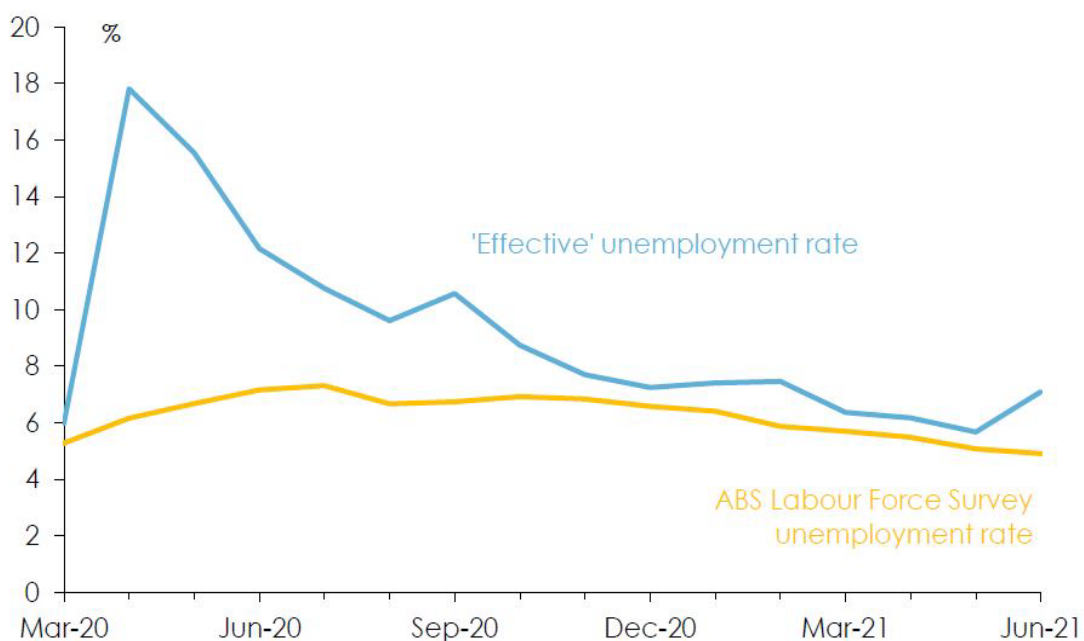
⁸⁴ Mr Saul Eslake, *Submission 128*, p. 1.

receive the JobSeeker payment—estimated to have risen from 'zero' in March 2020 'to a peak of almost 675 000 in May 2020.⁸⁵

2.93 Mr Eslake explained that adding these categories of people to the unemployment rate creates an 'effective unemployment rate' in April 2020 of 17.8 per cent⁸⁶—significantly higher than the official unemployment rate of 7.4 per cent.

2.94 Mr Eslake argued an effective unemployment rate 'arguably, more "accurately" captures the impact of COVID-19, and the measures deemed necessary to control it, on the labour market'.⁸⁷ (See **Figure 2.5**.)

Figure 2.5 'Official' and 'effective' unemployment rate



Source: ABS 2021a and b; author's calculations.

Source: Mr Eslake, *Submission 128*, p. 8.

Underemployment and underutilisation have increased

2.95 A number of sources indicate that underemployment and underutilisation have increased over the decades.

2.96 The ABS measures underemployment in relation to two groups of employed people:

- part-time employed people who would prefer to work more hours, and were available to do so; and
- full-time employed people who worked part-time hours (i.e. less than 35 hours) in the reference week for economic reasons.⁸⁸

⁸⁵ Mr Eslake, *Submission 128*, pp. 2–7.

⁸⁶ Mr Eslake, *Submission 128*, p. 7.

⁸⁷ Mr Eslake, *Submission 128*, p. 4.

2.97 According to the ABS, in February 2020, before the pandemic, there were around 13 million people employed in Australia ('almost two-thirds of the civilian population aged 15 years and over'), and around 1.2 million—or 9.1 per cent—of these workers were *underemployed*. Almost all of those who were underemployed were part-time workers (1.1 million).⁸⁹

2.98 The underemployment rate among part-time workers⁹⁰ increased during the recession of the early 1990s (from 4.1 per cent of workers in 1991, to 6.3 per cent in 1993). The underemployment rate for part-time workers increased again during the GFC (from 4.5 per cent in September 2008, to 7.2 per cent in December 2009). These increases only impacted part-time workers.⁹¹

2.99 Part-time underemployment never returned to 'pre-downturn levels', meaning the increase in part-time underemployment 'became a permanent shift'. The ABS concluded:

The increases in part-time underemployment reflect the increasing share of part-time employment in the labour market, as well as the increasing prevalence of underemployment amongst part-time workers.⁹²

2.100 In February 2020, 43.8 per cent of underemployed part-time workers reported being 'underemployed a year or more', and 49.7 per cent of underemployed part-time workers had taken 'active steps to look for additional hours'.⁹³

2.101 In addition to the underemployment rate, the ABS tracks the 'expanded underemployment rate'. This data incorporates additional groups of employed people who 'work less than their usual hours for economic reasons or have a preference for more hours'. These groups are:

- part-time employed who worked less than their usual hours, for economic reasons;
- full-time employed who worked less than their usual hours for economic reasons, but still worked 35 hours or more; and
- full-time employed who would prefer (and are available) to work more hours.⁹⁴

⁸⁸ ABS, *Underemployment: Reduced hours or prefers more hours*, 21 January 2021, www.abs.gov.au/articles/underemployment-reduced-hours-or-prefers-more-hours (accessed 6 October 2021).

⁸⁹ ABS, *Participation, Job Search and Mobility, Australia*, 17 September 2020, www.abs.gov.au/statistics/labour/employment-and-unemployment/participation-job-search-and-mobility-australia/feb-2020 (accessed 23 September 2021).

⁹⁰ Measured as the number of part-time employed people who would prefer to work more hours as a proportion of the labour force.

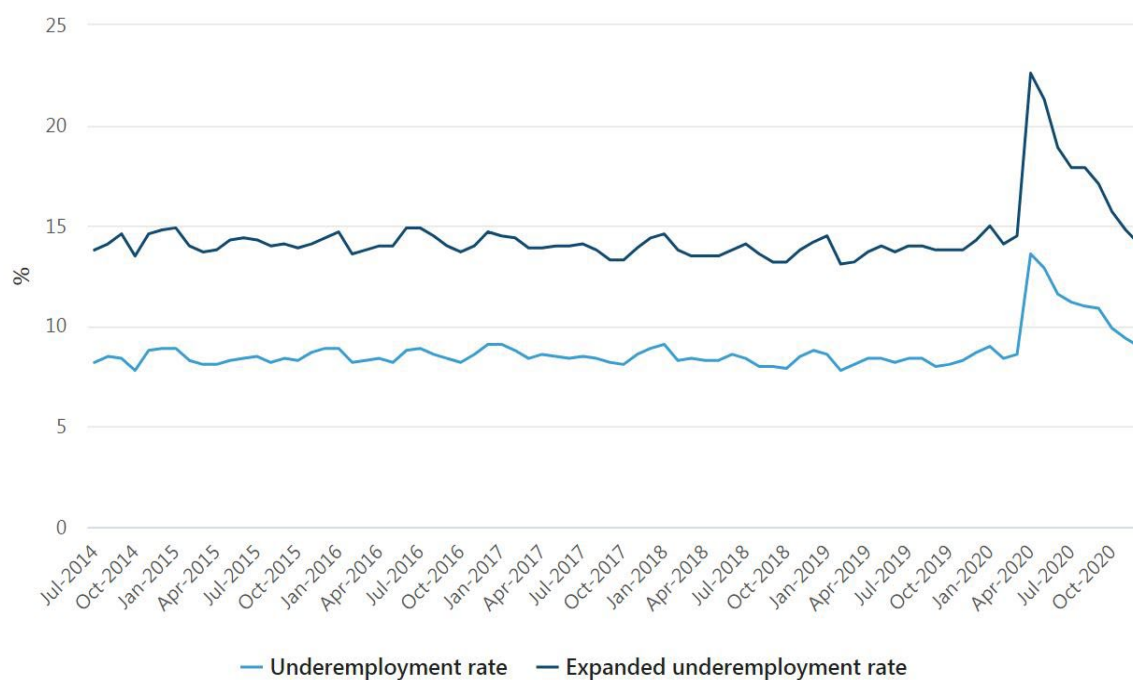
⁹¹ ABS, *Underemployment: Reduced hours or prefers more hours*, 21 January 2021.

⁹² ABS, *Underemployment: Reduced hours or prefers more hours*, 21 January 2021.

⁹³ ABS, *Participation, Job Search and Mobility, Australia*, 17 September 2020.

2.102 **Figure 2.6** shows the underemployment rate alongside the expanded underemployment rate from 2014 to 2020. The expanded underemployment rate rose to a high of 22.6 per cent in April 2020 due to the impacts of COVID-19, then fell throughout the year to reach 14.1 per cent by December 2020.

Figure 2.6 Underemployment and expanded underemployment, original, 2014 to 2020



Source: ABS, *Underemployment*. Data from: *Labour Force, Australia Table 24* and *Labour Force, Australia, Detailed Datacube EM2a*.

2.103 In addition to underemployment statistics, the ABS collects data on persons who are not in the labour force. In February 2020, 6.8 million people were not in the labour force. Of these, 1.1 million (16.3 per cent) were 'marginally attached'. This means they 'wanted to work, and were either available to start work, or had actively looked for work'.⁹⁵

Hours worked

2.104 Inquiry participants were interested in the issue of hours worked and the impact of the pandemic on underemployment and underutilisation.

2.105 Professor Peetz explained that, long before the pandemic, underemployment was increasing, as captured in hours worked:

⁹⁴ ABS, *Underemployment: Reduced hours or prefers more hours*, 21 January 2021.

⁹⁵ ABS, *Participation, Job Search and Mobility, Australia*, 17 September 2020.

Between 2010-11 and 2016-17, the number of hours sought, but not worked, by underemployed people grew by 31%, five times the total growth in hours worked.⁹⁶

2.106 Similarly, the NFAW submitted that hours worked per employed Australian had 'dropped by over an hour a month for the five years' leading up to 2017.⁹⁷

2.107 The ACCI stated that underemployment 'hit a historical high of 13.8% (1.8 million people working reduced or zero hours) in April 2020', and youth unemployment 'hit 23.6% in April 2020'.⁹⁸

2.108 The impacts of the pandemic on casual workers, women, young people and older workers are discussed in greater detail further on in this report.

The need for better data and statistics

2.109 Inquiry participants were generally complementary about the quality of Australia's labour statistics and data collection. Participants acknowledged the hard work of statisticians, and the limited resources at their disposal, along with their dedication to this work. However, it was acknowledged that there are certain areas where there are gaps in that data, or where data and statistics could be made more accessible.

2.110 This section reviews evidence and proposals for reforms or refinements to labour data collection and distribution that arose during the inquiry, and makes some observations and recommendations.

2.111 The NFAW argued that Australia's existing data collections 'are failing to elucidate the current situation for *some groups* of insecure workers'. The NFAW argued that, because they inadequately capture gig workers, multiple job holders and other 'segments of significantly insecure work', current Labour Force surveys may be undercounting insecure work, as well as 'obscuring an increasingly bifurcated workforce, with clear winners and losers'.⁹⁹

2.112 Professor Peetz suggested the ABS should collect data on self-reported work insecurity, including: insecurity of employment; insecurity of hours; and insecurity of income (compared with 12 months ago). The ABS could also collect data on other 'indicators of insecurity', such as:

- the extent of 'employment in franchise employment' (better collected through employer surveys than employee surveys); and
- 'authoritative data on the extent of the platform economy'.¹⁰⁰

⁹⁶ Professor Peetz, *Submission 88*, p. 9.

⁹⁷ NFAW, *Submission 11*, p. 34.

⁹⁸ ACCI, *Submission 71*, [p. 13].

⁹⁹ NFAW, *Submission 11*, p. 15.

¹⁰⁰ Professor Peetz, *Submission 88*, p. 17.

2.113 The committee asked the ABS about these suggestions. The ABS responded that it:

... must ask questions that can be understood and answered consistently by all people, in order to produce official statistics that enable people to draw effective inferences about the state of labour market and changes over time. 'Secure' is a term that would require respondents to make a subjective assessment and would be interpreted differently by different respondents.¹⁰¹

2.114 When asked on notice, 'Has work become less secure over the last 40 years and what are key indicators?', the ABS replied simply: 'The ABS does not produce measures of how secure work is'.¹⁰² However, the ABS also pointed out that existing ABS surveys currently collect data about changes in people's hours, and whether people are intending or expecting to change jobs in the near future.¹⁰³ These—and a number of other sources of ABS data—are *arguably* indicators that could be used to track changes in (at least people's *perceptions* of) job security over time.

2.115 Some participants argued for a greater focus on disadvantaged workers, through better disaggregation of data, and greater data collection among disadvantaged cohorts. For instance, the NFAW recommended that the government:

- ensure better data collection to capture alternative and insecure forms of work, including labour hire, sham contracting and gig work; [and]
- better monitor and report on risks of insecure work and exploitation among particular groups in Australia's workforce, including disaggregating data by disability, indigeneity, ethnicity and visa status with a view to better protecting those segments of the workforce that are particularly vulnerable to insecure work.¹⁰⁴

2.116 Other suggestions were focussed on making data and statistics more readily-available and more 'usable' by average people. Professor Peetz said:

Increasingly, [the ABS] is collecting data that it does not publish, but makes available through online access to microdata in various forms. That is useful for very serious and singularly focused researchers who have the time and inclination to chase those things up. But for a data-literate journalist or other observer, for example in a community group, who wants to look something up in a reasonably short period of time, it

¹⁰¹ ABS, Answers to questions taken on notice, public hearing 4 November 2021, Canberra (received 16 December 2021), [p. 3].

¹⁰² ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021, p. 2.

¹⁰³ ABS, Answers to questions taken on notice, public hearing 4 November 2021, Canberra, [p. 3].

¹⁰⁴ NFAW, *Submission 11*, p. 21.

becomes very hard—many will not or cannot do it. So a more accessible approach to publication would help.¹⁰⁵

2.117 Emeritus Professor Michael Quinlan commented on the difficulty in measuring fluctuations in the use of migrant labour, saying he couldn't provide 'an accurate figure of how much of an increase has occurred lately'. Describing the data collected by the ABS on short-term migrant labour as 'one of the major issues', Professor Quinlan said: 'I think there could be significant improvements to that to identify the extent and nature of these work arrangements'.¹⁰⁶

2.118 The ABS was asked to comment on reports that it is investing in new data collection in relation gig economy workers, and was able to confirm that this is indeed the case:

The Government provided \$2.8 million over four years to the ABS in the 2020–21 Mid-Year Economic and Fiscal Outlook to collect additional information on industrial relations related topics from people (through the annual Characteristics of Employment supplement to the Labour Force Survey) and businesses (through the two-yearly Survey of Employee Earnings and Hours).

The ABS is in the early stages of developing additional questions for the Characteristics of Employment supplement ... around on-demand/digital platform work and its nature and extent.

... All of these data will be new data.¹⁰⁷

Committee view

2.119 Inquiry participants broadly agreed that there were 'data deficits' when it came to insecure workers—including gig workers—and that there was a growing 'consensus' among academics, unions, and many government bodies that insecure work is on the rise.¹⁰⁸

2.120 In the 1980s and early 1990s many employers moved from permanent to casualised workforces to reduce costs and overheads, and transfer risks from the company onto individual workers. Once this mechanism had reached the limits of its usefulness, other mechanisms came into play.

2.121 Mechanisms like using part-time workers in a way similar to casuals, outsourcing, subcontracting, using labour hire services or agency staff—these measures have all grown in ways that are difficult to capture in official

¹⁰⁵ Professor Peetz, *Submission 88*, p. 15.

¹⁰⁶ Emeritus Professor Michael Quinlan, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 3.

¹⁰⁷ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021, p. 2.

¹⁰⁸ NFAW, *Submission 11*, p. 41.

statistics, increasing employers' 'flexibility', while disadvantaging workers impacted by them.

- 2.122 The pandemic has accelerated a trend that has been apparent for the last decade at least, in which the most disadvantaged workers have become even *more disadvantaged*. Some workers who lost casual work during the pandemic were forced to turn to gig work, losing even the minimum safety net of award pay rates; some regained work in the traditional employment market; some remain in the gig economy; and some have simply given up.
- 2.123 Many discouraged workers are invisible, many women have dropped out of the labour force and are now being ignored in the numbers—underemployment is still up and underutilisation has grown slowly over time.
- 2.124 On-demand platform work has grown but there is no real way to measure its true extent at this stage. Some gig workers are illegal, and some are working on the black market—certainly many of the multiple jobs that gig workers hold are not captured by official statistics.
- 2.125 The committee is encouraged to see that the Government is taking steps to rectify these gaps in the data. However, we caution that the data must be collected at both the employee and industry levels, and made freely and widely available. The industry data **must be transparent**.

Problems with labour hire data

- 2.126 Two key sources of data on employment in Australia are the Australian Bureau of Statistics Labour Force Survey and Characteristics of Employment Supplement, along with other ABS data sources, and the University of Melbourne's Household and Labour Dynamics (HILDA) Survey. Both sources have large sample sizes, sound methodologies, and are of a high quality and standard.
- 2.127 However, these key surveys are *employee* surveys, and do not always capture the size and details of specific industries or working arrangements, like labour hire. They have also failed to adequately capture, categorise and enumerate some emerging work types, like on-demand platform work. It is likely that this has led to an undercount of these work types in the data over the past ten years.
- 2.128 In particular, ABS data on labour hire is confusing at best—misleading at worst. Survey report after survey report—*correctly cited*—allows commentators to argue that labour hire and temporary third-party employment are not increasing in Australia. All the while, the industry grows, increasing in size and value, and reporting more and more jobs in its industry-level data.
- 2.129 At a minimum, the ABS should start publishing the labour hire statistics from the Characteristics of Employment supplement with caveats around the reliability of this self-reported employee data. However, it is the committee's

- view that the ABS should provide clearer and more coherent statistics on labour hire.
- 2.130 The Labour Account data provides a more realistic indication of the number of jobs across the sector in Australia, and a better source of information on earnings, hours worked, and other indicators. However, few people will have ever heard of this data, or know of its existence.
- 2.131 Most people are not statisticians, and do not have the skills, time or inclination to trawl through the ABS's databases or try to interpret the many graphs and data cubes available for download. As such, what is chosen to feed into the 'Key statistics' on the 'Working arrangements' page for labour statistics is all that many people will ever see.
- 2.132 The committee is also conscious of the potential for politicisation of the collection and reporting of data and statistics by governments who wish to paint a more flattering picture, or support particular agendas.
- 2.133 It is particularly concerning that the Attorney-General's Department, which is responsible for policy development dictating Australia's industrial relations system, has little to no information on the number of people working on gig platforms, and insists upon relying on the inferior labour hire data contained within the Characteristics of Employment dataset, rather than the ABS Labour Account.¹⁰⁹
- 2.134 As such, the committee is recommending that the ABS is funded and supported to undertake some additional work reconciling and better presenting its labour hire data going forward.
- 2.135 Labour hire is complex as a working arrangement, and indeed, even as an industry category. However, the committee believes that with a modest amount of additional funding and support, the ABS could ensure that the statistics it publishes on labour hire provide a more realistic indication of the number of labour hire jobs and workers in Australia (no matter which of the ABS's data sources they come from).
- 2.136 It would also be beneficial for the ABS to publish *changes* in labour hire employment over time, as it does with casual employment and a number of other indicators. This information is critical to inform legislative and policy responses relating to the industry.

¹⁰⁹ Ms Alexandra Matthews, First Assistant Secretary, Employment Conditions Division, Attorney General's Department, said 'the ABS has said to this committee that the best source of information on labour hire is the Characteristics of employment supplement, and that's what we're using'. *Proof Committee Hansard*, 3 February 2022, p. 24. However, the ABS told the committee that the Labour Account: 'gives us the best sense of the size of the industry [and] how many people are employed by the industry'. Mr Jarvis, ABS, *Proof Committee Hansard*, 4 November 2021, p. 50.

Recommendation 2

2.137 The committee recommends that the Australian Government provides funding and support to the Australian Bureau of Statistics (ABS) to enable the ABS to reconcile information from the Characteristics of Employment, Labour Account, and Jobs in Australia releases in order to provide clearer and more coherent information on labour hire employment in Australia.

The revised labour hire information should be published on the ABS website and include:

- **data reconciling the number of people who are registered with a labour hire firm or employment agency with industry level estimates of people employed directly by those businesses; and**
- **data and graphs/tables showing changes in labour hire employment over time.**

Supporting independent data and research

2.138 Frank and fearless advice to Government begins with high-quality information, data and research. The committee commends the statisticians at the ABS, the researchers at the University of Melbourne who conduct the HILDA Survey, and the many labour academics and research bodies that have contributed to this inquiry, for their hard work and dedication.

2.139 It is critical that the ABS be supported to collect and publish data in a robust, professional and independent way, and that policymakers, the public, the Australian Parliament and its committees, have free and unfettered access to ABS data and advice.

2.140 The committee sincerely thanks the ABS for its assistance during the inquiry, but notes that responses to questions on notice were held up excessively in Ministerial clearance processes, and appeared truncated when they did arrive.

2.141 The committee urges the Australian Government to commit to protecting the professional autonomy of the Australian Bureau of Statistics and its statisticians to ensure the highest standard of statistics and advice can be published and provided freely—especially to policymakers, and the Australian Parliament and its committees.

2.142 The Australian Government should not pick and choose the ABS labour hire data it acknowledges, nor should it be hiding critical data from the Australian public.

Chapter 3

Health and wellbeing impacts

- 3.1 This chapter presents evidence received on the detrimental impacts of insecure work on individuals and their relationships, families, and society.
- 3.2 It looks at impacts on physical health, mental health, wellbeing and relationships, in addition to considering the relationship between job security and levels of alcohol and drug abuse, and the risk and incidence of suicide, depression, and suicidal ideation.
- 3.3 The chapter then addresses proposals for reducing the mental and emotional harms created by insecure work, and their impacts on physical health and wellbeing, and social and economic inclusion.
- 3.4 The chapter concludes with the committee's views and recommendations.

Job insecurity has powerful negative impacts

- 3.5 A number of submitters gave expert testimony as to the harms associated with insecure work.
- 3.6 Emeritus Professor Michael Quinlan FASSA, from the Industrial Relations Research Group at the University of NSW, and Dr Elsa Underhill from Deakin University, submitted that there is over 25 years' worth of research and evidence on the association between insecure work and occupational health and safety (OHS)—including many Australian studies. The findings of this research are remarkably consistent—that the effects of insecure work 'are pervasive and overwhelmingly negative'.¹ The same conclusion has been reached by a number of international bodies, including the World Health Organisation in its 2007 report, *Employment Conditions and Health Inequalities*.²
- 3.7 According to Professor Quinlan and Dr Underhill, the major 'negative health and safety outcomes' associated with insecure work arrangements, compared with full-time permanent jobs, are:
 - (1) Higher incidence/frequency of injuries, including fatalities
 - (2) Poorer physical and mental health (including susceptibility to bullying and drug use); and

¹ Professor Michael Quinlan & Dr Elsa Underhill (Professor Quinlan & Dr Underhill), *Submission 2*, p. 4.

² See: World Health Organisation Employment Conditions Knowledge Network, *Employment, Conditions and Health Inequalities*, Geneva: 2007, www.who.int/social_determinants/resources/articles/emconet_who_report.pdf (accessed 15 December 2021).

- (3) Poor knowledge of and access to regulatory employment rights and less willingness to raise OHS concerns.³
- 3.8 In a combined submission, Professor Tony LaMontagne from the Institute for Health Transformation at Deakin University, and Dr Tania King and Ms Yamna Taouk from the Melbourne School of Population and Global Health, described job security and unemployment as 'powerful determinants of socioeconomic, health and wellbeing outcomes'.⁴
- 3.9 The authors pointed out that the impacts of *unemployment* are more easily-recognised than the impacts of *insecure* employment. This is evident in the way that social and economic supports—such as the JobSeeker payment—have been put in place to assist the unemployed. However, despite its 'powerful' negative impacts on individuals, relationships, families and society, job *insecurity* tends to be 'a socially invisible phenomenon', and there are 'very few policy responses or institutionalised supports' in place to address it.⁵
- 3.10 Professor LaMontagne, Dr King and Ms Taouk argued it is possible the adverse 'health burden' linked to job insecurity may even *exceed* that linked to unemployment—it certainly impacts a greater proportion of workers (15–25 per cent, as opposed to 4–5 per cent). The authors concluded that the health and wellbeing impacts of job insecurity warrant 'at least commensurate policy and practice attention'.⁶
- 3.11 To better understand *who* is impacted by job insecurity, and *how*, Professor LaMontagne, Dr King and Ms Taouk drew together research from numerous experts in Australia and around the world. They presented evidence from two large working population data studies which demonstrated that:
- males report 'slightly higher levels' of job insecurity compared to females;
 - casual and labour hire workers report the highest levels of job insecurity;
 - the 'lowest skilled workers' report 'the highest levels of insecurity';
 - non-Australian-born workers report higher insecurity than Australian-born workers;
 - there was 'a sharp increase in job insecurity' in 2008, during the Global Financial Crisis (GFC); and
 - job insecurity 'exposure also varies over time *within persons*'.⁷
- 3.12 The Australian Medical Association (AMA) submitted that job insecurity is 'a significant stressor' associated with 'a range of negative health outcomes',

³ Professor Quinlan & Dr Underhill, *Submission 2*, p. 5.

⁴ Professor Tony LaMontagne, Dr Tania King and Ms Yamna Taouk (LaMontagne, King and Taouk), *Submission 81*, p. 2.

⁵ LaMontagne, King and Taouk, *Submission 81*, p. 5.

⁶ LaMontagne, King and Taouk, *Submission 81*, p. 6.

⁷ LaMontagne, King and Taouk, *Submission 81*, p. 3.

and that insecure work 'further exacerbates existing levels of social and economic disadvantage'. The AMA added that improving job security 'can lead to improvements in health equity'.⁸

3.13 Key health effects of insecure work, according to the AMA, are:

- stress and anxiety resulting from uncertainty about future work;
- an increased likelihood of psychological distress and psychiatric morbidity;
- a higher risk of coronary heart disease;
- higher incidences of high cholesterol and hypertension; and
- feeling unable to report injuries or accidents suffered in the workplace.⁹

3.14 The AMA pointed out that rates of insecure work in Australia are 'higher' for those cohorts that are already socially and economically disadvantaged, 'including women, young people, Aboriginal and Torres Strait Islander peoples, migrants and people with a disability'—meaning 'disadvantage is both a predictor of insecure work and exacerbated by insecure work'.¹⁰

3.15 Dr Antonio Di Dio from the AMA told the committee that the impacts of insecure work on a person's health is 'a cradle-to-grave kind of situation' and leads to higher incidence of physical and mental disease:

... for the majority ... who simply have no option but to accept casualised work on a long-term basis, they have a far higher incidence of presentations with generalised and specific anxiety disorders, with mild to moderate to progressive depression, but also risk factors for physical disease. The biggest killer in this country, which is cardiovascular disease, whether it's in the form of heart attacks, strokes, or diabetes related vascular disease. There is objective evidence—and also lots of anecdotal evidence—that people who have more casualised work have higher rates and incidents of all of those illnesses.¹¹

3.16 A key concern among submitters was the link between job insecurity and suicide—especially for men. According to Suicide Prevention Australia, global research looking at suicide rates, population, and economic data, has found the rate of suicide for unemployed people is 'nine times that of the general population'.¹²

3.17 MATES in Construction—an organisation established to help prevent and respond to suicide in the construction industry—submitted that the construction sector has 'one of the highest occupational suicide rates in the

⁸ Australian Medical Association (AMA), *Submission 36*, p. 1.

⁹ AMA, *Submission 36*, p. 1.

¹⁰ AMA, *Submission 36*, p. 2.

¹¹ Dr Antonio Di Dio, Board Member, AMA, *Proof Committee Hansard*, 16 September 2021, p. 49.

¹² Suicide Prevention Australia, *Submission 181*, p. 3.

country',¹³ and this is 'linked to job insecurity'. In a sector characterised by 'multilevel contracting arrangements', few workers have secure full-time jobs. Most workers are employed through tiered sub-contracting arrangements, 'having to start the search for the next job as each new job is started'.¹⁴

Box 3.1 'Chris' – insecure work and COVID-related disruptions

'... I was out of work till November starting yet another casual position that lasted till Easter 2021.

I was off again till May and another casual position that finished early July.

I had just got word that the metro was about to start when the NSW government decided to wait till there were 30 or more [COVID-19] infections before locking down. This as you know led to 27 new infections a day.

So I once again find myself unemployed. I have run through all my savings and have not had any assistance from the government.

The most annoying thing is I was just about to start the metro project that I'd been waiting so long for.

The way COVID has been handled in this county and the roll out of much needed vaccinations has been a total failure.

This is just one experience. I know so many others in Australia are struggling with no pay or under pay and the tragedy of the people who've lost lives and loved ones.¹⁵

- 3.18 According to MATES in Construction, job insecurity is a 'contributing factor' in many of the deaths in the sector each year, with more than 50 per cent of calls to the MATES 24/7 Helpline concerning workers' 'lack of job security':

This is consistent with research which has shown that job insecurity leads to an increase [in] the risk of occupational stress that may be involved in suicide. Where a prevalence of non-permanent positions which impact on job security, have also been suggested as contributing factors for suicide within the construction industry.¹⁶

- 3.19 Stresses associated with the COVID-19 pandemic have exacerbated the situation, according to MATES in Construction; with lockdowns leading to further job insecurity, as well as the impacts of travel-related stress and testing regimes.¹⁷

¹³ MATES in Construction, *Submission 80*, p. 5.

¹⁴ MATES in Construction, *Submission 80*, pp. 1–2.

¹⁵ Chris, *Submission 141*, [p. 1]. Emphasis added.

¹⁶ MATES in Construction, *Submission 80*, p. 3.

¹⁷ MATES in Construction, *Submission 80*, p. 6.

3.20 MATES in Construction was concerned that specific factors relating to the composition of the construction workforce may make it especially vulnerable to a heightened suicide risk 'during and after COVID-19':

These are gender; lack of help seeking; younger workforce; low socio-economic position. In addition, there are what is termed contextual drivers. These are gaps in social security protection due to the informal and insecure nature of some construction work; high workforce mobility; limited job control; unemployment; masculine norms. These factors can contribute to a risky environment for mental health or suicidality, especially in the face of a pandemic and its social and economic consequences.¹⁸

3.21 These fears appeared to be founded, as MATES in Construction saw call rates 'go up through COVID', with an increase of over 40 per cent recorded by September 2021. National Chief Executive Officer, Mr Chris Lockwood observed that 'being employed actually *added* stress' early on in the pandemic, as construction workers felt anxious about going to work and risking the health and safety of their families: 'We are expecting some of the real impacts to still be coming down the track in terms of how it is going to impact on the individuals working in the industry.'¹⁹

3.22 Professor Quinlan and Dr Underhill were also concerned about the potential immediate and long-term impacts of the pandemic on those in insecure work, saying lessons could be learned from 'previous business cycle downturns/crashes like the [Global Financial Crisis] GFC'. Health impacts from the GFC were 'significant and long-term in both rich and poor countries', the authors submitted, 'compounding existing health inequities' and increasing suicides—particularly amongst 'lower class occupations':

Given the pandemic far outweighed even the GFC in scale it is logical to presume its effects will be even more profound. Even as the Australian economy bounces back it is unlikely to be a return to the prior economy and labour market. The uncertainty the pandemic created is likely to affect business employment decisions for years and may well include an even greater preference for insecure work arrangements, with consequent negative outcomes for OHS.²⁰

¹⁸ MATES in Construction, *Submission 80*, p. 6.

¹⁹ Mr Chris Lockwood, National Chief Executive Officer, MATES in Construction, *Proof Committee Hansard*, 16 September 2021, p. 23. Emphasis added.

²⁰ Professor Quinlan & Dr Underhill, *Submission 2*, p. 13.

Box 3.2 'Gary' – over-worked and needs a break

'... Positions are not being filled. Either contractors or overtime is used to cover job shortages. This is destroying family life and causing burn out due to workers being unable to have a proper break/ holiday due to being locked down.

I have already had two years' worth of holidays restricted to my home. I need to recharge by getting to go to a beach etc. Current situations are leading to family break downs and mental health issues.'²¹

Impacts on physical health

- 3.23 Professor LaMontagne, Dr King and Ms Taouk focussed on *perceived* job insecurity, which is 'the subjectively perceived threat of job loss and the worries related to that threat'. While there can be some variance in perception between different people in the same environment, 'there is also evidence that subjective perceptions reflect objective reality'.²²
- 3.24 Professor LaMontagne explained that insecure work 'is harmful to physical health', increasing cardiovascular disease, coronary heart disease, hypertension, and other conditions.²³
- 3.25 Reporting on a recent study conducted in Europe, Professor LaMontagne said being in insecure work increases the risk of coronary heart disease by '1.3 times or 30 per cent', meaning 'five per cent of coronary heart disease in the working population' can be attributed to insecure work. (See **Figure 3.1**.) The study was based on data across 35 European countries where around 17 per cent of the working population were assessed as being in insecure jobs—a figure Professor LaMontagne said is 'comparable with Australia'.²⁴

Figure 3.1 Job insecurity-related increase in risk of coronary heart disease (CHD) and depression

	Prevalence of job insecurity	Increased risk associated with job insecurity	Population attributable fraction
Coronary Heart Disease (CHD)	17%	1.32 [1.09, 1.59]	5.03% [1.30, 8.76]
Depression	17%	1.61 [1.29, 2.00]	9.20% [4.36, 14.02]

Professor Tony LaMontagne, Dr Tania King and Ms Yamna Taouk, *Submission 81.1*, p. 1.

²¹ Gary, *Submission 164*, [p. 1].

²² LaMontagne, King and Taouk, *Submission 81*, p. 2.

²³ Professor Anthony (Tony) Daniel LaMontagne, Professor of Work, Health and Wellbeing, Institute for Health Transformation, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 2.

²⁴ Professor LaMontagne, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 1.

- 3.26 Compounding this, the AMA submitted that people in insecure work earn less than those in secure jobs, are less likely to be able to afford medical care, and less likely to take time off work to seek medical treatment, and are more likely to suffer from chronic illnesses.²⁵
- 3.27 In October 2021, the Australian Council of Trade Unions (ACTU) reported employee survey results indicating that:
- 67 per cent of injured or sick workers in insecure jobs have not taken time off work 'because they feared it would negatively impact their job';
 - 60 per cent have not taken time off 'because they had no paid leave available'; and
 - only a quarter (25 per cent) 'felt that they had adequate support to return to work after an injury', compared with 61 per cent of permanent employees.²⁶

Box 3.3 'Cathy' – complex health needs and insecure work

'... I have not had a break for over 10 years. I have to be constantly available for work, the alternative is not being able to pay my rent. I face homeless and hunger.

I have lived with incredible stress and this has significantly impacted on my mental as well as physical health. I cannot afford proper treatment or medication, and, as public patient believe I experience discrimination—in some cases, not all.

I have a \$45 000 HECS and student loan debt I will never be able to repay, let alone use those skills.

To ask for support, I have to focus on my deficits which have become my reality. Being an intelligent, competent, energetic, positive person is not really possible.

Supposedly I work for myself—I cannot work in a standard environment. I have been working for a large NGO on and off for 10 years, on a relatively regular basis since 2015/16. I have no contract, no agreed hours. I make myself available but I am often too stressed to work.

I can no longer focus properly, I have inadequately treated eye disease, and a host of issues including exhaustion and fatigue. I can't afford to see the specialists who might be able to come to a diagnosis and therefore effective treatment, and appointments for anyone, including GPs are weeks and months apart.

...

I am over 55 and female. I read that I belong to a demographic which is the fastest growing homeless group in Australia. I actually don't feel like an Australian or as if I am a part of your community given the horrible experiences I have been through and the consequences.

²⁵ AMA, *Submission 36*, p. 2.

²⁶ Australian Council of Trade Unions (ACTU), *Media release: Insecure work is a massive work health and safety risk*, 13 October 2021, www.actu.org.au/actu-media/media-releases/2021/insecure-work-is-a-massive-work-health-and-safety-risk (accessed 10 January 2022).

I don't think I will be able to survive for much longer. I took out what little superannuation I had last year and have mostly spent that now on upgrading my work equipment, specialist visits, recommended dietary supplements, home furnishings and food.

I don't believe my work has any longevity or myself because I can't concentrate or focus properly, and I am very depressed. There is no way out of this.

I very much hope that this enquiry will also consider those people who are under and unemployed, rather than creating further exclusion and division.²⁷

Impacts on mental health

3.28 Experts told the committee that 'exposure to insecurity' is connected with a number of 'adverse health outcomes in the mental health area'. Professor LaMontagne listed 'depression, anxiety, burnout, suicidal thoughts, suicidal behaviours and some evidence coming around now of suicide mortality'.²⁸

3.29 Suicide Prevention Australia submitted that:

Conditions at work can have a profound effect on mental health and wellbeing. A national survey of over 10,000 Australians in 2019 highlighted that more than half the Australian workforce reported experiencing an issue with mental ill health, with two in five of these saying their workplace either caused or exacerbated the condition. The estimated costs of workplace-related mental illness and injury are estimated to be at least \$15.8 billion to \$17.4 billion per year.²⁹

3.30 Professor LaMontagne, Dr King and Ms Taouk referred to a range of research sources which have determined that perceived job insecurity induces:

... a physiological stress response, resulting in a range of reversible behavioural and health effects in the short term (e.g., drug use, tension, increased blood pressure) as well as more enduring and serious physical and mental health and wellbeing outcomes in the longer term (e.g., depression, anxiety, cardiovascular disease, and suicide) ...³⁰

3.31 Suicide Prevention Australia referred to recent Australian studies on male suicide rates which found that 'periods of unemployment and underemployment'—especially underemployment in insecure forms of work—are 'strongly correlated with an increase in the suicide rate'. Also that the risk of suicide is 'at its highest in the first five years of unemployment'.³¹

²⁷ Cathy, *Submission 147*, [p. 1].

²⁸ Professor LaMontagne, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 1.

²⁹ Suicide Prevention Australia, *Submission 181*, p. 5.

³⁰ LaMontagne, King and Taouk, *Submission 81*, p. 3.

³¹ Suicide Prevention Australia, *Submission 181*, p. 5.

3.32 According to Suicide Prevention Australia's Director of Policy and Government Relations, Mr Matthew McLean, research has demonstrated that 'regular, stable and predictable income' is a protective factor against mental illness, along with 'access to paid leave and the certainty that comes with'. Mr McLean said:

... if you're employed in an arrangement that doesn't have either that certainty in size or regularity of income or those safety net measures of leave, workers compensation or superannuation, the absence of those might create risk for mental ill-health and could create risk for suicide.³²

3.33 MATES in Construction said rates of suicide amongst workers in the construction industry in Australia are 71 per cent higher 'than amongst other employed men', with mining workers 'at risk' due to shift work, working in remote locations, and 'higher than average mental stress and alcohol consumption'.³³

3.34 The issue of job security has 'significant broader [psychological] impacts', leads to distress requiring 'the support of a Case Manager', and contributes to 'relationship breakdown'. MATES in Construction Case Management data from 2020–21 demonstrated that over half of 'workers in distress' are impacted by relationship breakdown and '1 in 6 is at risk of suicide'.³⁴

3.35 Specific features of insecure work that were found to lead to distress among these construction workers were 'excessive job stress' caused by insecurity, and 'low job control'. Recognising that work can be 'detrimental to mental health', 'as well as being positive', MATES in Construction worked with Beyond Blue and industry leaders to develop a 'Blueprint for the industry' that could address detrimental impacts:

And importantly it identified that one of the 5 key pillars the industry could use to address issues such as job insecurity and to deliver on the promise of better mental health and suicide prevention was to focus on 'Promoting work's positive impact on Mental Health'.³⁵

3.36 MATES in Construction provided anecdotal evidence of cases where addressing job insecurity had led to direct improvements in mental health. Mr Lockwood said:

One of the simplest stories that might play out ... is we direct them to try and resolve things within their workplace. When they are able to achieve some sort of resolution, that gives them more comfort in terms of their ongoing security. ... If they are able to get comfort through whatever form

³² Mr Matthew McLean, Director of Policy and Government Relations, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 43.

³³ MATES in Construction, *Submission 80*, p. 1.

³⁴ MATES in Construction, *Submission 80*, p. 3.

³⁵ MATES in Construction, *Submission 80*, p. 4.

around a more-secure job, then that can be one of the chinks that allow them to step forward to address the other issues they might be dealing with at the time.³⁶

- 3.37 Academic research has also found this correlation. Professor LaMontagne pointed to the European study which measured the correlation between insecure work and heart disease, saying it also estimated 'the proportion of depression in the working population that is attributable to job insecurity' (see **Figure 3.1**, previous section):

With depression, it is 1.6 times higher, which is a 60 per cent elevated risk of depression for people in insecure jobs. What that translates to is ... nine per cent of prevalent depression in the working population being attributable to job insecurity.³⁷

- 3.38 Basing research on data from HILDA—the Household Income and Labour Dynamics in Australia—study, Professor LaMontagne looked at the same cohort of people over 15 years, across multiple surveys, to see if there was a correlation between changes in the level of job security, and mental health of individuals. Professor LaMontagne identified 'probably the strongest causal inference study of job insecurity and mental health published internationally to date', finding that:³⁸

... improvements in job security across the Australian working population were associated with corresponding improvements in mental health, as well as deteriorating job security being associated with increases in depressive symptoms. There was also a strong dose-response relationship observed, with greater changes in job security predicting greater changes in mental health, both for better and for worse.³⁹

Impacts of the pandemic

- 3.39 Inquiry participants were concerned that the pandemic was likely to increase the suicide risk associated with insecure work. Suicide Prevention Australia appeared before the committee in September 2021. The available data did not show an increase in rates of death by suicide during the pandemic *at that point*. However, it showed an increase in other indicators of psychological distress, including 'presentations to hospital for people experiencing self-harm episodes',⁴⁰ and record levels of calls to Lifeline for assistance.⁴¹

³⁶ Mr Lockwood, MATES in Construction, *Proof Committee Hansard*, 16 September 2021, p. 25.

³⁷ Professor LaMontagne, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 1.

³⁸ Professor LaMontagne, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 2.

³⁹ LaMontagne, King and Taouk, *Submission 81*, p. 5.

⁴⁰ Ms Nieves Murray, Chief Executive Officer, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 42.

⁴¹ Mr McLean, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 43.

The facts are that there hasn't been an increase in suicide yet. However, there has been an increase in distress in the community ... So it's fair to say that, although we have contained the situation during the pandemic, the bigger risks will emerge as we start to roll back the protective factors that we've put in for the community during the pandemic.⁴²

- 3.40 The Chief Executive Officer of Suicide Prevention Australia, Ms Nieves Murray, suggested people in certain industries that have been particularly affected by job losses and increasingly insecure work, like tourism and the arts, will face a 'significant increase in distress' and a 'higher risk of suicide' if the 'protective factors' and social and financial supports put in place by governments during the pandemic are removed too quickly.⁴³
- 3.41 Mr McLean reported that, in a recent community sector survey for 2021 World Suicide Prevention Day, when organisations were asked to identify 'the greatest risk to suicide rates over the next 12 months', 74 per cent identified 'unemployment and job security'; 88 per cent identified 'social isolation'; and 56 per cent identified 'housing access and affordability' as a 'key risk'.⁴⁴

Box 3.4 'Dave' — self-funded retiree impacted by the pandemic

'... Because of my age I was ordered to stay home for my own safety. As a consequence I have no income, and assets I can't sell. My wife is keeping me housed and fed.

Private borrowings from family members are paying my unavoidable business expenses. That debt is growing at about \$1 500 a month.

Everybody needs a secure income or access to good social security. I have financially survived this pandemic only because I have a good family.

If I had been single I would have been destitute. This is third world social security.'⁴⁵

Impacts on social wellbeing and relationships

- 3.42 Insecure work impacts peoples' social connectedness and relationships.
- 3.43 Suicide Prevention Australia expressed strong concerns about the emergence of an increasingly fractured and casualised workforce, where gig work is becoming more dominant, along with short-term contracting and temporary roles. These 'flexible' models 'have the potential to further isolate individuals' suffering from loneliness, and exacerbate existing gaps in social connection, by failing to provide 'regular colleagues or fixed workplaces':

⁴² Ms Murray, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 42.

⁴³ Ms Murray, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 43.

⁴⁴ Mr McLean, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, pp. 43–44.

⁴⁵ Dave, *Submission 140.1*, [p. 1].

A recent poll of young adults showed that over 50% of freelancers surveyed feared a lack of connection to a company's internal culture would leave them feeling like outsiders. Consultations with our stakeholders mirrored these concerns, identifying that a lack of social connection in the workforce can lead to increased loneliness, high work demands can result in fractured relationships within families and lack of access to support systems in the community, and financial uncertainty causing difficulty in planning for the future.⁴⁶

- 3.44 Professor LaMontagne, Dr King and Ms Taouk submitted evidence showing that insecure work makes it hard for workers 'to plan, spend, study, and engage in society'. Job insecurity also 'places workers at risk of exploitation' and 'threatens' their 'economic security, self-esteem, social and familial relations, and other fundamental human needs'.⁴⁷
- 3.45 The authors cited research showing causal links between job insecurity and social and economic outcomes, such as 'relationship breakdown' due to 'worsening finances'.⁴⁸
- 3.46 Suicide Prevention Australia told the committee that job insecurity often results in 'economic hardship, which then leads to relationship breakdown', creating 'causal linkages' which 'accumulate' and can become 'the tipping point' that leads to suicide.⁴⁹
- 3.47 The Western Australian Council of Social Service (WACOSS) submitted that insecure workers often struggle to afford adequate housing, access credit for home loans or secure a rental, and are at increased risk of homelessness and long-term (even intergenerational) poverty:
- An emerging body of international research suggests that housing is associated with many aspects of social and economic life, including personal and family wellbeing, mental and physical health, economic participation, social connectedness, community functioning, sustainable cities and social cohesion.⁵⁰
- 3.48 Along with facing housing insecurity, income insecurity, and a lack of social connection, insecure workers may be denied 'dignity in retirement', according to WACOSS. Already disadvantaged insecure workers were further disadvantaged by a Government policy measure which allowed 'temporary early access to superannuation' during the pandemic, resulting in almost three million Australians 'accessing their super savings to meet short-term financial needs during the COVID crisis'. According to WACOSS, this will 'clearly'

⁴⁶ Suicide Prevention Australia, *Submission 181*, p. 5.

⁴⁷ LaMontagne, King and Taouk, *Submission 81*, p. 3.

⁴⁸ LaMontagne, King and Taouk, *Submission 81*, p. 3.

⁴⁹ Ms Murray, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 44.

⁵⁰ Western Australian Council of Social Service (WACOSS), *Submission 118*, pp. 17–18.

impact their superannuation balance and 'their ability to secure a dignified retirement':

Australians who have worked throughout their adult lives, paid their taxes and contributed to their communities have a right to expect as citizens they will be granted dignity in retirement. Insecure work is undermining the capacity of Australian workers to provide for their retirement years. If current circumstances continue, we risk seeing many of today's young workers and working families facing poverty and financial hardship in retirement.⁵¹

Box 3.5 'Sabrina'—a plea for families

'Please get every especially family committed person a permanent employment. Due to casual temporary employment there is so much of insecurity whether the contract is going to be extended or not, no paid leave, we cannot enjoy any benefits as an employee, and very hard to get a mortgage grant being a casual temporary contract employment.

Cannot enjoy any public holiday as it's no pay, very sad. So much of trauma and stress to maintain a family without a [permanent] job. Please provide permanent jobs. Thank you.'⁵²

3.49 Research also indicates that precariously-employed workers are significantly more likely than permanently-employed workers 'to report unwanted sexual advances' at work—at the following rates:

- casuals, 7 times more likely;
- fixed-term contract workers, 11 times more likely; and
- 'own-account self-employed workers', 4 times more likely.⁵³

Reducing the impacts of insecure work

3.50 Inquiry participants made a number of suggestions for reducing the impacts of insecure work on physical and mental health, wellbeing and social connection.

3.51 MATES in Construction talked about the importance of 'providing a mentally healthy and safe work environment', which is just as critical as delivering a *physically* safe work environment. Mr Lockwood was asked if it was important for workers to 'be able to take a day of paid leave to spend time with their family, sort out personal issues or just rest'—noting that, for casual and contracted workers, this is often impossible. MATES in Construction agreed that access to paid leave has a role to play in addressing mental health issues in construction and similar industries.⁵⁴

⁵¹ WACOSS, *Submission 118*, pp. 19–20.

⁵² Sabrina, *Submission 187*, [p. 1].

⁵³ LaMontagne, King and Taouk, *Submission 81*, pp. 3–4.

⁵⁴ Mr Lockwood, MATES in Construction, *Proof Committee Hansard*, 16 September 2021, p. 24.

- 3.52 Professor LaMontagne explained that work health and safety (WHS) authorities have not traditionally engaged with the issue of job insecurity, despite the fact that it is 'a job stressor' with genuine health impacts. This may be because these authorities see job security as 'an employment condition as opposed to a working condition', and thus, not in their remit. However, Professor LaMontagne argued job security and insecure work 'should be within the domain of [WHS] regulatory authorities'.⁵⁵
- 3.53 Professor LaMontagne, Dr King and Ms Taouk submitted that 'policy and practice interventions' designed to improve job security would in fact have 'multiple benefits', increasing broader population health, while also 'meeting regulatory and ethical mandates for work to be psychologically safe, and in increasing employment sustainability'.⁵⁶
- 3.54 The authors noted that because job insecurity is 'a recognised and well-documented work-related hazard to health', it could be addressed through existing health and safety regulatory frameworks:
- Job security can be improved and its impacts mitigated through complementary policy and practice interventions, ranging from international and national labour market policy to workplace and worker-level interventions ... In order to reduce the problem at its source, it is critical that interventions are directed to reducing job insecurity (so-called 'primary prevention') as much as, or more than, targeting job insecurity-associated ill-health ...⁵⁷
- 3.55 MATES in Construction highlighted the success of its program, which is evidence-based, industry owned and funded, and delivers 'specific services to the male dominated construction, energy and mining industries'. The program delivers 'tailored training and support, onsite, where it is needed most' and is 'backed up by a 24/7 helpline and Case management services'. According to MATES in Construction, to date the program has assisted over 200 000 workers, with over 20 000 trained volunteers in workplaces across Australia. According to peer reviewed, published evidence, the program has delivered 'a reduction in suicides', including 'an eight percent reduction in the Qld construction industry suicide rate, five years after the introduction of the MATES Program'.⁵⁸
- 3.56 As well as addressing the root causes of insecure work, Professor Quinlan and Dr Underhill recommended that Government provide more support for effective industry programs aimed at preventing suicide amongst insecure workers, such as the MATES program:

⁵⁵ Professor LaMontagne, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 2.

⁵⁶ LaMontagne, King and Taouk, *Submission 81*, p. 5.

⁵⁷ LaMontagne, King and Taouk, *Submission 81*, p. 6.

⁵⁸ MATES in Construction, *Submission 80*, p. 1.

The program is not about counselling but about training workplaces and the workforce to recognise and deal with suicide ideation—to provide a self-support network where workers themselves are heavily involved. It receives considerable support from the industry and is group focused. The program has spread to other industries like mining with analogous schemes in road transport. ... There is clear potential for the scheme to extend to other industries where insecure work and suicide are a problem but this would require more government support.⁵⁹

3.57 Ms Murray from Suicide Prevention Australia talked about the need to *also* focus government investments and policies for suicide prevention on 'other areas of our community and society'—not just mental health—'if we're going to make a difference in the prevention of suicide or the reduction of suicide rates'. Ms Murray said investing in job security, housing affordability and support for families in 'challenging times' would have an 'equal', or perhaps 'more significant', impact on suicide rates by providing a 'safety net' for people at risk of suicide: 'Mental health is just one lens'.⁶⁰

3.58 The AMA said the health impacts of insecure work are largely caused by 'prolonged anxiety about losing income, and the repercussions that this will have for workers' standards of living and ability to support their families'. The AMA suggested governments can reduce this anxiety by implementing policies that 'encourage secure working arrangements', on one hand, and providing an 'adequate social safety net', on the other hand:

The AMA's Social Determinants of Health Position Statement calls on the Australian Government to: ensure that all individuals have access to means that support adequate standards of living, regardless of their participation in paid employment, and invest in measures that support retraining and re-employment for those who are affected by underemployment or unemployment.⁶¹

3.59 Suicide Prevention Australia noted that entitlements built into the *Fair Work Act 2009* (paid leave, protection from unfair dismissal, and so on) 'often function as the protective factors that prevent risk or support those vulnerable to suicide'. However, those entitlements are not available to most gig workers and many other insecure workers. While there is currently 'limited evidence available on the rate of suicide or self-harm among gig economy workers', Suicide Prevention Australia recommended that the Australian Government should:

- commission research into the rate of suicides among gig workers in Australia and overseas; and

⁵⁹ Professor Quinlan & Dr Underhill, *Submission 2*, p. 27.

⁶⁰ Ms Murray, Suicide Prevention Australia, *Proof Committee Hansard*, 16 September 2021, p. 45.

⁶¹ AMA, *Submission 36*, p. 3.

- work with industry to fund an online peer support platform for gig workers and to develop toolkits to help gig companies to support better workplace mental health.⁶²

Committee view

- 3.60 Empirical evidence shows that insecure work has strong detrimental impacts on the physical and mental health of individuals, and often negatively impacts family life, social connectedness, and personal relationships.
- 3.61 Insecurity in work—whether actual, perceived, or both—affects every aspect of a person's life; from their self-esteem and self-worth, to their decisions around family planning, education, home ownership and retirement.
- 3.62 Insecure work impacts work health and safety, both for individuals and in workplaces, including construction sites, hospitals, mines and on our roads—sometimes with tragic consequences.
- 3.63 Insecure work makes people sick and reduces our productivity. It impacts children's ability to learn and to thrive; hampers low-income earners trying to save for a dignified retirement; and increases the Medicare burden on taxpayers.
- 3.64 Even more critically, insecure work can lead to depression, to hopelessness, and, in severe cases, to suicide.
- 3.65 Secure, ongoing work and a reliable and predictable income are 'protective factors' against physical health problems, like heart disease and hypertension, as well as depression and suicidal ideation. Participation in a stable workplace can also increase a person's social connectedness and decrease their isolation.
- 3.66 Governments must address the source problem of insecure work, *as well as* funding and supporting proven evidence-based programs that are helping people right now—like MATES in Construction.

Recommendation 3

- 3.67 The committee recommends that the Australian Government reviews the Model WHS Laws and associated Regulations to provide a greater emphasis on supporting workers' psychological safety in the workplace, and include 'job insecurity' as a workplace hazard in the appropriate laws and regulations.**

Recommendation 4

- 3.68 The committee recommends that the Australian Government provides ongoing support and funding to MATES in Construction, and similar evidence-based, industry-focused suicide prevention and mental health and**

⁶² Suicide Prevention Australia, *Submission 181*, pp. 8–9.

well-being programs—especially in industries where non-standard work arrangements are common, and those heavily-impacted by the pandemic, such as health, aged and disability care, hospitality, retail, the arts and tourism.

Recommendation 5

3.69 The committee recommends that the Australian Government commits to providing an adequate financial and social safety net for all, including by:

- ensuring that the JobSeeker payment is sufficient to help unemployed Australians focus on upskilling or obtaining employment;
- ensuring that the industries and cohorts *most* impacted by COVID-19 receive financial and other supports to rebuild and recover; and
- by focussing government funding and policy efforts towards initiatives that address the impacts of the pandemic on mental health and well-being.

Part 2
Casual work in Australia

Chapter 4

Casual work definitions, demographics and regulations

- 4.1 Australia is somewhat unique among developed countries in its categorisation and widespread use of 'casual employees'. Professor of Employment Relations at Griffith University, Emeritus Professor David Peetz FASSA, explained that 'technically the [Australian Bureau of Statistics] ABS does not estimate the numbers of casual employees'; it estimates the number of employees without leave entitlements and uses this 'as a proxy measure of casual employment'.¹
- 4.2 According to Professor Peetz, the proportion of Australian employees lacking leave entitlements is 'high ... compared with most other industrialised countries'.² Direct international comparisons are difficult to make because most countries do not have a category of 'casual employee'. However, the Organisation for Economic Co-operation and Development (OECD) reports on 'short part-time jobs' in member countries, which are non-permanent jobs where people usually work one to 19 hours per week. In 2019, Australia ranked fourth highest for these types of jobs in the OECD (with 13 per cent), after 'other nations with high casual worker rates including Netherlands (21 per cent), Denmark (15 per cent) and Switzerland (13 per cent)'.³
- 4.3 The core debate at the heart of this section of the report is whether the use of casual work in the Australian labour force is causing greater job insecurity. Therefore, this chapter discusses the casual workforce in Australia and considers:
- what constitutes casual employment;
 - key statistics and trends;
 - characteristics of casual employees; and
 - the issue of casual conversion.
- 4.4 The following two chapters, Chapter 5 and Chapter 6, consider evidence on the nature and impacts of casual working arrangements in key sectors such as retail and hospitality, and during the COVID-19 pandemic.

¹ Emeritus Professor David Peetz FASSA, *Submission 88*, p. 5.

² Professor Peetz, *Submission 88*, p. 5.

³ Nassim Khadem, *Australia has a high rate of casual work and many jobs face automation threats: OECD*, 25 April 2019, www.abc.net.au/news/2019-04-25/australia-sees-increase-in-casual-workers-ai-job-threats/11043772, Original data: 'Organisation for Economic Co-operation and Development (OECD) Employment Outlook 2019', www.oecd-ilibrary.org/employment/oecd-employment-outlook-2019_9ee00155-en (accessed 18 January 2022). Figures rounded down to the nearest percentage point.

- 4.5 Arguments for and against further reforms in relation to casual employment—along with the committee's views and recommendations on proposed reforms—are covered in the final chapter of this section, Chapter 7.

Reforms to the *Fair Work Act 2009*

Statutory definition

- 4.6 Prior to March 2021 the term 'casual employee' was not defined in the *Fair Work Act 2009* (Fair Work Act). Industrial relations practice, including modern awards, generally regarded casual employment as employment in which there was an absence of entitlement to paid annual or sick leave and a paid loading to compensate for the absence of said entitlements.⁴
- 4.7 The term also developed meaning through common law. Recent court cases such as *WorkPac Pty Ltd v Skene* [2018] FCAFC 131 (Skene) and *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 (Rossato) gave regard to the nature of the casual work arrangement at engagement and recognised changes in the employment relationship over time. This meant that a casual employee had the capacity to become 'other than casual' at an indefinite point in time and therefore may be entitled to paid entitlements despite receiving the loading.⁵
- 4.8 In March 2021, a *statutory definition of casual employment* was introduced to the Fair Work Act.⁶ The definition was the result of the Government's attempt to resolve the above-described uncertainty surrounding the then legal framework for casual employment.⁷
- 4.9 An employee is now considered a casual if they are 'offered employment without a firm advanced commitment to continuing and indefinite work and the person accepts the offer'. That is, the classification of whether an employee is a casual occurs based on the initial offer of employment, and not on any subsequent conduct by the parties.⁸
- 4.10 To determine whether a 'firm advance commitment to continuing and indefinite work' exists, the legislation requires a court to give regard to the following considerations:

⁴ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, *Explanatory Memorandum*, p. vii.

⁵ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, *Explanatory Memorandum*, p. vii.

⁶ The amendments were introduced as part of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020.

⁷ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, *Explanatory Memorandum*, p. iv.

⁸ *Fair Work Act 2009 (Cth)*, s. 15A(1).

- (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- (b) whether the person will work as required according to the needs of the employer;
- (c) whether the employment is described as casual employment; and
- (d) whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.⁹

Suitability of definition

4.11 The need for a clear definition was supported by a number of inquiry participants. Chief Executive Officer of the Australian Retailers Association (ARA), Mr Paul Zahra, said that the ARA 'welcomed' the definition:

The definition of casual employment addresses some concerns around existing arrangements and elevates the importance of what is agreed between an employer and employee, providing everyone with more freedom to determine the arrangements that best suit their situation.¹⁰

4.12 The Australian Chamber of Commerce and Industry (ACCI) were 'thankful' for the inclusion of the definition. Deputy Director of Workplace Relations, Ms Tamsin Lawrence, told the committee:

It appeared to be an unlimited number of factors that could be considered at any point in time that was causing the problem for casual employees. There was a concern that the full bench of the Federal Court had handed down a decision that misrepresented the way in which a majority of casuals in this country, who at the time were close to 2.6 million, had been employed and engaged for a couple of decades in which casual employment has been around the same rate.¹¹

4.13 While the legislated definition was broadly supported by employer and business groups, unions and other employee stakeholder groups raised concerns that the criteria for judging whether an employee was casual were too limited. The Centre for Future Work characterised the amendment as 'push[ing] the dial in precisely the wrong direction' as it unequivocally confirmed the employer's right to classify a worker as casual, regardless of the nature of the work.¹²

⁹ *Fair Work Act 2009 (Cth)*, s. 15A(1).

¹⁰ Australian Retailers Association (ARA), 'ARA welcomes industrial relations reforms, with a hard-fought win on casual employment', *Media Release*, 21 December 2021, www.retail.org.au/post/ara-welcomes-industrial-relations-reforms-with-a-hard-fought-win-on-casual-employment (accessed 10 January 2021).

¹¹ Ms Tamsin Lawrence, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry (ACCI), *Committee Hansard*, 21 April 2021, p. 13.

¹² The Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41*, p. 3.

4.14 Similarly, the Australian Council of Trade Unions (ACTU) submitted that employers can now 'effectively designate what would otherwise be regular full-time and part-time jobs to casual status'.¹³

4.15 The Principal Lawyer at Maurice Blackburn Lawyers, Mr Kamal Faroque, told the committee that many casuals are not 'truly in a circumstance of casual employment':

I've seen many instances of this, quite frankly: people are working 38 hours plus, week in and week out, styled as casuals. They're not casuals. I don't think under any proper analysis of the substance of that relationship are those workers casuals, and they shouldn't be characterised in that way.¹⁴

4.16 The Victorian State Government submitted that there was 'clearly a need to clarify and codify work status' but that the 'definition of casual employment approved does not meet that objective'. It argued that, in consequence:

... some employers will be even more likely to engage casual workers, knowing that by simply applying the casual label they can shift risk and engage workers on an insecure basis, regardless of whether a permanent employee is required.¹⁵

4.17 Professor Peetz submitted that:

On the surface, this might seem fair enough, as casual jobs are meant to be flexible, and there cannot be an ongoing commitment. But that is not what the data on 'casual employment' tell[s] us.¹⁶

4.18 Professor Peetz conducted an analysis of 'previously unpublished data' from the ABS. He argued that, while his analysis is of statistics collected before 2013, 'since the proportion of employees without leave entitlements has been relatively stable since the mid-1990s, the results remain relevant'.¹⁷

Professor Peetz found that:

- about 33% of 'casuals' worked full-time hours;
- about 53% had the same working hours from week to week, and were not on standby;
- about 56% could not choose the days on which they worked;
- almost 60% had been with their employer for more than a year; and
- about 80% expected to be with the same employer in a year's time.

Very few (6% of 'casuals') worked varying hours or were on standby, had been with their employer for a short time, and expected to be there for a short time.

¹³ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 7.

¹⁴ Mr Kamal Faroque, Principal Lawyer, Maurice Blackburn Lawyers, *Committee Hansard*, 20 April 2021, p. 59.

¹⁵ Victorian Government, *Submission 16*, p. 28.

¹⁶ Professor Peetz, *Submission 88*, p. 5.

¹⁷ Professor Peetz, *Submission 88*, p. 5.

As a result, Professor Peetz concluded that there are 'many reasons to question' the characterisation of employees without leave entitlements as 'genuinely flexible casual' workers, arguing that it 'is better to just call them "leave-deprived" employees'.¹⁸

Casual conversion

4.19 As part of the 2021 Fair Work Act amendments, all employers must now offer to convert a casual employee to on-going full-time or part-time employment if the employee:

- has been employed for 12 months; and
- has worked a regular and systematic pattern of hours which without significant adjustment the employee could continue to work as a permanent.¹⁹

4.20 The legislation contains some exemption clauses. Small business employers are exempt from the requirement to offer conversion as are all employers if they are able to satisfy 'reasonable grounds' for not doing so, based on facts which are 'known or reasonably foreseeable' at the time of the decision not to make the offer. 'Reasonable grounds' include (but are not limited to) cases where within 12 months:

- the employee's position will cease to exist;
- the employee's required hours of work will be significantly reduced; or
- there will be a significant change in the employee's pattern of work (e.g. days or hours the employee is required to work) and those changes cannot be accommodated within the employee's available days or hours.²⁰

4.21 Workers who wish to challenge such a refusal can have the dispute conciliated through the Fair Work Commission and/or commence legal proceedings in the Federal Court of Australia, the Federal Circuit and Family Court of Australia, or an eligible state or territory court.²¹

4.22 Since 2017, most modern awards have included a model casual conversion clause—but not all did. It was estimated that, prior to the amendments, approximately two-thirds of casual employees did not have access to casual conversion provisions. To this end, the Attorney General's Department argued that the new provisions 'significantly strengthen conversion entitlements for employees' and further that they will:

¹⁸ Professor Peetz, *Submission 88*, p. 6.

¹⁹ *Fair Work Act 2009 (Cth)*, s. 66AA.

²⁰ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75*, p. 26.

²¹ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75*, p. 26.

... provide a stronger pathway to full-time or part-time employment for casual employees and ensure that employers and employees understand their obligations and entitlements at any point in time.²²

Effect on casuals

- 4.23 The legislation was commented on by a broad range of stakeholders, including industrial relations groups, academics, and other stakeholder groups.
- 4.24 The ACCI noted that the casual conversion provisions 'go further than the existing Award conversion provisions'. The previous regimes 'entitled employees to request conversion', whereas the new provisions mean 'employers have an obligation to offer conversion regardless of any employee request'.²³
- 4.25 The Australia Institute argued that the provisions will 'not likely lead to any significant reduction in the incidence of casual employment'. It highlighted the exclusionary nature of the legislation, in that a significant percentage of casual workers will be unable to request conversion due to the stipulations placed on eligibility. It further argued that, even if an employee does meet all preceding conditions 'the time and expense involved' in arbitration options will be 'daunting' to most casual employees.²⁴
- 4.26 Ms Donna Tolhurst, a retail worker who gave evidence in a private capacity, said that casual workers do not typically have the financial means to go to court and that they will 'just give up'.²⁵
- 4.27 The National Foundation for Australian Women (NFAW) similarly expressed doubt that the amendments will lead to any meaningful change for casuals, submitting that they are 'less than inadequate'. It pointed out the inconsistency between pursuing arbitration and ultimately pursuing greater job security:
- The likelihood of any casuals applying, or having applied for conversion, and having been refused, then pursuing the unreasonableness of a refusal through the workplace dispute resolution process and on to the FWC is vanishingly small if what they are seeking is increased employment security.²⁶
- 4.28 The new legislation rolled back existing casual conversion provisions that were existent in many modern awards, which, in some cases, were superior. National Secretary of the Australian Manufacturing Workers' Union (AMWU)

²² Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75*, pp. 25–26.

²³ ACCI, *Submission 71*, [p. 18].

²⁴ Centre for Future Work, *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, p. 7.

²⁵ Ms Donna Tolhurst, Private Capacity, *Committee Hansard*, 13 April 2021, p. 47.

²⁶ National Foundation for Australian Women (NFAW), *Submission 11*, pp. 30–31.

Mr Steve Murphy gave evidence on the effect of the new legislation on the existing manufacturing award, calling it a 'significant step backwards' for employees. He explained:

In our award, the conversion was there by election of the worker after six months. The change that was made now delays that for a period of 12 months and makes it much more difficult, particularly for workers who are in the food industry who might be seasonal for 11 months of the year but then there is no work for one month; they now forgo that right to elect to go permanent.²⁷

Likely uptake

4.29 The ABS told the committee that at this stage it is too early to assess the effectiveness of the legislation and were therefore unable to provide any data on the uptake rate. However, it did confirm that:

The ABS is in the early stages of developing additional questions for the Characteristics of Employment supplement on casual conversion (converting from casual to non-casual employee jobs with an employer), questions to better understand people working as casuals for longer periods of time.²⁸

4.30 To gauge the likely uptake rate of the provisions, the committee asked several inquiry participants to provide numbers of offers made to casuals to convert, and numbers who had actually converted. Some responses are detailed below.

Box 4.1 Casual conversion – information from employers

Spotless – cleaning contractor

'Spotless confirms that 515 offers were made to casual employees who were assessed as meeting the requirements to convert to full-time or part-time employment in accordance with the casual conversion provisions in the National Employment Standards (NES). As a percentage of Spotless's casual workforce (4.6 per cent) of employees were made an offer to convert from casual to full-time or part-time employment under the NES process and 68 per cent of employees who were offered conversion accepted that offer'.²⁹

PwC – multinational professional services firm

'PwC offered 23 casual employees permanent positions and one employee accepted that permanent position. Since the initial review, ongoing reviews occur monthly. Outside of the casual conversion process described above, an additional

²⁷ Mr Steve Murphy, National Secretary, Australian Manufacturing Workers' Union (AMWU), *Proof Committee Hansard*, 3 November 2021, pp. 8–9.

²⁸ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021 (received 12 January 2022), p. 2.

²⁹ Spotless, Answer to Questions on Notice, 8 December 2021, Canberra, [p. 2].

85 casual employees also accepted the opportunity to convert to a permanent position (81 into permanent full-time positions, one into permanent part time positions) in the calendar year 2021'.³⁰

Australian public education institutions

Just five of 2 300 casual staff at the University of Newcastle were converted to full-time employment in 2021.³¹

At the University of Melbourne, where during semester up to 47 per cent of the University's academics are casuals, just 18 were offered casual conversions.³²

At the University of Sydney, 69 of 4 173 casual staff have been offered a conversion.³³

The New South Wales Teachers Federation and Australian Education Union informed the committee that of 7 700 casual teachers at NSW TAFE, not a single casual has been offered a conversion since passage of the casual conversion laws.³⁴ TAFE NSW declined invitations to appear before the committee.

Commonwealth Bank of Australia (CBA)—in response to the Financial Sector Union (FSU)

The Financial Sector Union presented evidence to the committee that, of the CBA's 419 casuals, 38 were offered conversion and only four converted to a permanent employment arrangement—a rate of roughly one per cent.

In response, Mr Andrew Culleton, Executive General Manager, Group People Services of CBA clarified that 'our conversion rate for casuals, going back nine years, is actually 45 to 46 per cent. More recently, if you look over the last three-year period, our casual conversion rate is 36 per cent'.³⁵

However, for the past 12 months Mr Culleton said of the 38 people identified to be eligible for conversion, only 4 (roughly 8 per cent) took the offer up. When

³⁰ PwC, Answers to questions on notice, public hearing, 8 December 2021, Canberra and Answers to written questions on notice from Senator Sheldon (received 20 January 2022), p. 1.

³¹ Dr Damien Cahill, Secretary, NTEU NSW, *Proof Committee Hansard*, 7 December 2021.

³² Dr Julie Wells, Vice-President, Strategy and Culture, University of Melbourne, *Proof Committee Hansard*, 3 February 2022, p. 11.

³³ Anna Patty, 'Sydney University denies full-time work to thousands of casuals', *The Sydney Morning Herald*, 9 September 2021, www.smh.com.au/business/workplace/sydney-university-denies-full-time-work-to-thousands-of-casuals-20210909-p58qc1.html (accessed 3 February 2022).

³⁴ Mr Angelo Gavrielatos, President, NSW Teachers Federation, and Ms Susan Hopgood, Federal Secretary, Australian Education Union, *Proof Committee Hansard*, 3 November 2021.

³⁵ Mr Andrew Culleton, Executive General Manager, Group People Services, Commonwealth Bank of Australia (CBA), *Proof Committee Hansard*, 8 December 2021, p. 35.

asked why the rate differed so significantly, Mr Culleton referred to the recent casual conversion provision requirements and said:

I think the interplay is between the fact that we possibly have already gone through this process with casuals, and so this new process from the legislation was an obligation we had to do at the time, and you can't separate it from our process that's part of our enterprise agreement.³⁶

The Financial Sector Union also revealed that just 39 of 466 casual workers at ANZ Bank were offered a casual conversion.³⁷

- 4.31 The National Retail Association anticipated that the uptake of 'employer offers' would likely be low. It reported that many of its members estimate that casual employees 'simply prefer the comparatively higher rates of pay offered by casual employment'.³⁸
- 4.32 The Attorney-General's Department said that as of 3 February 2022, it did not have any data on the number or proportion of casuals who had been offered the opportunity to convert to permanent employment under the new laws. The department did note there had been 21 applications to the Fair Work Commission regarding conversion disputes, as of early January 2022, and zero applications made to the Federal Court's small claims jurisdiction. The department was unable to clarify what proportion of the 21 applications had been for a binding arbitration decision.³⁹
- 4.33 Further discussion and options for reform regarding the Fair Work Act reforms are contained in Chapter 7.

Key statistics and trends

- 4.34 This section provides brief statistics and trends on:
- the prevalence of casual work
 - the demographic characteristics of the casual workforce, including: gender and age composition; migration status; and,
 - the industries and businesses most affected.
- 4.35 Casual employees comprise a substantial part of the Australian workforce. The ABS provides estimates of this group in its quarterly detailed Labour Force

³⁶ Mr Culleton, CBA, *Proof Committee Hansard*, 8 December 2021, p. 40.

³⁷ Ms Angela Budai, National Policy Officer, Finance Sector Union of Australia, *Proof Committee Hansard*, 8 December 2021, p. 4.

³⁸ National Retail Association, *Submission 29*, p. 6.

³⁹ Ms Lace Wang, Assistant Secretary, Safety Net Branch, Employment Conditions Division, Attorney-General's Department, *Proof Committee Hansard*, 3 February 2022, p. 18.

Australia dataset. As of August 2019, pre-pandemic, there were 2.6 million casual employees in Australia.⁴⁰

- 4.36 As previously stated, the ABS does not actually count casual employees—it counts employees without access to leave entitlements, using this as a proxy for casual employment.⁴¹ There are some limitations to this approach as it relies on employees to correctly report their entitlements.
- 4.37 A comparative examination of the ABS Labour Force Data and the Household, Income and Labour Dynamics in Australia Survey (HILDA) 2017 by Inga Laß and Mark Wooden indicated that casual employment is the most prevalent type of 'nonstandard employment' in Australia, accounting for almost one in every five workers.⁴²
- 4.38 Consistent with the ABS and HILDA estimates, the OECD's 2019 Employment Outlook report found that one in four workers in Australia were casually employed.⁴³ This is very high by international comparison. Laß and Wooden point out that, in this regard, Australia stands out, 'both because of its relatively large non-standard employment share and because of the high prevalence of casual employment within this group'.⁴⁴

Is casual work increasing?

- 4.39 The committee received evidence that quantified the rate of casualisation in the Australian workforce and addressed whether or not this rate has been increasing. The Australian Industry Group (Ai Group) and the ACCI, for example, both submitted categorically that the Australian workforce is not being increasingly casualised.⁴⁵
- 4.40 **Figure 4.1** illustrates the casual share of total employees in Australia from 1992 to 2021 as reported by the ABS. When analysing the data, the trend in casual employment depicted appears to contrast with claims that casual work is on the rise in Australia. As a percentage of all employees, casual work increased

⁴⁰ Geoff Gilfillan, 'COVID-19: Impacts on casual workers in Australia—a statistical snapshot', *Parliamentary Library Research Paper Series*, 2019-20, p. 1, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/7262636/upload_binary/7262636.pdf (accessed 10 January 2022).

⁴¹ Professor Peetz, *Submission 88*, p. 5.

⁴² Inga Laß and Mark Wooden, 'Trends in the prevalence of non-standard employment in Australia', *Journal of Industrial Relations* 2020, Vol. 62(1), pp. 3–4, <https://journals.sagepub.com/doi/pdf/10.1177/0022185619873929> (accessed 4 January 2022).

⁴³ OECD, 'OECD Employment Outlook 2019', *The Future of Work*, 25 April 2019, p. 60, www.oecd-ilibrary.org/employment/oecd-employment-outlook-2019_9ee00155-en (accessed 4 January 2022).

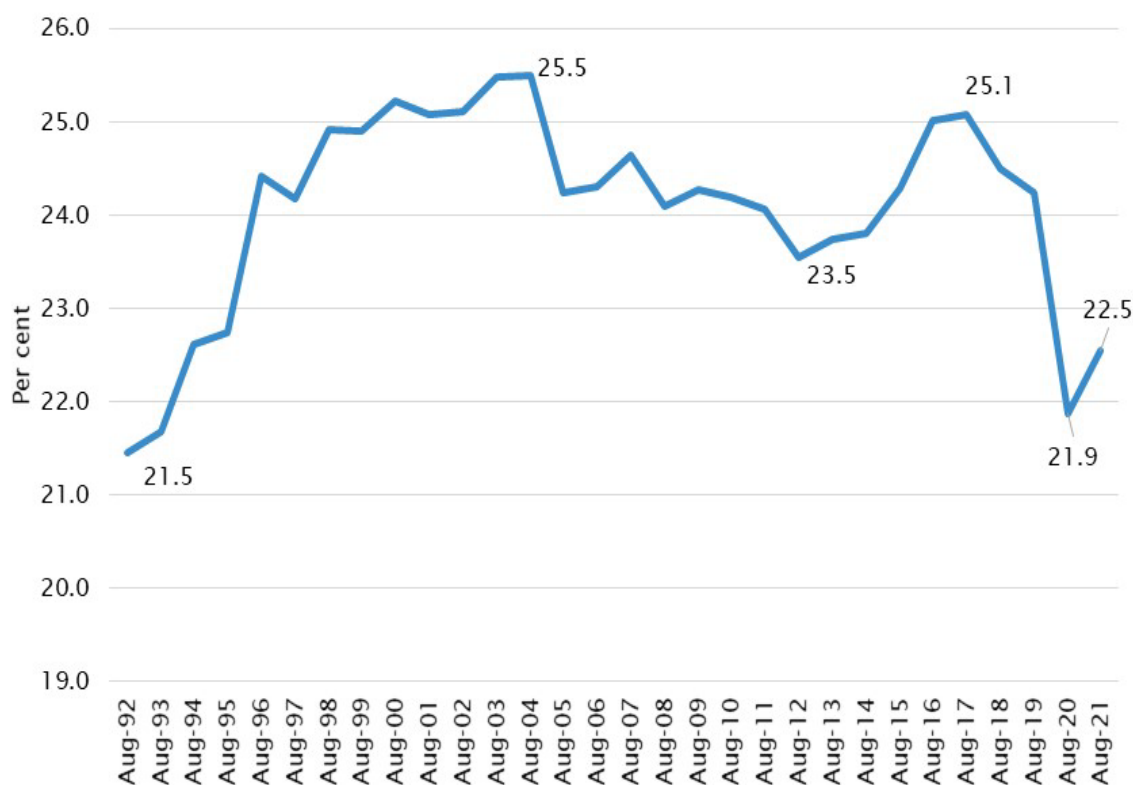
⁴⁴ Laß and Wooden, 'Trends in the prevalence of non-standard employment in Australia', *Journal of Industrial Relations* 2020, Vol. 62(1), p. 26.

⁴⁵ ACCI, *Submission 71*, p. [8]; Ai Group, *Submission 77*, p. 6.

dramatically from 1992 to 2002, slightly from 23.5 per cent in August 2012 to 25.1 per cent in August 2017 but has since fallen marginally to 24.4 per cent in August 2019, pre pandemic.⁴⁶

- 4.41 As a result of the COVID-19 pandemic, casual work decreased significantly to 21.9 per cent. The pandemic's effect on casual work is discussed in greater detail in Chapter 7.

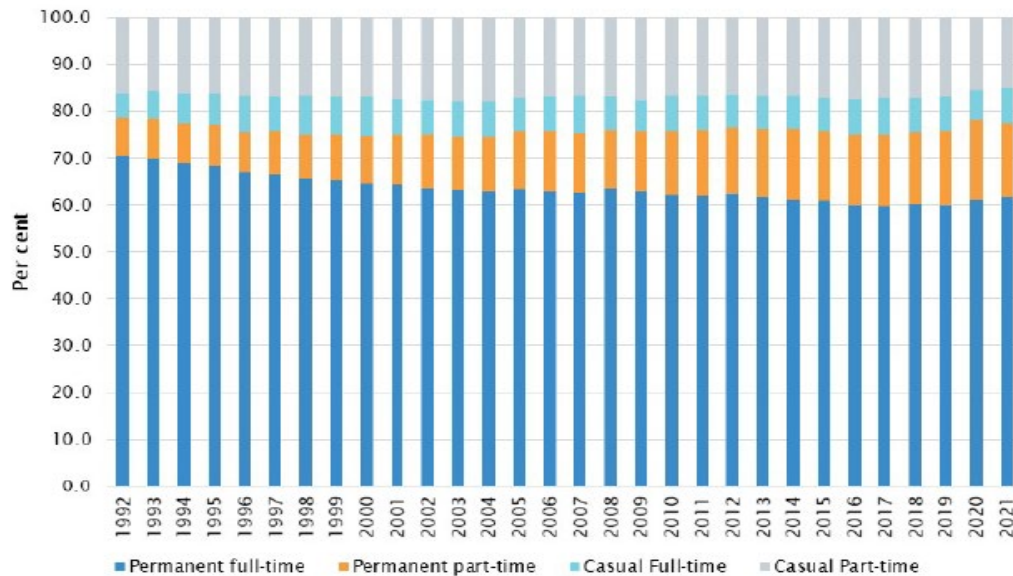
Figure 4.1 Casual employee share of total employees, 1992–2021



Sources: 1992 to 2003—ABS, *Australian Labour Market Statistics*, ABS, Canberra, various years, Table 1; 2004 to 2020—ABS, *Characteristics of Employment, Australia*, ABS, Canberra, December 2020, Table 1c.3; 2021—ABS, *Labour Force, detailed*, ABS, Canberra, October 2021, Datacube EQ04 (original data).

⁴⁶ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series*, 2021-22, 24 November 2021, Canberra, p. 12, www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/pubs/rp/rp2122/TrendsCasualEmployment (accessed 10 January 2022).

Figure 4.2 trends in the number of casual and permanent employees, 1992–2021



Sources: 2004 to 2020—ABS, *Characteristics of Employment*, ABS, Canberra, December 2020, Table 1c.3; 2021—ABS, *Labour Force, detailed*, ABS, Canberra, October 2021, Datacube EQ04 (original data).

- 4.42 When compared to permanent employment, from 2004 to 2012, casual employment grew more slowly than permanent employment, but from 2012 to 2017 this trend was reversed, with the growth in casual employment maintaining an annual average growth rate of 2.9 per cent, compared with 1.2 per cent for permanent employment.⁴⁷
- 4.43 Laß and Wooden noted in their research that 'arguably the most striking feature of the trend in the casual employment share is how little has changed since 2001' but concede that in recent years it has been rising, 'albeit modestly'.⁴⁸
- 4.44 Dr Elsa Underhill, an academic from Deakin University, told the committee that whilst 'the percentage of casuals seems to have stabilised', the 'composition' of casual employment has not. Specifically, people who previously would have been employed as a permanent worker are now continually employed as casuals:

So casual employment, in a sense, has become more acute even though the numbers may not reflect that.⁴⁹

⁴⁷ Geoff Gilfillan, 'Trends in use of non-standard forms of employment', *Parliamentary Library Research Paper Series*, 2018-19, p. 4, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/NonStandardEmployment (accessed 23 September 2021).

⁴⁸ Laß and Wooden, 'Trends in the prevalence of non-standard employment in Australia', *Journal of Industrial Relations* 2020, Vol. 62(1), p. 13.

⁴⁹ Dr Elsa Underhill, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 3.

Demographics

Gender and age

4.45 Casual employment is often seen as an entry point into the workforce, as such young people form a significant share of the casual workforce.⁵⁰ In 2016 the all-age average for casual work was 25 per cent. However close to 76 per cent of workers aged 15 to 19 were employed in casual roles, along with almost 41 per cent of workers aged 20 to 24.⁵¹

4.46 Today's casual workforce shows a similar age split. As at August 2020:

- 40.1 per cent of casual workers were aged 15 to 24 years—compared with only a 9.7 per cent share of permanent employees.
- 53.7 per cent of all employees aged 15 to 24 years are casuals—compared to 15.3 per cent for those ages 25 to 44 and 16.0 per cent for 45 years and older.⁵²

Figure 4.3 Permanent and casual employees by age, August 2020

Age	Permanent employees		Casual employees		Total employees	
	'000	Share of total (%)	'000	Share of total (%)	'000	Casual prevalence (%)
15 to 24 years	787.2	9.7	914.6	40.1	1,702.3	53.7
25 to 44 years	4157	51.0	753.1	33.0	4,911.1	15.3
45 years plus	3,204.8	39.3	611.7	26.8	3817	16.0
TOTAL	8,145.6	100.0	2,283.1	100.0	10,428.2	21.9

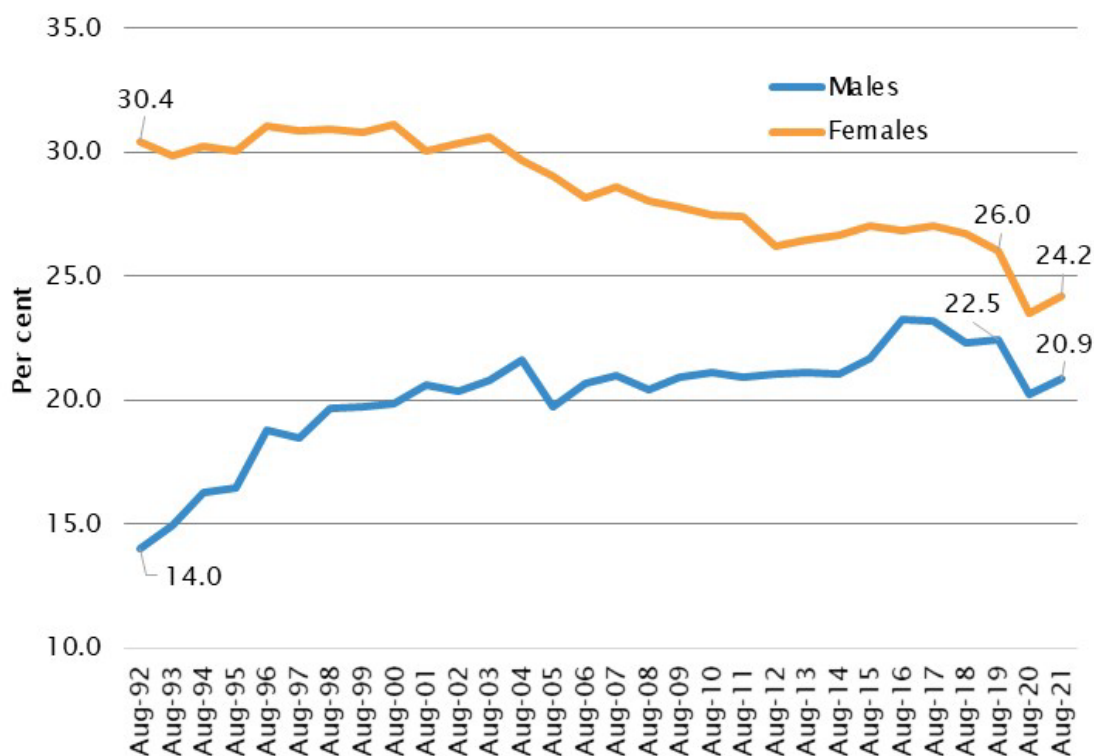
Source: ABS, *Characteristics of Employment, Australia*, ABS, Canberra, using TableBuilder.

4.47 The incidence of casual employment is higher among females than males. In 2019, 26 per cent of all female employees were in casual jobs compared with a corresponding figure of 22.5 per cent for males. Whilst females have persistently represented a larger proportion of the casual workforce, this gap has gradually been narrowing—illustrated in **Figure 4.4**.

⁵⁰ Victorian Government, *Submission 16*, p. 20.

⁵¹ The National and State Youth Peaks, *Submission 63*, p. 1.

⁵² Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series, 2021-22*, 24 November 2021, Canberra, pp. 20–21.

Figure 4.4 Casual employee share of total employees by gender, 1992–2021

Sources: 1992 to 2003—ABS, *Australian Labour Market Statistics*, ABS, Canberra, various years, Table 1; 2004 to 2020—ABS, *Characteristics of Employment, Australia*, ABS, Canberra, December 2020, Table 1c.3; 2021—ABS, *Labour Force, detailed*, ABS, Canberra, October 2021, Datacube EQ04 (original data).

- 4.48 Contributing to this trend is the strong growth in female permanent part-time employment which has increased a remarkable 172 per cent between 1992 and 2013, compared with growth in female casual part-time employment which increased 44 per cent over the same duration. Both trends have remained consistent to the present day.⁵³ The NFAW submitted that this difference could be accounted for by the fact that 'part time work [is] less likely to be available in male dominated than female dominated or mixed occupations'.⁵⁴
- 4.49 The increase in male casual employment on the other hand has likely been caused by the combination of increasing casualisation of traditional industries such as construction and manufacturing, and more men seeking employment in service industries, which are characterised by casual work, to supplement full-time earnings.⁵⁵

⁵³ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series*, 2021-22, 24 November 2021, Canberra, p. 13.

⁵⁴ NFAW, *Submission 11*, p. 9.

⁵⁵ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series*, 2021-22, 24 November 2021, Canberra, pp. 1–2.

4.50 Women aged 15 to 34 were the most likely to be employed casually, at 36.3 percent, compared to men, where those aged 65 years or older were most likely to be employed casually, at 38.1 per cent.⁵⁶

Migration and visa status

4.51 Australia has one of the highest temporary worker migration rates of any of the world's democracies—in pre-pandemic years varying between 8 and 10 per cent of the labour force. In 2019, 48 per cent of workers on temporary visas were full-time employees with the remaining 52 per cent employed in casual and part-time roles.⁵⁷

4.52 Unfortunately, it is difficult to exactly quantify the number and percentage of migrants employed in casual roles. However, it is possible to infer that the rate of casualisation across this cohort is relatively high. For example, temporary visa holders are predominantly employed in hospitality, aged-care and agriculture, which are all highly casualised sectors.⁵⁸ Some visa conditions also incentivise casual work due to caps on the legal amount of hours that are allowed to be worked; such as for international students, who according to their visa are legally only allowed to work up to 40 hours per fortnight.⁵⁹

Industries and businesses most affected

4.53 Casual workers are most highly concentrated in low-wage sectors, but they are now increasingly found throughout most industry sectors.⁶⁰ A breakdown of casualisation by industry was submitted by Ai Group (**Figure 4.5** below). The hospitality and retail sectors employ by far the largest number of casual workers—together accounting for almost half of all casual employees.⁶¹ Although the proportion of workers who are casual is also very high in agriculture, arts and recreation, and administrative services.

⁵⁶ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series, 2021-22*, 24 November 2021, Canberra, p. 13.

⁵⁷ Migrant Workers Centre, *Submission 26*, p. 13.

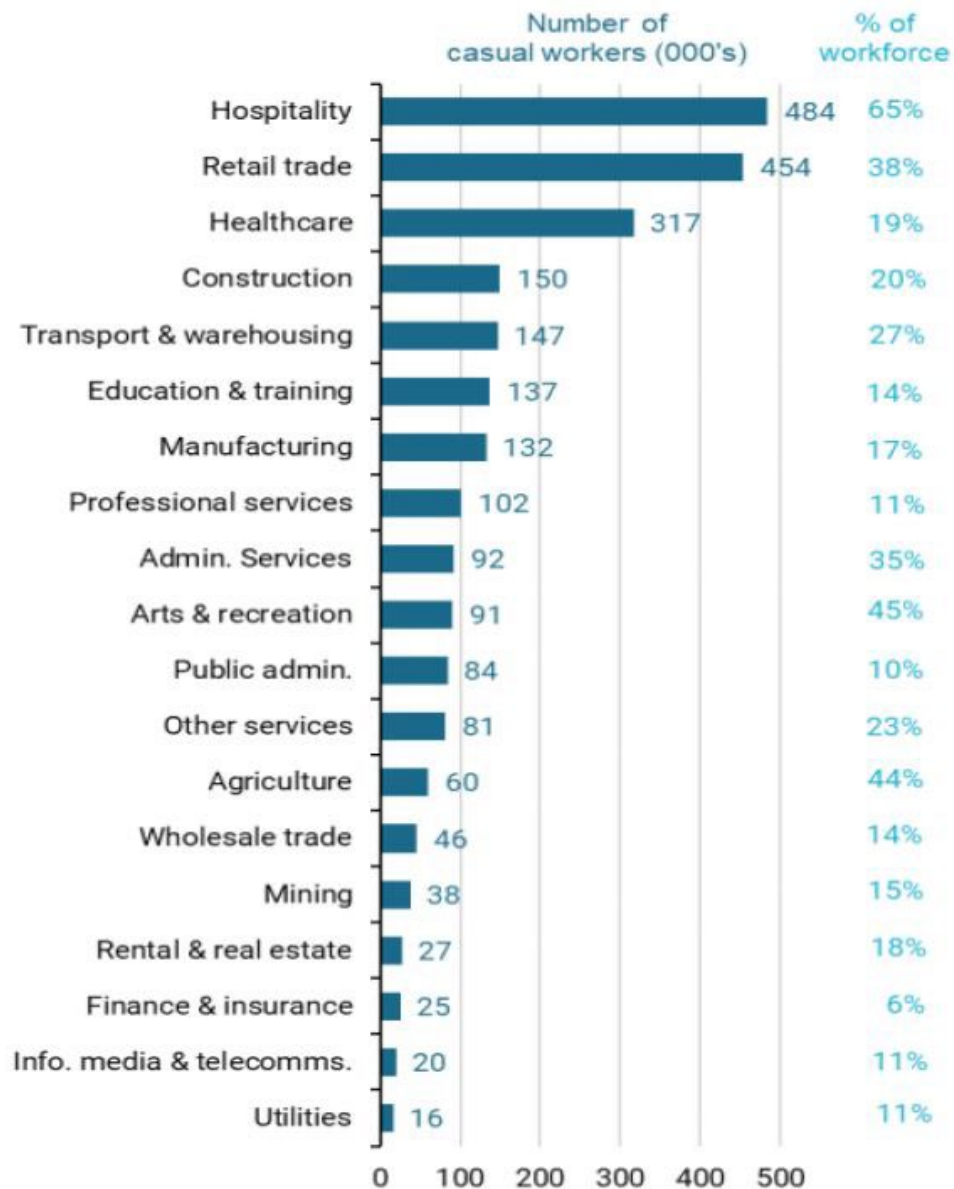
⁵⁸ Australian Institute of Employment Rights, *Submission 6*, p. 14.

⁵⁹ Migrant Workers Centre, *Submission 26*, p. 14.

⁶⁰ Associate Professor Angela Knox & Associate Professor Susan Ainsworth, *Submission 35*, p. 1.

⁶¹ The incidence of casual work in the hospitality and retail sectors is expanded upon and discussed in Chapter 5.

Figure 4.5 Number and share of casual employees, Feb 2021



Source: ABS, *Detailed Labour Force Australia*, February 2021.

Source: Ai Group, *Submission 77*, p. 7.

- 4.54 It is worth noting that casual work is not the domain only of low-skilled, low-paid occupations. The broader education sector in Australia relies heavily on casual and fixed-term employment. In Victoria, for example, a record 68.7 per cent of staff were employed as casuals or on short-term contracts in 2020.⁶²
- 4.55 There is also a significant difference in the rate of casualisation based on business size. In 2018, over 80 per cent of casuals worked for Small and Medium Enterprises (SMEs):

⁶² NFAW, *Submission 11*, p. 11

- Over 51.4% of casuals work for small businesses with less than 20 employees;
- Over 30.7% of casuals work for businesses with 20-99 employees; and
- Less than 17.9% of casuals work for businesses with 100 or more employees.⁶³

Extent of job insecurity for casual workers

4.56 It is not possible to strictly measure whether casual work is insecure. However, evidence received by the committee regarding the common characteristics of casual workers and individual submitter testimonies support the proposition that casual workers are indeed more insecure.

4.57 HILDA tracks a number of criteria that are useful for assessing workers' feelings about the security of their employment.⁶⁴ In 2015 it found that casual workers were:

- 'slightly more satisfied' with their level of pay than permanent employees;
- 'less satisfied' with their level of job security;
- 'less satisfied' with their 'hours worked';
- 'less satisfied' with their level of access to training and skill development; and
- almost *twice as likely* to be looking for another job as permanent employees.⁶⁵

4.58 The committee received 60 submissions from individuals who described various experiences with insecure work. The submissions from casuals were at odds with the virtues of the 'flexibility' of casual work. Examples of these submissions are outlined in **Box 4.1** below.

Box 4.2 Casual worker testimonies

Of the 60 submitters:

- 22 indicated that they 'have not had access to paid leave even though [they] would like it.'
- 16 indicated that they 'had [their] hours or pay cut because [they have] stood up for [themselves] in the workplace'.

'Brett'—comments on the fallacy of flexibility in casual work

'It is so infuriating to hear business lobbyists and certain media types continually

⁶³ Geoff Gilfillan, 'Characteristics and Use of Casual Employment in Australia', *Parliamentary Library Research Paper Series, 2017-18*, 19 January 2018, Canberra, p. 10, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5742396/upload_binary/5742396.pdf, (accessed 10 January 2022).

⁶⁴ NFAW, *Submission 11*, p. 14.

⁶⁵ Geoff Gilfillan, 'Characteristics and use of casual employees in Australia', *Parliamentary Library Research Paper Series, 2017-18*, 19 January 2018, Canberra, pp. 13–14.

lie that the majority of workers somehow want the "flexibility" of "casual" work. Casualization and labour hire are a blight on the Australian society and our once proudly held notion of a "fair go".⁶⁶

'Dave' – had a negative experience with casual work

'I now see casual employment as an attempt by big business to create second class, landless, citizens'.⁶⁷

Kristie – a full-time casual teacher for 6 years

'Teachers, with degree qualifications, are working day to day casual or on temporary contracts for literal YEARS on end, not knowing what we are doing from one day to the next. Hopefully we get a contract, and then we spend time fighting others for our jobs each year, or with the everlasting threat of the permanent position we're covering going to someone else because of the weird, nepotistic way our system works. As casual teachers, we only have two pay grades, and while the casual rate is good, we are restricted to the school terms as to days we are able to work, and then we need to be engaged for every single available day to reach anything like a decent yearly salary.'⁶⁸

Casuals earn less

- 4.59 The lack of paid leave entitlements for casual workers contributes significantly to the precarity of their employment. Despite that fact that casual employees are supposed to receive loadings of 25–30 per cent to compensate for a lack of leave provisions, casual employees earn significantly less on average than permanent employees. That is, they earn *both* a lower weekly wage *and* lower hourly rates.
- 4.60 The OECD, for example, reports that there are marked wage gaps between workers on temporary or casual contracts and those on otherwise comparable 'permanent' employment contracts in almost all countries for which there are suitable data.⁶⁹
- 4.61 **Figure 4.6** below provides data on median hourly earnings from 2004 to 2020 for employees with, and without, paid leave; and **Figure 4.7** below charts the median hourly wage gap between permanent and casual employees over the

⁶⁶ Brett, *Submission 149*, [p. 1].

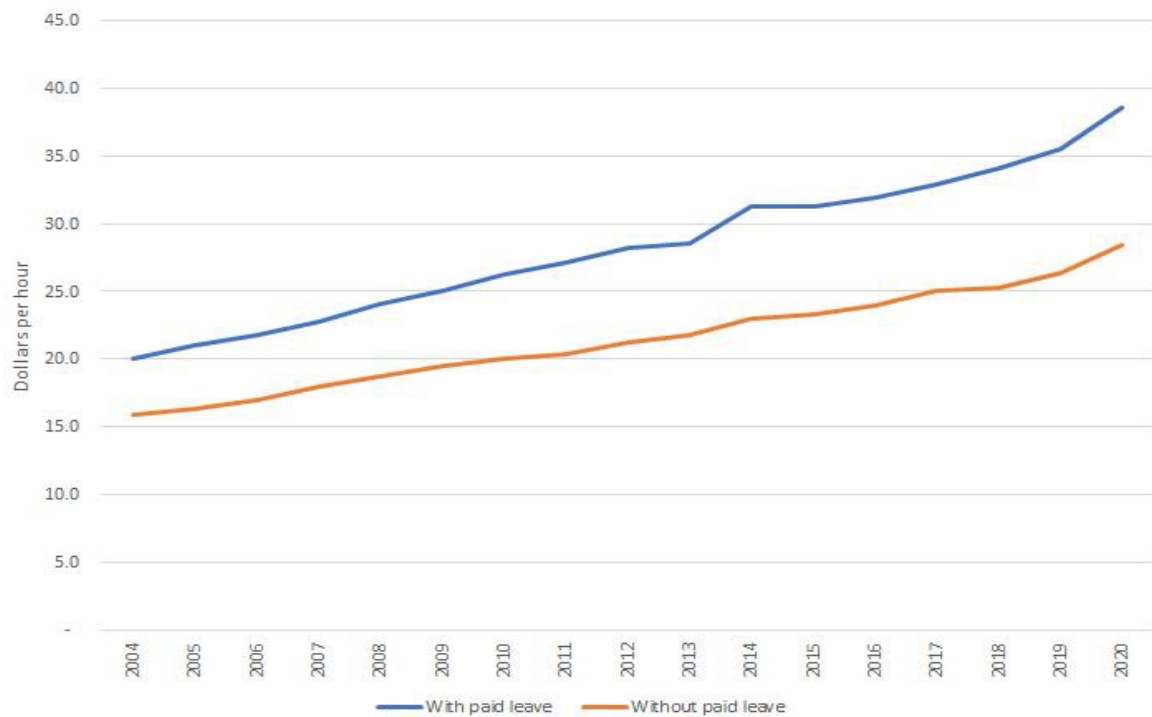
⁶⁷ Dave, *Submission 140*, [p. 1].

⁶⁸ Kristie, *Submission 143*, [p. 1].

⁶⁹ Irma Mooi-Reci and Mark Wooden, 'Casual employment and long-term wage outcomes', *Human Relations*, Vol. 70(9), p. 1065, <https://journals.sagepub.com/doi/pdf/10.1177/0018726716686666> (accessed 10 January 2022).

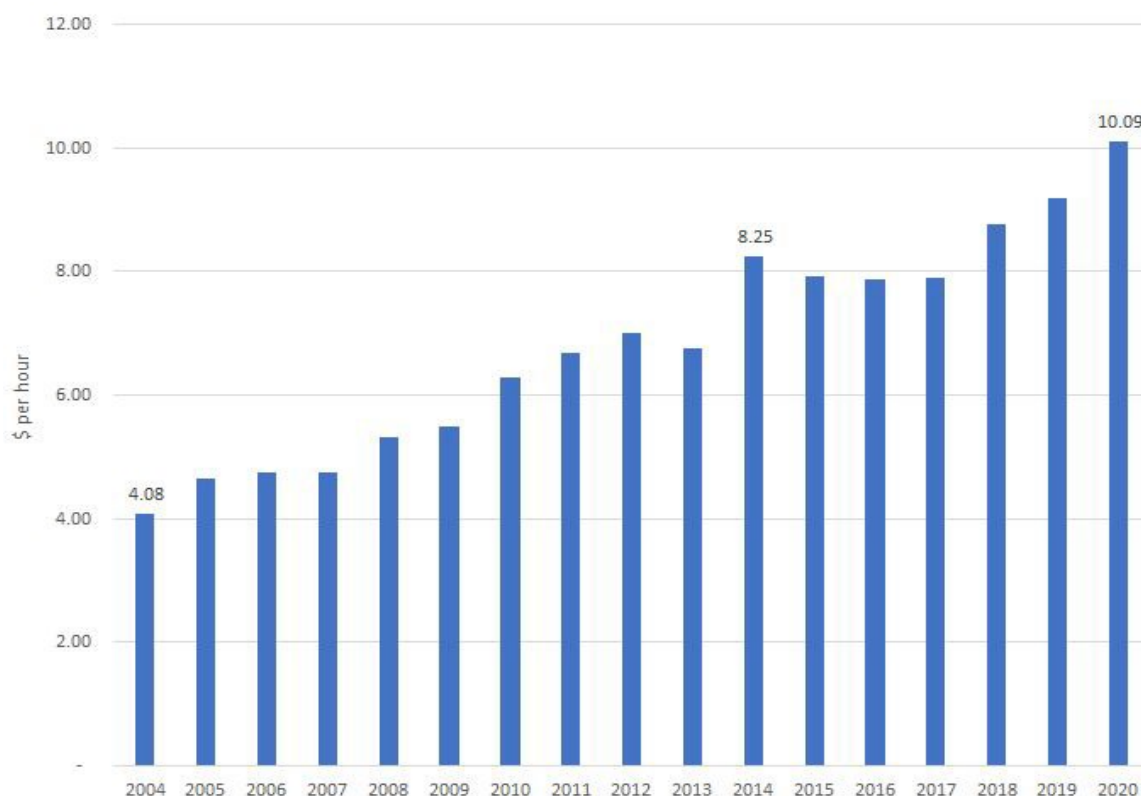
same period. Hourly earnings provide a better comparison than weekly earnings, as casuals typically work fewer hours.

Figure 4.6 Median hourly earnings, 2004 to 2020



Source: ABS, *Characteristics of Employment*, Table 1b.2 (Parliamentary Library calculations).

Figure 4.7 Median hourly wage gap between permanent and casual employees, 2004 to 2020



Source: ABS, *Characteristics of Employment*, Table 1b.2 (Parliamentary Library calculations).

4.62 The data shows that, in August 2019, median hourly earnings for permanent employees in Australia were \$35.50. For casuals they were \$26.30; a difference of \$9.19 per hour.⁷⁰ In addition, **Figure 4.7** shows that the hourly wage gap between permanent and casual employees is *widening*, having grown from \$4.08 per hour in 2004 to \$10.09 per hour in 2020.

4.63 The NFAW submitted that casual loadings do not provide 'adequate compensation' for a lack of leave entitlements, referring to Fair Work Commission findings that such loadings do not take into account a range of 'detriments which the evidence has demonstrated may attach to the absence of such benefits', such as:

- going to work sick;
- not taking leave due to fears about endangering future employment;
- the inability to 'properly balance' work, personal and caring responsibilities;
- last minute changes to working hours;
- 'sudden loss of what had been regular work', with no notice;
- the 'lack of a career path';
- reduced access to training and lower workplace participation;

⁷⁰ Note: Data for 2019 is used as it likely to provide a more reliable indication of trends. This is because the 2020 figure is distorted by the JobKeeper payment.

- 'poorer health and safety outcomes'; and
 - an 'inability' to secure a home loan or other finance.⁷¹
- 4.64 In a report on casual employment, originally published in November 2020, and submitted to this inquiry, Professor Peetz contended that casual loadings do not 'actually guarantee [casual workers] a higher hourly rate of pay'.⁷²
- 4.65 Professor Peetz' research pointed to 'a wage penalty' for low-wage casual in Australia, who are generally offered lower base-rates than permanent employees, 'given their skills, experience and the like':
- This may reflect illegal underpayment by some employers who decline to pay the casual loading. Or they may be legally paid the loading but be placed on a lower base pay (perhaps no more than the award rate) by employers than they otherwise would be. The latter is consistent with, but not proven by, the fact that (amongst non-managerial adult employees) 38% of employer-described 'casuals' are paid only the award rate, while this is the case for just 12% of other employees.⁷³
- 4.66 Analysing data from multiple ABS employee surveys conducted between 2006 and 2013,⁷⁴ Professor Peetz reported that *less than 50 per cent* of 'casual' employees surveyed⁷⁵ reported that they received a casual loading. A further 13 to 18 per cent of those surveyed 'did not know' if they received a casual loading.⁷⁶

Casuals are disempowered

- 4.67 Far from providing employees with flexibility and agency, the committee heard evidence that casual work promotes disempowerment.
- 4.68 According to Professor Peetz, 'low power' is the key feature in the profile of an insecure employee, and:
- ... the underlying power of workers has decreased substantially, and this decline in power is equivalent to a loss of control and a rise in insecurity: an increase in control for one party leads to an increase in insecurity by the other party.⁷⁷
- 4.69 Professor Peetz argues that this is the case with casual workers, who he characterised as 'cheap, stable, disposable and easily controlled', particularly in

⁷¹ NFAW, *Submission 11*, p. 28.

⁷² Appendix 1, Professor Peetz, *Submission 88*, p. 30.

⁷³ Appendix 1, Professor Peetz, *Submission 88*, p. 30.

⁷⁴ For a full breakdown of the methodology, see Appendix 1, Professor Peetz, *Submission 88*, pp. 30–33.

⁷⁵ Employees without leave entitlements.

⁷⁶ Appendix 1, Professor Peetz, *Submission 88*, p. 34. Results varied between surveys, with the average figure being around 15 per cent.

⁷⁷ Professor Peetz, *Submission 88*, p. 15.

their relationship with their employers. The uneven power dynamic emboldens employers' ability to indiscriminately 'hire and fire'.⁷⁸

- 4.70 The Victorian Government submitted that casual employees have little agency regarding their own working arrangements for fear of penalisation from management:

Concern about reductions in shifts can prevent casual workers from raising concerns about health and safety and underpayments or asking for flexibility in their working arrangements. Rostering arrangements can be used as a penalty for raising such issues, including rostering across greater numbers of days, at unfavourable times or for shifts of unfavourable duration.⁷⁹

- 4.71 This concern was also relayed to the committee by Mr Darcy Moran, a casual who has worked in the hospitality sector for 15 years. Mr Moran underscored the helplessness innate in casual work:

The precarious nature of the work makes it extremely hazardous for employees to challenge inept, corrupt or abusive managers. When you're a casual employee, you don't need to go through a dismissal process; you just stop being rostered, which means you don't have reasonable recourse and you don't feel that you can invoke regulation or support.⁸⁰

- 4.72 The ACTU asserted that such disempowerment is further intensified by the fact that casual work is often experienced by those in our workforce with the least bargaining power—women, young people, and migrants. These demographics are less likely to be aware of, or to have the means to enforce their rights and entitlements.⁸¹

- 4.73 Miss Jorja Hickey, who gave evidence in a private capacity, agreed that casual work allows employers to take advantage of vulnerable cohorts. Young people, for example:

... don't understand what they are entitled to, what award they should be on, if superannuation is actually being paid into their account, or if tax is being deducted from their pay. Securing a job is difficult, and even when you are employed you are taken advantage of.⁸²

- 4.74 Dr Katy MacDermott who gave evidence on behalf of the NFAW said that women in precarious work are 'often the victims of power imbalance' and can become entrenched there because of it:

People in precarious and insecure work tend not to have any power; they tend to be on the wrong end of that. That is a self-perpetuating mechanism.

⁷⁸ Professor Peetz, *Submission 88*, p. 8.

⁷⁹ Victorian Government, *Submission 16*, p. 10.

⁸⁰ Mr Darcy Moran, Member, Hospo Voice, *Committee Hansard*, 20 April 2021, p. 26.

⁸¹ ACTU, *Submission 98*, p. 6.

⁸² Ms Jorja Hickey, Private capacity, *Committee Hansard*, 20 April 2021, p. 21.

As you've noticed, once you become a precarious worker, you tend to be recycled in that position again and again because it's very difficult to move structurally up into the system.⁸³

- 4.75 Casual employment also makes it difficult for workers to take part in industrial organising.⁸⁴ The Centre for Future Work noted that only 4 per cent of casuals are union members, compared with 14 per cent of employees overall:

And where employment is precarious, it becomes more difficult for workers to report wage theft. This is because it is harder to organise in many precarious contexts, making industrial support and advocacy less available, and because casual workers can be let go more readily, discouraging workers from speaking up.⁸⁵

- 4.76 Other consequences of casual employee's low agency include higher risk of sexual assault, harassment, and wage theft, as well as lower occupational health and safety outcomes—all of which are discussed further in Chapters 5 and 6 of this report.

⁸³ Dr Kathy MacDermott, Member, NFAW, *Proof Committee Hansard*, 16 September 2021, p. 39.

⁸⁴ Centre for Future Work, *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, pp. 16–18.

⁸⁵ Centre for Future Work, *Submission 41*, p. 7.

Chapter 5

Key sectors: retail and hospitality

- 5.1 Retail trade, and accommodation and hospitality services, account for a large proportion of all casual workers across Australia. In 2021, 2.5 million people worked on a casual basis, almost one million of those were employed in hospitality and retail.¹ With such a high concentration of casual workers, these sectors provide crucial insight into how casual work and job insecurity intersect.
- 5.2 As part of its evidence gathering, the committee heard testimony from a number of retail and hospitality workers, unions and organisations. This chapter details evidence on the positive and negative impacts of working in retail and hospital, for:
- young people and migrants;
 - wage outcomes; and
 - occupational health and safety outcomes.

Sector snapshot

Retail

- 5.3 The Australian Bureau of Statistics (ABS) categorises industries using the Australian and New Zealand Standard Industrial Classification (ANZSIC). The retail sector is primarily captured by ANZSIC Code 'G', or 'retail trade', which encompasses jobs in:
- motor vehicle and vehicle parts retailing;
 - fuel retailing;
 - food retailing, including supermarkets;
 - 'other store-based' retailing (consumer goods, pharmaceuticals, etc.); and
 - 'non-store retailing and retail commission-based buying and/or selling'.²
- 5.4 The retail sector is the single largest employer of Australians between the ages of 15 and 29. The National Retail Association (NRA) submitted that, there were approximately 1 331 700 employees in the retail sector as of February 2021. Of these:
- 197,200 were aged between 15 and 19 years;

¹ The Australian Industry Group (Ai Group), *Submission 77.1*, p. [2].

² Australian Bureau of Statistics (ABS), Australian and New Zealand Standard Industrial Classification, 2006 (Revision 2.0, published 2013), [www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1292.02006%20\(Revision%202.0\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1292.02006%20(Revision%202.0)?OpenDocument) (accessed 6 October 2021).

- 240,500 were aged between 20 and 24 years; and
- 146,500 were aged between 25 and 29 years.³

- 5.5 Due to the fact that retail offers many entry level jobs and employs a higher proportion of young people 'than most other industries', it is commonly not thought of as an industry in which to establish a career.⁴ However, many Australians consider retail their full-time and ongoing job. General Secretary of the Western Australian Branch of the Shop, Distributive and Allied Employees Association (SDA), Mr Peter O'Keeffe said that some retail workers have worked 'for years as casuals'. He reported evidence that, in a sample of 2150 casuals working for one of the biggest retailers in Australia, the average tenure of those workers was nearly three and a half years.⁵
- 5.6 The industry faces significant job precarity with 38 per cent of retail employees engaged on a casual basis.⁶ According to Bankwest Curtin Economics Centre (BCEC) employees working in the sector 'have less stability' than employees in many other sectors,⁷ and real hourly wages have only grown 2.9 per cent since 2010.⁸
- 5.7 Retail trade was heavily impacted by restrictions to combat the spread of COVID-19, experiencing payroll job losses of 4.1 per cent between 14 March and 3 October 2020.⁹ ABS labour force data from February 2020 to August 2020 shows an even bigger fall, of 5.1 per cent, over a longer period.¹⁰
- 5.8 The largest decrease in jobs was observed in the state of Victoria, which recorded 7.1 per cent less jobs than at the start of the pandemic. Other states

³ National Retail Association (NRA), *Submission 29*, p. 8.

⁴ Australian Government National Skills Commission (National Skills Commission), *Australian Jobs 2020*, p. 8, www.nationalskillscommission.gov.au/sites/default/files/2020-11/Australian%20Jobs%20Report%202020.pdf (accessed 6 October 2021).

⁵ Mr Peter O'Keeffe, General Secretary, Western Australia Branch, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 26 July 2021, pp. 35-36.

⁶ Ai Group, *Submission 77.1*, p. [2].

⁷ Bankwest Curtin Economics Centre (BCEC), *Future of work in Australia*, April 2018, p. 34, <https://bcec.edu.au/assets/BCEC-Future-of-Work-in-Australia-Report.pdf> (accessed 6 October 2021).

⁸ BCEC, *Future of work in Australia*, April 2018, p. 34.

⁹ Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series 2020-21*, 23 October 2020, Canberra, p. 14, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/COVID-19-Stat_Snapshot (accessed 6 October 2021).

¹⁰ Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series 2020-21*, p. 18. Note: this data includes February 2020, which is before COVID-19 restrictions were imposed.

affected were New South Wales with a 2.8 per cent decrease and Tasmania with 3.2 per cent decrease.¹¹

- 5.9 While job losses in the sector due to COVID were significant, data from November 2020 suggests employment in the retail trade sector has recovered, thanks to strong gains in supermarket and grocery stores, pharmaceutical and other store-based retailing. The National Skills Commission reported:

The Retail Trade industry has more than recovered from the sharp decline in employment in the first quarter of the COVID-19 impact, to record an increase in employment over the nine months to November 2020 (up by 43,600 or 3.5 per cent) and is now approaching its all time high of 1,307,200 recorded in February 2018.¹²

- 5.10 At the time JobKeeper was announced, 36.8 per cent of casuals in retail trade had been with their current employer for less than 12 months, meaning they were not eligible for the supplement.¹³

Hospitality

- 5.11 Hospitality is one of Australia's largest industries, with 817 500 workers identifying hospitality as their primary source of income, which accounts for 6.2 per cent of the total workforce.¹⁴ It is part of the broader accommodation and food services sector, which also includes some tourism occupations. ANZSIC Code 'H', 'accommodation and food services', encompasses jobs in:

- accommodation;
- food and beverage services, including restaurants, takeaways and cafes;
- pubs, taverns and bars; and
- clubs.¹⁵

- 5.12 The industry employs many young people with 45 per cent of the workforce aged 15 to 24 years, as well as older workers looking to re-enter the workforce.

¹¹ Aurin, *Employment Vulnerability in the Retail Sector*, 7 October 2020, <https://aurin.org.au/employment-vulnerability-retail/> (accessed 10 January 2022).

¹² National Skills Commission, *Employment by industry, occupation and skill level*, reference period November 2020, p. 4, <https://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation> (accessed 6 October 2021).

¹³ Geoff Gilfillan, 'COVID-19: Impacts on casual workers in Australia—a statistical snapshot', *Parliamentary Library Research Paper Series, 2019-20*, updated 8 May 2020, Canberra, p. 1, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/7262636/upload_binary/7262636.pdf (accessed 6 October 2021).

¹⁴ Labour Market Information Portal, *Accommodation and Food Services*, 13 January 2022, <https://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/AccommodationandFoodServices> (accessed 13 January 2022).

¹⁵ ABS, *Australian and New Zealand Standard Industrial Classification, 2006 (Revision 2.0, published 2013)*.

More than half of all workers in the industry do not have post-school qualifications and around 61 per cent work part-time hours.¹⁶

5.13 Hospitality is by far the most casualised of all industries, with 65 per cent of the workforce employed as such in February 2021.¹⁷ According to the BCEC, it is the most precarious sector to be employed in, with precariousness 'increasing over time'. Managers in the sector 'enjoy less stable employment' than managers employed in other sectors,¹⁸ and growth in real hourly wages has been 'relatively flat', at 1.9 per cent, over the period 2010–2018.¹⁹

5.14 Chief Executive Officer of the Restaurant and Catering Industry Association of Australia (RCIA), Mr Wes Lambert, commented on the effect that COVID lockdowns have had on the composition of hospitality employment:

I would say at the moment, because of the severe shortage, it is going to skew more towards full time and permanent part time. Casuals will likely make up a much smaller percentage because of the border closures, because of the recent lockdowns and because of the restrictions that are still in place. Certainly, going forward, we expect that it will take a good year or longer, depending on when working holiday-makers, international students and skilled migrants are allowed back in the country, before it settles back. If we run a survey now, you'll likely see a result that's very heavily weighted towards full time and part time.²⁰

5.15 In a response to a question on notice, the RCIA undertook a 'staff breakdown survey' of its members. The survey revealed that as of November 2021, 57 per cent of employees were permanent full-time and part-time and 43 per cent were casual and labour hire; 'a huge change from PreCovid'.²¹

5.16 Hospitality was the industry 'most heavily affected by trading restrictions to combat the spread of COVID-19' and experienced the greatest job losses between 14 March and 3 October 2020, with a 17.4 per cent reduction in payroll jobs during the period.²²

¹⁶ National Skills Commission, *Australian Jobs 2020*, p. 10.

¹⁷ Ai Group, *Submission 77.1*, [p. 2].

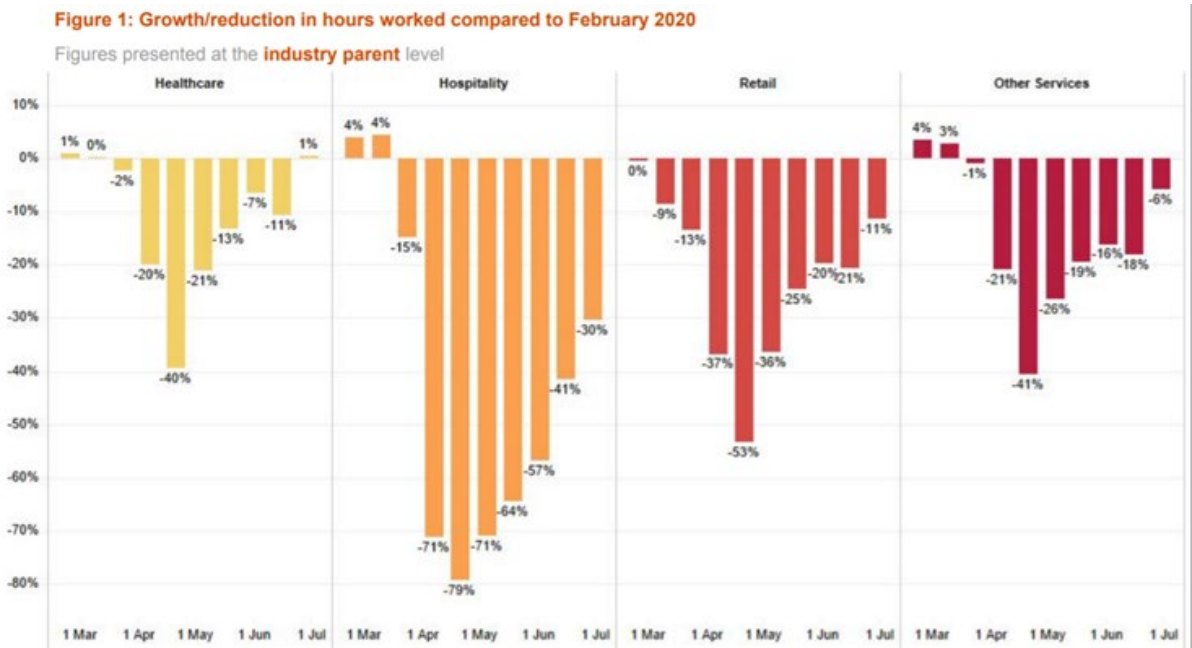
¹⁸ BCEC, *Future of work in Australia*, April 2018, p. 34.

¹⁹ BCEC, *Future of work in Australia*, April 2018, p. 34.

²⁰ Mr Wes Lambert, Chief Executive officer, Restaurant and Catering Industry Association of Australia, *Committee Hansard*, 3 November 2021, p. 42.

²¹ Restaurant and Catering Industry Association of Australia (RCIA), *Answers to questions taken on notice, public hearing*, 3 November 2021, Canberra (received 11 December 2021).

²² Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series 2020-21*, 23 October 2020, Canberra, p. 14.

Figure 5.1 Growth/reduction in hours worked compared to February 2020

Source: PwC and Deputy, 'The Rostering Report', Issue 1, 7 July 2020, p. 2, www.pwc.com.au/important-problems/RosteringReport_Issue1_7July.pdf (accessed 10 January 2022).

- 5.17 **Figure 5.1** illustrates the industries most affected by COVID-19, showing that hospitality suffered the greatest sustained decline in rostered hours between March and July 2020.
- 5.18 Slightly more women in the industry lost jobs than men—94 400 women (18.4 per cent), compared with 74 700 men (18 per cent).²³ At the time JobKeeper was announced, 46.3 per cent of casuals in accommodation and food services had been with their current employer for less than 12 months, meaning they were not eligible for the supplement.²⁴
- 5.19 The sector was also heavily affected by wage losses. Wages in accommodation and food services fell 13 per cent in the six and a half months to early October 2020.²⁵
- 5.20 According to the National Skills Commission, the industry has bounced back some of the way since October 2020, reducing the over-all fall in employment to 11.2 per cent over the nine months to November 2020. The biggest falls in the industry have been in accommodation, which has fallen by 19.6 per cent;

²³ Between February and August 2020. Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series, 2020-21*, 23 October 2020, Canberra, p. 18.

²⁴ Geoff Gilfillan, 'COVID-19: Impacts on casual workers in Australia—a statistical snapshot', *Parliamentary Library Research Paper Series, 2019-20*, updated 8 May 2020, Canberra, p. 1.

²⁵ Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series, 2020-21*, 23 October 2020, Canberra, p. 7.

cafes, restaurants and takeaway food services, which were down by 15.2 per cent, and clubs, which fell by 12.3 per cent:

While employment in the industry still remains below pre-COVID levels, the industry has recorded two consecutive quarters of employment growth—in line with the easing of restrictions across Australia.²⁶

- 5.21 Mr Tim Petterson, Coordinator at Hospo Voice, a branch of the United Workers Union (UWU), told the committee that the pandemic sent the hospitality industry 'into meltdown' and the casual employees who work in it 'into a state of extreme panic and desperation':

It exposed the rotten foundations on which this industry is built—on insecure work, on wage theft and on the exploitation of migrant workers.²⁷

Why is casual work so widespread?

- 5.22 Given the significance of both sectors to Australia and the link between casual work and insecure employment, it is pertinent to consider why so many workers are employed as casuals in the first place.

- 5.23 The flexibility afforded by casual labour is crucial for businesses in hospitality and retail to be able to keep up with fluctuating demand. Seasonal business cycles create short-term employment opportunities, which have implications on the duration and type of employment likely to be offered. Mr Lambert noted that in states such as Tasmania and ACT businesses require a reduced staff during winter and autumn. In others, such as Far North Queensland, staffing may fluctuate due to the rainy season:

Certainly, the flexibility that has always existed in the hospitality industry—either for the seasonality of tourism or of the weather—will always have an effect.²⁸

- 5.24 As submitted by the NRA, retail businesses have 'long' relied on a surge workforce during peak seasons, giving the well-known example of the 'Christmas casual'.²⁹

- 5.25 Mr Lambert also commented on the 'transient' demographic composition of hospitality workers. Many of the workers in hospitality—young people and temporary visa holders—are more likely to be staying for a shorter period, or do not view hospitality as a long-term employment option and will be 'going on to a different career or a different industry'.³⁰

²⁶ National Skills Commission, *Employment by industry, occupation and skill level*, reference period November 2020, p. 6.

²⁷ Mr Tim Petterson, Coordinator, Hospo Voice, United Workers Union (UWU), *Committee Hansard*, 20 April 2021, p. 20.

²⁸ Mr Wes Lambert, Chief Executive officer, RCIA, *Committee Hansard*, 3 November 2021, pp. 41–42.

²⁹ NRA, *Submission 29*, p. 8.

³⁰ Mr Wes Lambert, Chief Executive Officer, RCIA, *Committee Hansard*, 3 November 2021, pp. 41–42.

5.26 With reference to the above two points, Mr Lambert said that the hospitality industry has a high turnover rate. Because of this 'semiskilled, skilled and highly skilled individuals are seen as a commodity and certainly are well regarded in the industry':

Most restaurants, once someone gets ingrained in that business in terms of a skilled or highly skilled position—ask any restaurateur and say, 'Would you give your eye teeth for your restaurant manager, assistant manager, your chefs, chefs de partie and sous chefs and chefs to stay with you forever?' and they'll tell you yes in most occasions because those positions are very difficult to fill and certainly those individuals are in very high demand.³¹

5.27 From the perspective of the employer, Chief Executive Officer of the Australian Retailers Association (ARA), Mr Paul Zahra said 'with confidence' that there is a preference amongst retailers to employ a generally permanent workforce with a casual supplement for two reasons: maintaining a casual roster of employees is more expensive and costs a retailer on average 'at least 25 per cent more'; and service outcomes improve significantly by having more permanent staff.³²

5.28 Notwithstanding the above, Mr Zahra argued that the decision for employers to hire casually was largely a function of the complex modern awards. For example, the General Retail Industry Award is 'about 122 pages long':

So you can imagine giving that to a small business owner and asking them to understand it, interpret it and then execute it. That's why there's such a large preference, particularly in smaller businesses, to move to casual, which is an upfront payment. There's no commitment, and of course it's easier to manage.³³

5.29 Mr Gerard Dwyer, National Secretary-Treasurer of the SDA argued that:

There will always be a place for casuals by choice and also by stage of life—we don't dispute that—but certainly there is a capacity to promote greater permanency. Often I think it's a blind spot that companies may have as they set out to apply their business model.³⁴

5.30 Mr Zahra told the committee that he did not think job insecurity was an issue in the mainstream retail sector, instead saying that casual work was 'often the choice of the employee' to receive the higher rate of pay.³⁵

³¹ Mr Lambert, RCIA, *Committee Hansard*, 3 November 2021, p. 42.

³² Mr Paul Zahra, Chief Executive Officer, Australian Retailers Association (ARA), *Committee Hansard*, 13 April 2021, p. 22.

³³ Mr Zahra, ARA, *Committee Hansard*, 13 April 2021, p. 18.

³⁴ Mr Gerard Dwyer, National Secretary-Treasurer, SDA, *Committee Hansard*, 13 April 2021, pp. 1–2.

³⁵ Mr Zahra, ARA, *Committee Hansard*, 13 April 2021, p. 16.

5.31 Mr Petterson acknowledged the need for a larger permanent workforce in hospitality and asserted that, for workers receiving the same shifts 'each week, each month, each year', there is no compelling reason they could not receive a permanent role if they wanted one.³⁶

5.32 Referring to the long-term tenure of many retail staff, Mr O'Keeffe pointed out the absurdity of keeping casual staff as casual and the risk they are exposed to by that designation:

These people, quite frankly, are not casuals; they are long-term employees who rely on their wage coming in every week, as inevitably it does until something happens, whether it be COVID or some other problem. These people are precariously employed³⁷

5.33 The United Workers Union (UWU) submitted that 'having a job in hospitality is synonymous with insecure work', drawing upon evidence about worker sentiment:

Even prior to COVID-19, a significant majority of hospitality workers (64.5 per cent) said it was very or extremely important to have a permanent job. Since the start of the COVID-19 pandemic this margin has increased to 76.5 per cent, with more than half weighing their need as extremely important.³⁸

5.34 On the contrary, Mr Lambert said that, at present, hospitality is 'an employee's market' and therefore a very secure time for employees.

[A]t present hospitality is certainly an employee's market, because there are so few [employees]. The expectation is that, because of that supply-and-demand issue...businesses are paying extra to ensure that their dedicated staff stay with them, not cutting their hours or giving them fewer hours. I think, if you were to walk into any restaurant or cafe in your electorate, or in Canberra, and say, 'What hours are your staff working?' they would say that they're all working at least 38, if not significantly more.³⁹

5.35 The National Foundation for Australian Women (NFAW) outlined some of the ways that employers in some industries, including hospitality and retail, seek to 'enhance flexibility and reduce costs' to the detriment of the workers:

... reducing or removing restrictions on working time arrangements; widening the span of ordinary hours; removing or reducing penalty rates for extended or unsociable hours; and reducing minimum periods of

³⁶ Mr Petterson, *Hospo Voice*, UWU, *Committee Hansard*, 20 April 2021, p. 24.

³⁷ Mr Peter O'Keeffe, General Secretary, Western Australia Branch, SDA, *Committee Hansard*, 26 July 2021, pp. 35–36.

³⁸ UWU, *Submission 54*, pp. 9–10.

³⁹ Mr Lambert, RCIA, *Committee Hansard*, 3 November 2021, p. 43.

engagement. Lack of predictability of scheduling (on a daily and weekly basis) has further eroded job quality.⁴⁰

Key concerns raised in the retail and hospitality sectors

5.36 Mr Darcy Moran, a member of Hospo Voice and a hospitality worker of 15 years, said of casual workplaces:

I can testify that casualised workplaces are very poor for fostering good mental health, are very poor for fostering the kinds of savings and reliable income necessary to build a future and are extremely poor environments for allowing workers to operate in their fields with dignity and safety in the workplace.⁴¹

5.37 Problems similar to those described above by Mr Moran in retail and hospitality were raised many times during the inquiry. Submitters put forward their frustrations and concerns with migrant and youth exploitation, wage theft, and reduced occupational health and safety outcomes. Furthermore, many of these issues have been exacerbated as a result of the pandemic.

Demographic disadvantages

Migrant exploitation

5.38 Migrant exploitation in the workplace has been well-documented in Australia, with the extent of such abuse having been made possible in large part by 'deeply precarious working arrangements'.⁴²

5.39 The UWU submitted that the 'power asymmetry' in casual employment relationships is emboldened in the case of migrant workers due to the fact that their right to remain in Australia is contingent on the work conditions of their visa. Therefore:

Any legal irregularity in the employee/employer relationship, whether the fault of the employee or not, can trigger a chain of events that leads to a grievous result for the worker (detention and deportation) that is disproportionate to any negative outcome potentially faced by the employer and is insensitive to the power dynamics.⁴³

5.40 Hospo Voice reported on the experience of Tiff Tan, a chef and international student from Malaysia. Ms Tan was reportedly paid \$3 an hour by her former employer, a hospitality business in Melbourne, and was also promised a visa sponsorship if she continued work. On why she persisted with the employment, Ms Tan said:

⁴⁰ NFAW, *Submission 11*, p. 33.

⁴¹ Mr Darcy Moran, Hospo Voice, UWU, *Committee Hansard*, 20 April 2021, p. 20.

⁴² UWU, *Submission 54*, p. 12.

⁴³ UWU, *Submission 54*, p. 12.

I had a lot of anxiety, I had to pay my rent, I needed money, if I didn't go to work then I didn't get anything. I only had a half an hour break, I was tired, exhausted, I would go home and cry, my body was shaking.⁴⁴

Youth exploitation

5.41 The Retail and Fast Food Workers Union (RAFFWU) submitted that many large retailers and hospitality businesses 'rely on casual employment to exploit the young'.⁴⁵ The RAFFWU outlined one such instance of this by fast food company McDonald's. A brief case study on this evidence is outlined below in **Box 5.1**.

Box 5.1 Evidence from the Retail and Fast Food Workers Union

As reported by the ABC, in 2018:

- McDonald's employed 103 000 Australian workers—approximately 7 per cent of all the total hospitality workforce;
- 65 per cent of all staff were aged between 14 and 18;
- These employees were paid significantly less than older workers on 'junior rates'.⁴⁶

While junior rates are legal, McDonald's was accused of maintaining a 'perpetual poverty wage system' by keeping a significant percentage of its employees young to keep labour costs down.⁴⁷

The RAFFWU argued the McDonald's business model was predicated on giving staff reduced hours as they got older and more expensive, which was enabled by employing them on a casual basis.

This practice was referred to as 'learn and churn', in the words of Union Secretary Mr Josh Cullinan:

The learn is about having new managers take on training and become managers or supervisors in the workplace—very few get to go on to that track.

The vast majority are stuck in the churn and the churn is when a worker turns 15, 16, 17, as they turn older and their wages go up because of junior rates, their hours are being cut and that's because they're casual.

Reportedly, a franchisee who gave evidence during a Fair Work Commission hearing in 2018 acknowledged that he was aware of the practice of learn and churn.⁴⁸

⁴⁴ UWU, *Submission 54.1*, pp. 18–19.

⁴⁵ Retail and Fast Food Workers Union (RAFFWU), *Submission 90*, p. 3.

⁴⁶ 'McDonald's accused of churning and burning young workers', *ABC News*, 9 October 2018 www.abc.net.au/7.30/mcdonalds-accused-of-churning-and-burning-young/10357384 (accessed 10 January 2022).

⁴⁷ RAFFWU, *Submission 90*, p. 3.

5.42 Professor Paula McDonald, Professor of Work and Organisations at the University of Queensland, suggested that the low rate of union participation amongst young retail and hospitality workers may play a role in their collective disempowerment:

We also know, from decades of research, that when a single employee is trying to navigate these issues on an individual basis with a single employer it usually doesn't result in any great outcomes. There are winners and losers in this. There are still occupational groups that enjoy protections from having a high degree of collective representation, and there are other cohorts and occupations that do not enjoy such benefits. If we think about young people, for example, in tourism, hospitality, retail et cetera, there are really low rates of unionisation and hence problematic opportunities for them to exercise voice in a way that doesn't personally disadvantage them in the workplace or such that no punitive consequences come as a response.⁴⁹

Wage underpayment

5.43 Both sectors are well known for issues of underpayment of wages, but hospitality in particular has a sustained and disappointing track record.

5.44 According to the Fair Work Ombudsman (FWO), the hospitality industry consistently has the highest number of disputes of any sector, with highest rates of non-compliance in the fast food, restaurants, and cafes sector.⁵⁰ Some FWO findings during the past five years include:

- In 2016–17 the FWO reported that the hospitality industry accounted for the percentage of disputes, despite only making up around 7 per cent of Australia's workforce.⁵¹
- A 2018 FWO audit of food precincts in Melbourne, Sydney and Brisbane revealed that 72 per cent of businesses had breached workplace laws, with the most common breach being underpayment of wages and failure to provide pay slips.⁵²

⁴⁸ 'McDonald's accused of churning and burning young workers', *ABC News*, 9 October 2018.

⁴⁹ Professor Paula McDonald, Professor of Work and Organisations, Queensland University of Technology Business School, *Committee Hansard*, 10 June 2021, p. 8.

⁵⁰ Fair Work Ombudsman (FWO) and Registered Organisations Commission, 'Annual Report 19–20', September 2020, p. 18, www.fairwork.gov.au/sites/default/files/migration/710/fworoce-annual-report-2019-2020.pdf (accessed 12 January 2022).

⁵¹ FWO, *Food Precincts Activities—a report on compliance activities undertaken by the Fair Work Ombudsman*, July 2018, p. 5, www.fairwork.gov.au/sites/default/files/migration/1386/fwo-food-precincts-report.pdf (accessed 12 January 2022).

⁵² FWO, *Food Precincts Activities—a report on compliance activities undertaken by the Fair Work Ombudsman*, July 2018, p. 6, (accessed 12 January 2022).

- The sector continued to receive the most reports about workplace breaches, accounting for 34 per cent of all reports received by the FWO in 2019–20 (which is nearly 3 times more than the second highest industry, retail).⁵³
- 5.45 This evidence was substantiated by inquiry participants. A survey by Hospo Voice over 2020–21 found that 82 per cent of the respondents had experienced wage theft whilst employed in the industry. Mr Tim Petterson explained that such wage theft can take 'various forms' including:
- people being paid below the legal hourly minimum, the withholding of penalty rates, tips theft, unpaid super and salary workers being required to do vast amounts of unpaid overtime.⁵⁴
- 5.46 According to Hospo Voice Director Ms Karma Lord the hospitality industry is 'ground zero' for super theft, and the problem is 'supercharged' by insecure work.⁵⁵
- 5.47 Ms Jorja Hickey, a casual hospitality worker, told the committee of her experience with an employer who did not pay any superannuation for 15 months; the employer was later fined \$300 000 for underpayment of other staff.⁵⁶
- 5.48 Australian Retailers Association (ARA) submitted that whilst they acknowledge cases of deliberate underpayments do exist, the root cause of underpayments in retail is due to award complexity, and not criminal intent.⁵⁷
- 5.49 Mr Petterson rejected the argument that award complexity facilitates instances of accidental underpayment, describing wage theft in hospitality as a 'crisis [that] cuts all the way across the industry from small cafes to major employers' and 'the dominant business model'. Regarding how casual work promotes wage theft, Mr Petterson said workers are dissuaded from bringing attention to instances of underpayment as they are fearful of penalisation:

Hospitality workers who are casual or employed on a cash-in-hand basis understand that, when you have no guaranteed hours, it's a very risky proposition to stand up and ask to be paid correctly. If you speak up, you're likely to find that you're being given fewer and fewer shifts—you're taken off the roster. In fact, we found that 38 per cent of those workers we

⁵³ FWO and Registered Organisations Commission, *Annual Report 19–20*, September 2020, p. 18.

⁵⁴ Mr Petterson, Hospo Voice, UWU, *Committee Hansard*, 20 April 2021, p. 21.

⁵⁵ Matilda Marozzi, 'Long-term hospitality workers victims of unpaid superannuation', *ABC News*, 10 August 2021, www.abc.net.au/news/2021-08-10/hospitality-workers-worried-about-unpaid-superannuation/100349406 (accessed 22 December 2021).

⁵⁶ Ms Jorja Hickey, Private capacity, *Committee Hansard*, 20 April 2021, p. 21.

⁵⁷ ARA, *Submission 72*, Senate Standing Committee on Economics, Inquiry into the Unlawful Underpayment of Employees' Remuneration, p. 4.

surveyed had direct experience with losing shifts because they stood up for their rights at work.⁵⁸

5.50 Compounding the problem, according to Mr Petterson, is the fact that there are few consequences for employers if they underpay their staff, and in many cases employers do not take the threat of penalisation seriously: 'It's effectively an interest-free loan from your staff'.⁵⁹

5.51 Mr Matt Kunkel, Director of Migrant Workers Centre, and a self-described 'retail veteran' similarly disputed the claim the modern awards are a hindrance to employers paying their workers correctly:

Many small businesses and medium businesses successfully apply themselves to the tax code, to consumer law and other regulations. Indeed, the retail award, for example, has become much more simple since the award modernisation process after the 2009 changes. So I don't accept the contention that people don't know how to pay their workers correctly. It's part of doing business. It's an important part of doing business.⁶⁰

Reduced occupational health and safety

5.52 Casual work can lead to diminished occupational health and safety outcomes. In retail and hospitality these can include an increased likelihood of being sexually assaulted or abused by customers, and poor mental health.

Sexual harassment

5.53 The committee heard how job insecurity for casual workers increases the difficulty workers face in raising issues around sexual harassment.

5.54 In a 2017 survey run by Hospo Voice, one in ten women working in hospitality reported they had been sexually harassed. Concerningly, the report indicated that employers did not often address instances of sexual harassment and many respondents said that they 'were expected to continue to serve offending customers'. It said:

For workers with precarious working arrangements, who are looking to lock in their next shift, speaking out against sexual harassment and job-induced anxiety can get in the way of their next pay cheque and ultimately cost them their livelihoods. And, when presented with the ultimatum of paying the bills or insisting on a safe and respectful workplace, it is often safety and respect that are sacrificed.⁶¹

5.55 In giving evidence, Sex Discrimination Commissioner, Ms Kate Jenkins acknowledged the above survey and identified that casual workers in hospitality often feel that 'they're not able to speak up':

⁵⁸ Mr Petterson, Hospo Voice, UWU, *Committee Hansard*, 20 April 2021, p. 21.

⁵⁹ Mr Petterson, Hospo Voice, UWU, *Committee Hansard*, 20 April 2021, p. 23.

⁶⁰ Mr Matt Kunkel, Director, Migrant Workers Centre, *Committee Hansard*, 13 April 2021, p. 26.

⁶¹ UWU, *Submission 54.1*, p. 16.

They're also in an environment where they're dealing with customers and clients who will not have attended the same training that the best employers hold. In the service industry people are told, 'The customer's always right.' A young man told me in our inquiry that he was actually told he had to flirt with the customers.⁶²

5.56 Incidents of sexual harassment and the diminished capacity to access support can have far reaching consequences for workers. Acting Director of the Young Workers Centre, Ms Mairead Lesman, talked about an apprentice chef who was sexually harassed by their direct boss, threatened with firing, and unable to finish their apprenticeship if they told anyone. The incident as a result:

... had a huge impact on their ability to finish their apprenticeship and it had a huge impact on their mental health, as well as their ability—the scarring that we talk about when young workers enter the workforce and their first job is in a downturn or they have a terrible experience. They will feel that effect for many years.⁶³

Customer abuse

5.57 Customer abuse is a confronting reality for employees in retail and hospitality, no matter their employment status. However, where securely employed staff may receive support from management or feel able to stand up to said abuse without any threat to their job, casual employees do not.

5.58 In 2017 the SDA ran an online survey of thousands of retail and fast food workers and found that, even though more than 85 per cent of respondents had been subjected to verbal abuse from a customer in the last 12 months, 51 per cent said no action was taken after they reported the incident.⁶⁴ This indicates that workers are unlikely to feel supported by their bosses after such confrontations.

5.59 Customer abuse reportedly increased during the pandemic. Hospitality and retail businesses have had to make substantial changes to their operations in order to continuing operating and ensure employee and customer health and safety.

5.60 A November 2021 report from the University of Sydney and the Australian National University (ANU) reported a 'a notable decrease in the quality of interactions with customers during the pandemic'. Other pertinent findings from the report were:

⁶² Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, *Committee Hansard*, 16 September 2021, p. 32.

⁶³ Ms Mairead Lesman, Acting Director, Young Workers Centre, *Committee Hansard*, 20 April 2021, p. 26.

⁶⁴ SDA, *Survey results highlight abuse towards retail and fast wood workers is epidemic*, www.sda.org.au/resources/customer-abuse-violence-in-retail-fast-food/ (accessed 21 January 2022).

Almost half (49 percent) of retail workers felt their job security had decreased as a result of the pandemic. Those whose job security was most affected were

- women (51 percent)
- those under 30 (56 percent)
- those from a non-English-speaking background (60 percent)
- frontline (51 percent) and casual (55 percent) workers
- those working in a locked-down region (53 percent).⁶⁵

5.61 Ms Hickey told the committee of her experience working in a supermarket during the pandemic that did not implement suitable COVID safety measures. When these concerns were raised to her manager Ms Hickey described him as 'dismissive':

He made me feel stupid and very small. At that point I said I didn't really want to work there and I felt very anxious. I told him that I didn't want to work there until the COVID-19 measures were in store, until I felt comfortable working there. He just kind of rolled his eyes and didn't seem to care. It really hurt because it takes a lot of courage to stand up to your boss and there's a possibility of having a decreased number of shifts, or you can just bear it all. At the end of the day, you're human and you're a worker.⁶⁶

Mental health

5.62 Research by SuperFriend, a mental health organisation which, in partnership with the superannuation and life insurance industries, designs and delivers workplace mental health initiatives, found that in 2020 the retail industry had the second highest proportion of workers with mental health issues at 66 per cent—among casual workers it was 69 per cent overall. Furthermore, casual workers reported that their workplaces were less supportive than full-time and part-time workers, with only 41.1 per cent having 'highly supportive' workplaces.⁶⁷

5.63 Mr Zahra acknowledged that, whilst he did share some concern about the high levels of reported mental health issues in retail, the issue goes 'beyond the type of employment'; saying 'many of our full-time people equally had issues around mental health'.⁶⁸

⁶⁵ Ariadne Vromen, Briony Lipton, Rae Cooper, Meraiah Foley and Serrin Rutledge-Prior, *Pandemic Pressures: Job Security and Customer Relations for Retail Workers*, Crawford School of Public Policy, Australian National University with Work and Organisational Studies, University of Sydney Business School, November 2021, p. 8, www.policyforum.net/wp-content/uploads/2021/11/Pandemic-Pressures.pdf (accessed 20 January 2022).

⁶⁶ Ms Hickey, Private capacity, *Committee Hansard*, 20 April 2021, pp. 25–26.

⁶⁷ SuperFriend, *Spotlight on the Retail Industry 2020*, [pp. 1–2] https://superfriend.com.au/wp-content/uploads/2020/12/SPF0396_SpotlightReport_Retail_fv-2.pdf (accessed 18 January 2022).

⁶⁸ Mr Zahra, ARA, *Committee Hansard*, 13 April 2021, p. 17.

5.64 Hospo Voice submitted evidence from a 2020 survey in which 91 per cent of workers indicated that they were concerned about mental health in hospitality. A quote from a casual hospitality worker in the report says:

Unstable hours have really affected my mental health in the past. My current bartending position has been put in jeopardy unjustly multiple times and has made me feel worthless and unhappy. It is also frustrating to have shifts cancelled when you're already at work, where I could have been working at my other job had they just not rostered me on.⁶⁹

Concluding note

5.65 This chapter has provided a discussion of the employment arrangements within the hospitality and retail industries, focussing on the impacts of casual employment. The next chapter, Chapter 6, complements this chapter by focussing on the COVID-19 pandemic and its impacts on job security.

⁶⁹ UWU, *Submission 54.1*, p. 17.

Chapter 6

Insecure work and COVID-19

6.1 COVID-19 laid bare the impacts of insecure work. All over Australia, it was those in precarious and insecure work who were hardest hit by the pandemic, and also most likely to become infected and spread the virus.

6.2 As summarised by the Centre for Future Work at the Australia Institute (the Centre for Future Work) in their report *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*:

The expansion of casual and insecure work reflects a very one-sided vision of 'flexibility.' Employers can hire and fire labour precisely when it is needed. But the risks and costs of the resulting instability in employment are shifted onto the backs of workers who can least afford it. This has been harshly evident during the COVID-19 pandemic: most job losses have been incurred by workers whose hours, wages and entitlements were already inadequate, long before the virus arrived. The resulting hardship and polarisation from the overuse of casual and insecure work arrangements will hold back Australia's recovery for many years to come.¹

6.3 This chapter looks at the impacts of employment arrangements on people's experience of the pandemic. The committee heard recurring evidence that the risks associated with insecure work, and particularly casual work, were exacerbated and exposed by the pandemic. This chapter considers the extent of this with regard to:

- employment trends;
- gendered effects of the pandemic;
- impacts on other cohorts, such as migrants and young workers;
- the spread of COVID-19 and insecure work; and
- outcomes of Federal and state government financial supplements.

Key data and statistics

6.4 While all categories of work have been affected to some degree during the pandemic, the overwhelming majority of job losses, disadvantage and upheaval have been experienced by casual employees.

6.5 To curb the effect of COVID-19, state mandated lockdowns were implemented at various stages throughout 2020 and 2021. Nearly 600 000 Australians lost their jobs in early 2020 as a result of these lockdowns—the largest on record

¹ Centre for Future Work at the Australia Institute (Centre for Future Work), *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, p. 22, <https://australiainstitute.org.au/report/shock-troops-of-the-pandemic/> (accessed 28 January 2022).

since the Labour Force Survey commenced in 1978.² It was argued during the inquiry that the impact of the lockdowns was vastly disproportionate, with job losses being most severe in positions that were casual and part time. This is supported by research conducted by the McKell Institute Victoria, which submitted that:

Between the February and May 2020 quarterly labour force surveys, the number of employees without paid leave (casuals) dropped by 20 per cent, while the reduction for those with paid leave (permanents) dropped by just two and half per cent.³

- 6.6 The Centre for Future Work also submitted estimates quantifying the effect of lockdowns upon the workforce and pointed out that the impact of lockdowns on other categories of insecure work were also significant, with 12.8 per cent of part-time employees losing their jobs over the same duration.⁴
- 6.7 **Figure 6.1** illustrates the disparity in the composition of job-losses due to the first lockdown as well as employment recovery by November 2020. By November, casual employment had recovered significantly, but still remained 5 per cent below pre-pandemic levels. According to the Australian Industry Group (Ai Group), this recovery 'underscores the flexible nature' of casual employment.⁵

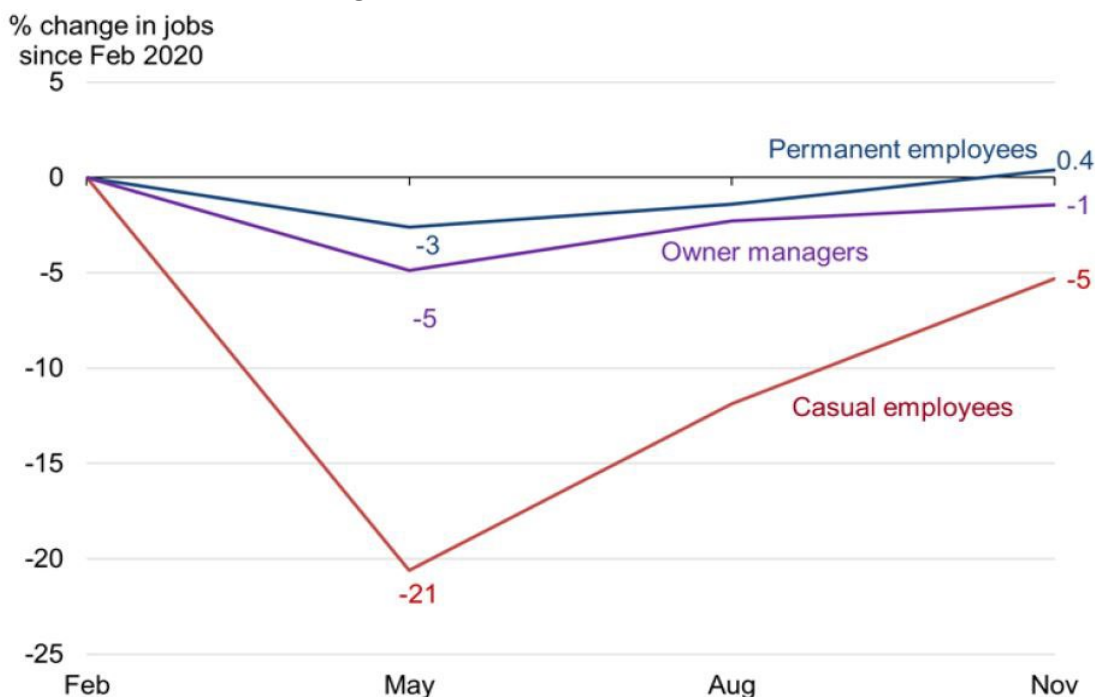
² Australian Institute of Health and Welfare (AIHW), 'Employment and unemployment', *Australian welfare 2021*, <https://www.aihw.gov.au/reports/australias-welfare/employment-trends> (accessed 14 January 2022).

³ McKell Institute Victoria, *Submission 86*, p. 3.

⁴ The Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41*, p. 10.

⁵ The Australian Industry Group (Ai Group), *Submission 77*, p. 6.

Figure 6.1 Changes in employment for casuals, permanent employees and owner-managers in 2020



ABS 6291.0, *Labour Force Australia, Detailed*, November 2020, Table 13

* 'casuals' are identified in the ABS labour force survey as 'employees without paid leave entitlements'.

Source: Ai Group, *Submission 77*, p. 7.

- 6.8 However, job losses were not permanent. As job growth occurred between major lockdown periods, casual jobs accounted for over half of all jobs recovered, and part-time jobs accounted for almost 60 per cent.⁶
- 6.9 The Centre for Future Work's October 2021 report quantified the impact of the 2021 delta-strain lockdowns in NSW, Victoria and the ACT. Its analysis of quarterly data from the Australian Bureau of Statistics (ABS) indicated a clear continuation in the trend of job losses in 2020. Workers in casual jobs were eight times more likely than those in permanent positions to experience job loss during the 2021 lockdowns. In fact, the report concluded that the concentration of job loss among insecure workers had become *more severe* as the pandemic has progressed.⁷
- 6.10 In early 2022, the Omicron coronavirus variant is widespread within the Australian community. While it will be some time until labour market impacts are able to be quantified, anecdotal evidence suggests that Omicron is again particularly affecting those in casual and insecure positions.

⁶ Centre for Future Work, *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, p. 1.

⁷ Centre for Future Work, *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, p. 2.

6.11 Secretary of the Australian Council of Trade Unions (ACTU), Ms Sally McManus, made the following comment:

Some employers are responding by pressuring Covid-positive people to work, others have not changed safety measures despite the more infectious nature of Omicron, workers are sick, many now without income and there is a serious lack of national leadership.⁸

Industries

6.12 Between March and October 2020, job loss as a percentage of jobs in any sector was greatest in accommodation and food services, and arts and recreation, down 17.4 per cent and 12.9 per cent respectively. Other industries that suffered relatively high job losses included agriculture, forestry and fishing (8.1 per cent), and information media and telecommunications (9.5 per cent).⁹

6.13 These industries tend to be low-income and heavily concentrated with casual workers. However, not all industries with significant losses were low-income. As previously discussed in this inquiry, job losses in higher education have been significant, with one-in-five employees losing their job between May 2020–21.¹⁰

6.14 Due to the length and frequency of lockdowns, some of these job losses were more extreme in some states than in others. Pre-pandemic, approximately one-third of workers in the City of Melbourne were employed on a part-time, casual or contract basis, with these roles concentrated in the arts and recreation services, and accommodation and food services industries.¹¹ **Figure 6.2** depicts the difference between Victorian and Australian job losses in these two sectors from March to August 2020, with the Victorian experience being notably more severe.

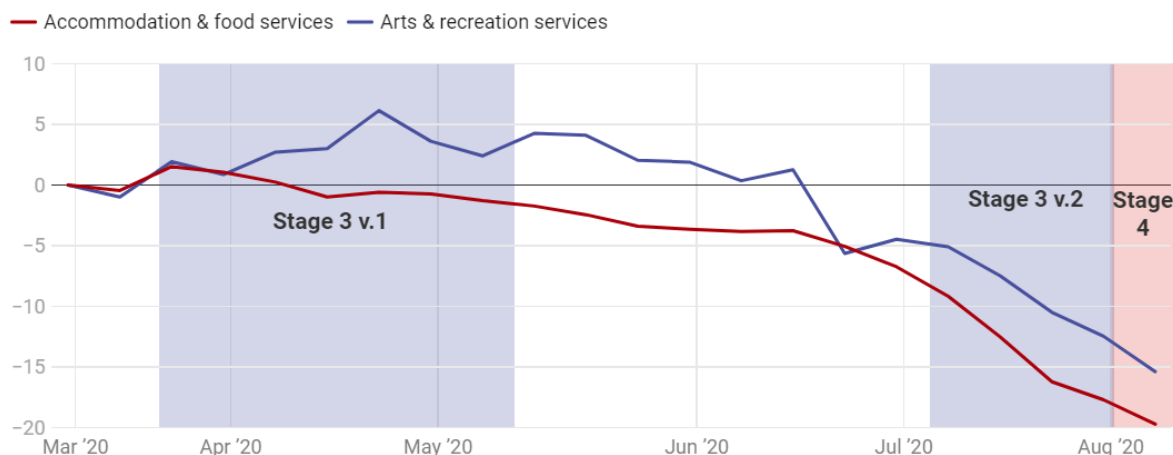
⁸ Australian Council of Trade Unions (ACTU), 'Emergency meeting of unions to consider action to keep workers safe', *Media Release*, 16 January 2022, www.actu.org.au/actu-media/media-releases/2022/emergency-meeting-of-unions-to-consider-action-to-keep-workers-safe (accessed 16 January 2022).

⁹ Geoff Gilfillan, 'COVID-19: Labour market impacts on key demographic groups, industries and regions', *Parliamentary Library Research Paper Series 2020-21*, 23 October 2020, Canberra, p. 6, www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/pubs/rp/rp2021/COVID-19-Stat_Snapshot (accessed 6 October 2021).

¹⁰ Centre for Future Work, 'An Avoidable Catastrophe: Pandemic Job Losses in Higher Education and their Consequences', September 2021, p. 6, https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/3830/attachments/original/1631479548/An_Avoidable_Catastrophe_FINAL.pdf?1631479548 (accessed 17 September 2021).

¹¹ City of Melbourne, 'Economic impacts of COVID-19 on the City of Melbourne: Final report', 20 August 2020, p. 11, www.melbourne.vic.gov.au/sitecollectiondocuments/economic-impacts-covid-19-report.pdf (accessed 10 January 2022).

Figure 6.2 Difference between Victoria and Australian job losses (baseline), 14 March to 8 August 2020



Source: Professor Jeff Borland, 'Tracking Victoria's COVID-19 job losses' The University of Melbourne, 7 September 2021 <https://fbe.unimelb.edu.au/newsroom/tracking-victorias-covid-19-job-losses> (accessed 10 January 2022).

Demographic-specific impacts

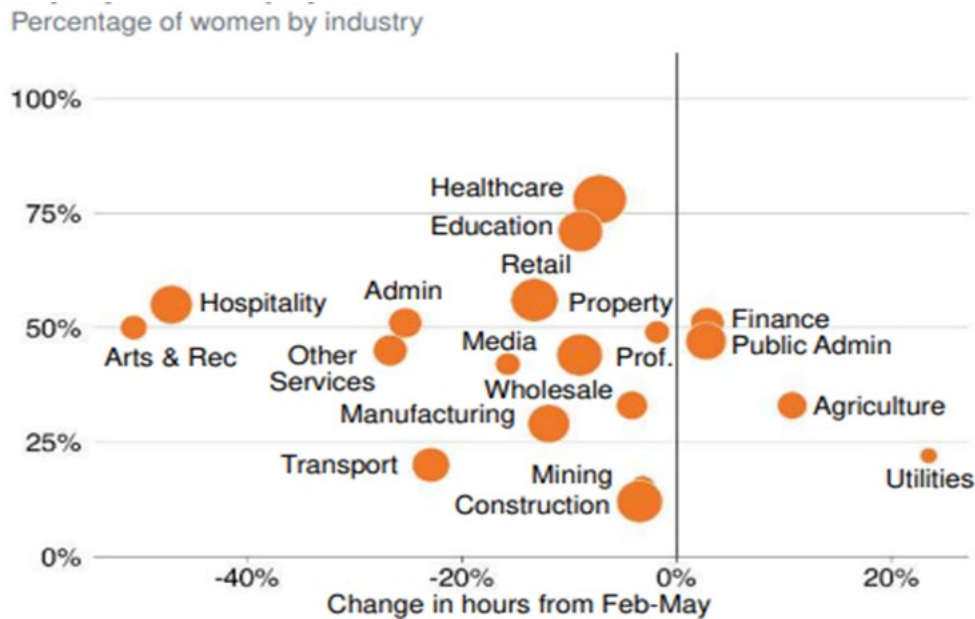
6.15 The committee queried the impacts of lockdowns on specific demographics, including women, young people, and migrants. It was revealed that all three groups were significantly affected by COVID-19 due to their over-representation in casual and insecure positions.

Women

6.16 Women suffered job loss at a higher rate than men during the COVID lockdowns. At the peak in April 2020, almost 8 per cent of Australian women had lost their jobs, and women's total hours worked were down 12 per cent—the corresponding figures for men were only 4 per cent and 7 per cent.¹² This is not surprising as women were disproportionately employed in the sectors hit hardest by COVID-19 shutdowns, such as retail, hospitality, health care, and education—as demonstrated in **Figure 6.3**.

¹² Grattan Institute, 'Women's work: The impact of the COVID crisis on Australian women' March 2021, p. 3, <https://grattan.edu.au/wp-content/uploads/2021/03/Womens-work-Grattan-Institute-report.pdf> (accessed 10 January 2022).

Figure 6.3 The two worst-affected industries in the first lockdown were majority-female employers



Source: Grattan Institute, 'Women's work: The impact of the COVID crisis on Australian women' March 2021, p. 10.

6.17 Some Australian states fared worse than others, for example women comprised 83 per cent of all job losses in Victoria during 2020, compared to 61 per cent nationally.¹³

6.18 Despite this fact, more recipients of the Government's JobKeeper wage subsidy were men. The Grattan Institute concluded that the pandemic has 'compounded existing economic disadvantage for women'. Research by the Grattan Institute estimated that:

If a typical young woman lost income for just six months during the COVID recession, this could translate to losing more than \$100,000 in earnings over her lifetime, a 6 per cent increase on the already substantial earnings gap.¹⁴

6.19 Socioeconomic challenges for women were also more pronounced. Research from Ms Lyn Craig and Mr Brendan Churchill found that while 'there was more gender equality, of a sort' overall, women found it harder to balance paid work with family obligations throughout the shutdowns.¹⁵

¹³ Victorian Government, *Submission 16*, p. 18.

¹⁴ Grattan Institute, 'Women's work: The impact of the COVID crisis on Australian women' March 2021, p. 11.

¹⁵ Lyn Craig and Brendan Churchill, 'Dual-Earner Parent Couples' Work and Care During COVID19', *Feminist Frontiers*, Vol 28 (S1), 16 June 2020, pp. 76–77, <https://onlinelibrary.wiley.com/doi/full/10.1111/gwao.12497> (accessed 14 January 2022); National Foundation for Australian Women (NFAW), *Submission 11*, p. 19.

6.20 Dr Kathy MacDermott, a member of the National Foundation for Australian Women (NFAW), said that as a result of this difficulty, many women have 'either withdrawn from work altogether, reduced their hours or not gone for promotions to higher-level positions—that is, the pressure from the primary carer end decreased the secondary earner's scope for workforce security'.¹⁶

6.21 In their submission, the NFAW elaborated:

... the combination of massive increases to unpaid caring and domestic work, predominantly shouldered by women, the greater harm to women's workforce engagement due to their forms of work and sectors in which women work, as well as government policies that have hit women hardest, such as excluding shorter term casuals and early childhood education and care workers from access to JobKeeper and eliminating access to free early childhood education and care (ACTU 2020), when aggregated, raise a very serious risk that women will reduce their paid work or leave the paid workforce entirely, and that this will have permanent or at least persistent effects.¹⁷

6.22 Research from the University of Queensland indicated that domestic violence against women increased during lockdowns, with some women suffering their first experience of domestic violence. Chief Executive Officer of the Australian Women Against Violence Alliance, Ms Therese Edwards said that the lockdowns 'stopped papering over the cracks' of the link between insecure work and domestic violence. Having a secure connection to a workplace is a 'safety mechanism' that may provide a lifeline for many women:

It provides you the money to afford safety. When you're broke, you have less chance to afford that safety. It also gives you connection to other adults. It can be a safe place, a place to go, a place to have some freedom and to make those phone calls that you need to make, even if it's quickly done in the morning tea break or whatever that time may be.¹⁸

Young people

6.23 The pandemic has exposed how vulnerable young people in insecure work are to sudden economic and health shocks—with significant and potentially long-term impacts on, not only their economic standing, but their social and civic participation, health and wellbeing, and capacity for recovery.

6.24 The economic impact of the pandemic on young Australians has been considerable. The Australian Institute of Health and Welfare (AIHW) reported

¹⁶ Dr Kathy MacDermott, Member, NFAW, *Committee Hansard*, 16 September 2021, p. 38.

¹⁷ NFAW, *Submission 11*, p. 19.

¹⁸ Ms Terese Edwards, Advisory Member, Australian Women Against Violence Alliance; Chief Executive Officer, National Council of Single Mothers and their Children, *Proof Committee Hansard*, 16 September 2021, pp. 8–9.

that of the 592 000 Australian's who lost their jobs in April 2020, more than one-in-three (38 per cent) were aged between 15–24.¹⁹

6.25 A 2020 survey by the Young Workers Centre, a part of Unions ACT, in which young workers were asked about their experiences of work during the pandemic, revealed similar job loss results. It further shed light on the financial duress young people face:

- 1 in 3 young workers reported that they were struggling to get enough work to cover the cost of living.
- 52% saying they were only just getting along, poor or very poor and one quarter pessimistic about their financial future.
- To get by, 55% spent less on essentials; 32% borrowed from friends or family; 31% moved back in with family; and, 4% withdrew money from their superannuation.²⁰

6.26 A further indicator of the disproportionate financial affect the pandemic has had on young people is the rate at which they have accessed early superannuation.²¹ More than a third of Australians that have accessed their superannuation early due to coronavirus are under the age of 30. Given that many already work in insecure and casual jobs and therefore may have little super, young people's future retirement may be at risk of being financially unstable, and wholly reliant on the pension for income.²²

6.27 Industry Super Australia has estimated the effect of this early withdrawal, indicating that a 25-year-old who accesses the full \$20 000 available under the scheme could lose more than \$95 000 from their retirement balance.²³

6.28 In evidence, Executive Officer of the Australian Youth Affairs Coalition, Mr Luke Rycken, described the pandemic as 'creating an economic crisis for young people', which, without proper intervention, will:

... affect young people for the rest of their lives. Young people will experience worse employment prospects for a significant period of time,

¹⁹ AIHW, 'Young Australians highly impacted by COVID-19' *Media Release*, 25 June 2021, www.aihw.gov.au/news-media/media-releases/2021-1/june/young-australians-highly-impacted-by-covid-19 (accessed 25 January 2022).

²⁰ Young Workers Centre, Unions ACT, *Submission 99*, pp. [8–9]

²¹ On 22 March, the government announced that individuals in financial stress from the pandemic would be able to access their superannuation early, in two allotments of up to \$20 000.

²² The National and State Youth Peaks, *Submission 63*, p. 3

²³ Industry Super Australia, 'Accessing super early should be the last resort for financially stressed members', *Media Release*, 5 May 2020, www.industrysuper.com/assets/FileDownloadCTA/200323-Accessing-super-should-be-a-last-resort-v3.pdf (accessed 14 January 2022).

and those who do find work will still experience less job security, fewer hours and lower wages.²⁴

6.29 Mr Dan Nahum, an Economist at the Centre for Future Work, said, due to the 'increasing precarity of the Australian labour market over time', young people have faced more difficulty gaining secure employment, which has relegated them to being the 'last hired and first fired'.²⁵

6.30 Dr Joseph Borlagdan, Principal Research Fellow at the Brotherhood of St Laurence, said that the pandemic has underscored 'ongoing structural challenges' for young people; notably casualisation, underemployment and stalled career mobility. He expressed concern for increased economic hardship and eminence in insecure work for this cohort in the future:

What we're setting up for young people at the moment is a combination of cruel optimism and encouraging young people to invest more in their education so that they will be better off. Research has shown that over the past decade, since the GFC, this hasn't paid off for young people. They're stuck in low-income work and precarious work.²⁶

6.31 The National and State Youth Peaks submitted a similar concern indicating that many may suffer 'career scarring'—that being, the negative long-term effect that unemployment has on future career prospects—which may as a result:

... increase [the number of] of young people living in Australia who are unable to access long-term stable employment and who will face significant reductions in lifetime career earnings and standards of living, leading to increased mental health issues, homelessness and a sense of hopelessness for the future.²⁷

Migrants

6.32 The International Labour Organization submitted:

Migrant workers are often first to be laid-off but last to gain access to testing or treatment in line with nationals. They are often excluded from national COVID-19 policy responses, such as wage subsidies, unemployment benefits or social security and social protection measures.²⁸

²⁴ Mr Luke Rycken, Executive Officer, Australian Youth Affairs Coalition, *Committee Hansard*, 27 July 2021, p. 42.

²⁵ Mr Dan Nahum, Economist, Centre for Future Work, *Committee Hansard*, 20 April 2021, p. 51.

²⁶ Dr Joseph Borlagdan, Principal Research Fellow, Brotherhood of St Laurence, *Committee Hansard*, 20 April 2021, p. 28.

²⁷ The National and State Youth Peaks, *Submission 63*, p. 3.

²⁸ International Labour Organization, 'Policy brief: protecting migrant workers during the COVID-19 pandemic', April 2020, p. 2, www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_743268.pdf. (accessed 10 January 2022).

- 6.33 This impacted migrants in Australia during this pandemic, where temporary visa holders lost jobs en masse and were excluded from government payment assistance.²⁹
- 6.34 A survey of over 6000 temporary visa holders conducted by the University of Technology Sydney (UTS) and The University of New South Wales (UNSW) found that in the four months from March to July 2020:
- 70 per cent had lost their jobs or most of their hours/shifts;
 - 40 per cent had been afraid they would become homeless (and 1 in 7 international students had indeed become homeless); and
 - 28 per cent had been unable to pay for meals or food.³⁰
- 6.35 These results demonstrate that, prior to the pandemic, temporary visa holders were unable to save enough from their employment to provide for more than a few weeks of expenses following the loss of regular incomes.³¹
- 6.36 Asked by the committee if the circumstances surrounding migrant workers fearing to speak up for, or not knowing their rights, had changed, Mr Matt Kunkel, the Director of the Migrant Workers Centre, said that he had not seen any improvement:
- COVID-19, if anything, made it much, much worse. With their exclusion from any type of state support or welfare, they were forced even further into those demanding, dirty and dangerous jobs.³²
- 6.37 When asked how migrants workers fared during the pandemic, Mr Tim Petterson, a coordinator at Hospo Voice said that in 'every way migrant workers were hit harder than any other category of worker'.
- Not only were visa workers ineligible for JobKeeper, which often meant they were the first to be laid off, but workers on skilled visas whose visas were tied to their employment were put in a particularly precarious state and feared being deported if they could not find another employer to sponsor them, which was next to impossible, given how the pandemic was affecting the industry, basically. Our survey told us that migrant workers were more likely to experience a relationship breakdown, twice as likely to have to move out of their home and seven times more likely to have to rely on a charity for food or financial assistance. It was a catastrophe for migrant workers, the pandemic, and we saw the multiple forces of wage

²⁹ Monash University, 'Migrant Precariousness in the Time of COVID-19: Migrant Workers, Risks and Rights', January 2021, p. 7. www.monash.edu/_data/assets/pdf_file/0004/2489233/Migration-and-COVID-19-final-report.pdf (accessed 10 January 2022).

³⁰ Laurie Berg and Bassina Farbenblum, 'As if we weren't human: The abandonment of temporary migrants in Australia during COVID-19', 2020, p. 7, <https://apo.org.au/sites/default/files/resource-files/2020-09/apo-nid308305.pdf> (accessed 14 January 2022).

³¹ Australian Institute of Employment Rights, *Submission 6*, p. 37.

³² Mr Matt Kunkel, Director, Migrant Workers Centre, *Committee Hansard*, 13 April 2021, p. 24.

theft, insecure work and our visa regime all come together to really magnify the impact on these workers.³³

Long term effects

- 6.38 The Centre for Future Work expressed concerns about the future of the Australian labour market, arguing that employers will be 'determined to re-establish insecure work as a dominant practice once the pandemic ends'.³⁴
- 6.39 The NFAW noted that the COVID-19 recession is remarkably different to previous recessions given the extent of the shutdown and the specific, targeted effects, with '...a radical short-term shift in the mix of economic activities—of which an unknown, but possibly significant, amount will be persistent'.³⁵

The spread of COVID-19 and insecure work

- 6.40 The COVID-19 pandemic has highlighted the considerable health and safety risks associated with casual work, as well as demonstrated the additional problems posed by serious outbreaks of infectious disease.³⁶
- 6.41 From early in the pandemic, health advice to all Australians recommended that people stay home if they were feeling unwell, get a COVID test if they met the testing criteria, and isolate while they waited for the results. For workers without leave entitlements, this meant potentially foregoing several days of paid work.³⁷
- 6.42 In their submission, Professor Michael Quinlan and Dr Elsa Underhill argued that precarious workers were under pressure to attend work, notwithstanding COVID symptoms or being close contacts of others exposed to the virus. In some circumstances workers holding insecure jobs faced strong pressure not to report illness symptoms, or isolate, because this would mean losing income they needed.³⁸
- 6.43 Mr Dwyer identified the lack of sick leave as an 'economic cost' casuals had to weigh up in their choice to attend work or not, he explained:

But what we also saw during COVID was that it was a health risk for the community, because the casuals didn't have paid sick leave, which means there was an economic incentive for them to turn up for work, even if they

³³ Mr Tim Petterson, Coordinator, Hospo Voice, *Committee Hansard*, 20 April 2021, p. 23.

³⁴ Centre for Future Work, *Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond*, October 2021, p. 1.

³⁵ NFAW, *Submission 11*, p. 17.

³⁶ Professor Michael Quinlan and Dr Elsa Underhill, *Submission 2*, p. 3.

³⁷ Australian Medical Association, *Submission 36*, p. 2.

³⁸ Professor Quinlan and Dr Underhill, *Submission 2*, pp. 13–14.

knew they had symptoms, and they wouldn't get tested, because it was an economic cost.³⁹

6.44 In other circumstances, workers have been compelled to attend work by management regardless of whether they were a close-contact, or even if they had tested positive to the virus. It was widely revealed that abattoir workers at Teys Naracoorte in South Australia have been expected to work whilst sick. As reported by the ABC on 10 January 2022, a letter to employees from the abattoir's General Manager—Operations stated:

You are required to present for work tomorrow [Monday] as normal unless you are feeling unwell ... This applies even if you have tested positive to COVID-19 either by a PCR or rapid test [RAT], and also if you are currently isolating because you are a close contact.⁴⁰

6.45 Emeritus Professor David Peetz submitted that the 'absence of paid leave encouraged the spread of the virus'.⁴¹

6.46 The relationship between precarious work and community spread of COVID-19 was demonstrated during the 2020 Victorian outbreak during which Victorian Premier Daniel Andrews said 'about 80 per cent' of the state's infections were coming from workplace transmission.⁴² The Victorian experience demonstrates that a lack of paid sick leave is not just a danger to the well-being of those workers in these positions; it also poses a significant threat to public health.

6.47 Professor Quinlan and Dr Underhill also argued that societies heavily reliant on insecure work are both more vulnerable to pandemics and find it 'more difficult to suppress and manage them'. The risk factors of insecure employment arrangements are a clear lesson of the pandemic, and this experience therefore represents 'a warning signal' for the future.⁴³

6.48 The Australian Institute of Employment Rights recommended that, given the role that precarious work played in the spread of COVID-19 in Australia, 'addressing precarious and insecure work should be a part of the nation's pandemic preparedness and response strategy'.⁴⁴

³⁹ Mr Gerard Andrew Dwyer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 13 April 2021, p. 2.

⁴⁰ Isabel Dayman, 'COVID-positive Teys Australia staff told to keep working at Naracoorte abattoir, as supply chain issues start to bite', *ABC News*, 10 January 2021, www.abc.net.au/news/2022-01-10/covid-positive-abattoir-staff-told-to-keep-working-in-sa/100748372 (accessed 14 January 2021).

⁴¹ Emeritus Professor David Peetz FASSA, *Submission 88*, p. 19.

⁴² 'Workplace coronavirus transmission driving Victorian case numbers, including in aged care', *ABC News*, 19 July 2020, www.abc.net.au/news/2020-07-19/workplace-coronavirus-transmission-in-victoria-in-aged-care/12470704 (accessed 17 December 2021).

⁴³ Professor Quinlan and Dr Underhill, *Submission 2*, p. 10.

⁴⁴ Australian Institute of Employment Rights, *Submission 6*, p. 37.

Government payments and supports

- 6.49 As noted, insecure workers, predominantly casuals, were the first to lose their jobs or be stood down due to lockdowns. As such, many found themselves with no source of income. Given that casual workers experience both a lower hourly and annual wage than their permanent counterparts, many casual employees did not have sufficient savings to weather such an event. Further compounding the problem for casual workers was uncertainty around government financial assistance schemes.
- 6.50 The main Federal government scheme was the \$130 billion JobKeeper Payment scheme, announced on 30 March 2020 to support businesses affected by COVID-19 lockdowns and keep workers in jobs.⁴⁵ It is acknowledged that, at the completion of JobKeeper on 28 March 2021, the absence of integrated and comprehensive income supports for the remainder of 2021 was a pressing concern for casual workers. The below however only outlines casual workers' experience with the JobKeeper scheme.

JobKeeper

- 6.51 As in name, JobKeeper was touted to keep Australian in jobs, however, it deliberately excluded some worker cohorts. Many of these exclusions targeted workers and industries that had been the hardest hit by the pandemic including: casual employees who could not demonstrate 12 months of continuous employment with the same employer; all temporary visa holders; and all local government employees. Because of these exclusions, an estimated 1.1 million casual employees did not qualify for the JobKeeper scheme.⁴⁶
- 6.52 The Executive Director of Business Illawarra, Mr Adam Zarth, identified the essential role that JobKeeper played in keeping people in jobs during lockdown. He provided examples of how JobKeeper impacted local businesses, including: a catering company that would have 'closed down if it weren't for JobKeeper'; and a tourism operator, which was already experiencing hardship due to the 2019–20 bushfire season that 'credits JobKeeper with keeping their staff employed'.⁴⁷
- 6.53 However, Mr Zarth also reflected on the 'issues' JobKeeper created when 'it came to hiring'. On the experience of one company, he said:

When they were trying to get back up and running, they had a 50 per cent no-show rate for apprentice landscaper interviews compared to about 10 to

⁴⁵ The Hon Scott Morrison MP, Prime Minister and the Hon Josh Frydenberg MP, Treasurer, '\$130 billion JobKeeper payment to keep Australians in a job', *Media Release*, 30 March 2020, <https://www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job> (accessed 1 September 2021).

⁴⁶ The Victorian Government, *Submission 16*, p. 16.

⁴⁷ Mr Adam Zarth, Executive Director, Business Illawarra, *Committee Hansard*, 14 April 2021, p. 18.

15 per cent earlier. That's the reflection of just one employer, but perhaps it does demonstrate that there was a disrupting effect out there in the workforce created by JobKeeper, that that's what happens when you have major interventions in the economy.⁴⁸

- 6.54 Numerous inquiry participants criticised the decision to exclude casuals who had not been with their employer for at least 12 months. This eligibility criteria was described as *arbitrary*, and it was argued that it placed a considerable burden on casuals, and also exacerbated labour market inequalities, especially amongst those already considerably disadvantaged.⁴⁹

Box 6.1 JobKeeper exclusion testimony

'Angus' – labour-hire employee

'I work for a labour-hire company in Event Services. When the Sydney Lockdown was imposed I was not able to prove to Centrelink I had shifts scheduled for the period of the lockdown as the events had been cancelled before my employer had been allocated shifts/position, meaning I am ineligible for the lockdown support payments'.⁵⁰

'Terri' – hospitality casual

'My friend was stood down from his hospitality work but can't get government relief payments because he was paid cash-in-hand'.⁵¹

'Mark' – disappointed

'Very disappointing being told by my boss that my job is not a vital service
No pay for past month
Not enough hours worked to qualify for financial assistance'.⁵²

- 6.55 Mr Michael Clifford, General Secretary of the Queensland Council of Unions, said that of the in 213 000 people who were excluded from JobKeeper in Queensland, a significant proportion came from lower socioeconomic areas, including 5200 people from the Mackay region.⁵³

⁴⁸ Mr Adam Zarth, Executive Director, Business Illawarra, *Committee Hansard*, 14 April 2021, p. 20.

⁴⁹ Mr Gerard Andrew Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees Association, *Committee Hansard*, 13 April 2021, p. 2.

⁵⁰ Angus, *Submission 130*, [p. 1].

⁵¹ Terri, *Submission 137*, [p. 1].

⁵² Mark, *Submission 134*, [p. 1].

⁵³ Mr Michael Clifford, General Secretary, Queensland Council of Unions, *Committee Hansard*, 13 July 2021, p. 16.

6.56 Branch Secretary of the Victorian and Tasmanian Branch of the Australian Services Union (ASU), Ms Lisa Darmanin, highlighted the fact that those missing out on JobKeeper were not limited to food and beverage, and retail service industries, but also included staff from local government-run childcare services, arts and entertainment venues, and recreation centres. She said:

In Victoria, what we saw in terms of job security and local government was that approximately 20 per cent of the workforce is casualised out of 52,000 just in Victoria. At the height of the pandemic, 7,000 of those were stood down and did not access JobKeeper.⁵⁴

6.57 The Young Workers Centre submitted evidence from a survey that found:

Only 28% of respondents qualified for JobKeeper. Of those, 31% said that they were forced by their employer to work extra hours to 'qualify' for the JobKeeper rate, and 8% said they were directly threatened with losing JobKeeper support if they didn't agree to increase their hours.⁵⁵

6.58 The Victorian Government said the significant difference in the incidence of job losses between casual and permanent staff reflects the inherently flexible nature of casual employment contracts which 'may have encouraged employers to sever shorter term casual staff and use wage subsidies to retain long-term or permanent employees'.⁵⁶

Committee view—looking forward

6.59 The COVID-19 pandemic has offered some important insights into the state of the Australian industrial relations landscape. A reflection of their insecure status, casual and insecure workers bore the brunt of the pandemic—most notably women, migrants, and young people. Their historic job losses, and relative abandonment through restrictive eligibility requirements for income support, confirms the urgency of addressing insecure work through policy reform.

6.60 It is crucial to recognise the inherent heightened exposure of those in insecure work—made plain by the pandemic—and take steps to provide all workers with secure jobs. Options for reform and the committee's recommendations are outlined in the following chapter.

⁵⁴ Ms Lisa Darmanin, Branch Secretary, Victorian and Tasmanian Branch, Australian Services Union, *Committee Hansard*, 20 April 2021, p. 56.

⁵⁵ Young Workers Centre, Unions ACT, *Submission 99*, pp. [8–9]

⁵⁶ The Victorian Government, *Submission 16*, pp. 16–17.

Chapter 7

Casual work: proposals for reform

- 7.1 In examining the evidence presented throughout the inquiry, the committee has considered the question: how can the Australian Government better support casual workers?
- 7.2 In casual work, and other forms of insecure employment, the burden of 'risk' shifts from the employer to the employee. Economist, Mr Dan Nahum, from the Centre for Future Work at The Australia Institute (Centre for Future Work) identified the Government as the 'third major player in terms of that burden of risk'. Mr Nahum said:
- ... during times of major economic stress, government does have a role to step in to mitigate the effects of some of that stress, large quantities of that stress, on both businesses and employees.¹
- 7.3 The committee is firmly of the view that much more needs to be done to support casual workers and challenge the tendency of industry to choose insecure forms of work over building a secure, stable workforce.
- 7.4 This chapter highlights the key issues raised during the inquiry regarding the casual workforce and recent changes to the *Fair Work Act 2009* (Fair Work Act). These topics were discussed in detail across Chapters 4, 5 and 6, the committee's views and recommendations are provided subsequent to each proposed reform.

The case for casual work

- 7.5 The common argument supporting the necessity of casual work is that it provides 'flexibility'—flexibility to enable businesses to deal with peaks and troughs in demand, and flexibility to allow employees to maintain competing life priorities. Therefore, both employers and employees have a 'shared interest' in maintaining casual employment arrangements.²
- 7.6 Inquiry participants had differing views on the legitimacy of this justification of casual work. These opposing views are discussed below.

Casual work enables employer certainty and employee choice

- 7.7 According to advocates for casual work, it underpins two principles of a successful industrial relations (IR) environment: employer certainty and employee choice.

¹ Mr Dan Nahum, Economist, The Australia Institute, Centre for Future Work, *Committee Hansard*, 20 April 2021, p. 49.

² The Australian Industry Group (Ai Group), *Submission 77*, [p. 8]

7.8 A few submitters argued that most employees engaged as a casual do so as a preference, and that this is often overlooked.³ The Australian Chamber of Commerce and Industry (ACCI), for example, submitted that:

Casual employment is a genuine and fulfilling choice for many employees, particularly those who seek to balance work and other aspects of their lives such as studying or caring responsibilities, and those who prioritise additional take home pay over leave.⁴

7.9 Similarly, the Australian Industry Group (Ai Group) submitted that many people engage in casual work because these arrangements offer them 'more flexibility to balance work, family, study and leisure'. To restrict casual employment arrangements would 'destroy jobs, including for young people and others who are disadvantaged in the labour market'.⁵

7.10 From an economic perspective, casual work plays an important role in keeping Australia competitive and dynamic to global changes. Ai Group maintained that flexibility increases workplace participation, and that 'Australia's future success depends upon the maintenance of flexible workplaces'.⁶

7.11 Similarly, the ACCI submitted that casual employment provides 'the necessary flexibility' for many businesses to manage their activities. Further, that casual employment 'is crucial for recovery' from the impacts of COVID-19, as it allows businesses to 'scale up' their workforces as they rebuild:

Casual employment makes our workplaces more productive, competitive and adaptable, and gives more Australians opportunities to work.⁷

7.12 Using the example of the retail sector, Chief Executive Officer of the Australian Retailers Association (ARA), Mr Paul Zahra said that casual work allows a business to 'flex up when there are customers and flex down when there are no customers'.⁸

Retail is a very fast and dynamic business. Often decisions made at the rostering levels are made by a sales manager an hour before they may need it. And what we're seeing within the industry—unfortunately, it's become a real cultural thing—is that it's easier to bring in a casual and not deal with the administration of a part-time change.⁹

³ Recruitment, Consulting and Staffing Association (RCSA), *Submission 73*, [p. 1].

⁴ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 8].

⁵ Ai Group, *Submission 77*, p. 8.

⁶ Ai Group, *Submission 77*, p. 6.

⁷ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 9].

⁸ Mr Paul Zahra, Chief Executive Officer, Australian Retailers Association (ARA), *Committee Hansard*, 13 April 2021, p. 17.

⁹ Mr Zahra, CEO, ARA, *Committee Hansard*, 13 April 2021, p. 18.

7.13 **Mr Duncan Fletcher, a labour employment legal practitioner of 20 years, said that the term flexibility has been bastardised to 'denigrate employer sentiments, in the view that flexibility is akin to treating workers poorly'. This is in contrast to Mr Fletcher's own experience. Instead, Mr Fletcher argued that the workforce needs to modernise, and it is prudent to consider what 'actually motivates people and what people really want from their workplace':**

I appreciate that we need to have a safety net. We need to have a structure that prevents people from falling through the cracks, but, in terms of the way people want to work, if we look at our system of employment, all of the overtime, penalty and other arrangements that have been developed over the years are built on a postwar concept of a Monday to Friday, 38-hour week, with time and a half on a Saturday till 12 and double time for the rest of the weekend so that you can go to church on Sundays and enjoy a public holiday when that comes around.¹⁰

7.14 Similarly, the Recruitment, Consulting and Staffing Association (RCSA) referenced the diversity of the Australian workforce and the evolving global environment in which it operates in its argument against imposing generic IR policy, saying it 'is futile to attempt to engineer, via regulation, the retention of permanent full-time employment as the default work-type'.¹¹

The myth of 'flexibility'

7.15 The overarching reason provided by inquiry participants who were *not* in favour of casual employment was that it does not constitute a fair employment arrangement and, in practice, 'flexibility' frequently favours the employer.

7.16 Rather than viewing casual employment arrangements 'as a source of flexibility for employer and employee', Professor Peetz suggested that it may be more prudent to describe it as a means of depriving employees of leave entitlements and promoting dependency on employers.¹²

7.17 Professor Peetz further explained:

Employers may have the ability to deploy [casual workers] in all sorts of flexible ways, but often do not need to utilise that flexibility. The low use of these flexibilities is indicated by the seeming stability of employment for many leave-deprived workers, stability which by its nature suits the employer. The implicit threat of having their hours cut, or being dismissed, enhances the potential power of the employer to exercise discipline. So 'casual' employment reduces employee power and reduces employee entitlements (often without any offsetting 'loading') under the guise of providing necessary flexibility.¹³

¹⁰ Mr Duncan Fletcher, Private capacity, *Proof Committee Hansard*, 27 July 2021, p. 19.

¹¹ Recruitment, Consulting and Staffing Association (RCSA), *Submission 73*, [p. 2].

¹² Appendix 1 (What do the data on casuals really mean), Professor Emeritus David Peetz FASSA, *Submission 88*, p. 48.

¹³ Appendix 1, Professor Peetz, *Submission 88*, p. 46.

7.18 In a similar vein, the National Foundation for Australian Women (NFAW) submitted that employer defined flexibility, and flexibility for workers, are two distinctive concepts and are not to be confused.¹⁴ The NFAW stressed that flexibility, not insecurity, is vital for women:

Working time minima and predictable working patterns are crucial for women ... However, it is deliberate myth-making to imply that the numerical flexibilities that benefit employers are the same flexibilities that benefit for women—though the two are often conveniently conflated by employer associations. Steady and substantive minimum hours of work and a reliable working pattern represent basic income security to women and set a floor to the transaction costs of working, such as the expense and time in travelling to work. Most importantly, they assist in the planning of caring arrangements—which is the reason why most women are working 'non-standard' hours to begin with.¹⁵

7.19 The Executive Director of Per Capita, Ms Emma Dawson said that flexibility means different things in different workplaces. For some it means 'being able to work from home and pick up the kids from school a couple of days a week' but for others, especially those in 'low-paid shift work it almost always means insecurity'.¹⁶

7.20 In its submission, Per Capita phrased it this way:

'Flexibility' is a term used to describe insecure work conditions: it is often portrayed as offering benefits to workers and employers equally, but in practice, the concept is sold to employers by labour hire companies as a way to reduce the 'ongoing burden of fixed costs' ... workforce 'flexibility' is most often a euphemism for insecure employment and is of far greater benefit to business owners than it is to workers.¹⁷

7.21 The Australian Services Union (ASU) identified the use of casual labour as a profit driver for businesses:

[C]asual employment is driven by employers trying to realise short-term savings and higher profits by avoiding the costs associated with permanent employment...¹⁸

7.22 Director of the Migrant Workers Centre, Mr Matt Kunkel said that employers prefer to hire casuals as they recognise the benefits of keeping their employees 'hungry for work' and, as such, businesses can 'hire and fire much more easily'.¹⁹

¹⁴ National Foundation for Australian Women (NFAW), *Submission 11*, p. 3.

¹⁵ NFAW, *Submission 11*, p. 32.

¹⁶ Ms Emma Dawson, Executive Director, Per Capita, *Committee Hansard*, 19 April 2021, p. 20.

¹⁷ Per Capita, *Submission 30*, p. 10.

¹⁸ Australian Services Union, *Submission 33*, p. 4.

¹⁹ Mr Matt Kunkel, Director, Migrant Workers Centre, *Committee Hansard*, 13 April 2021, p. 26.

7.23 However, this short-term gain may actually be to the detriment of an employer in the long run. In their submission, Associate Professor Angela Knox & Associate Professor Susan Ainsworth argued that ultimately there are consequences for businesses who extensively rely on non-standard employment:

Firms that rely heavily on nonstandard employment can experience a gradual erosion of firm-specific skills in the organization, limiting its competitiveness, including its ability to respond to changing market demand. Any short-term cost and flexibility gains based on using non-standard employment, may be outweighed by productivity losses.²⁰

Proposals for reform

7.24 The committee received a number of proposals for addressing and improving casual employment arrangements. The below section considers range of regulatory and policy options available to strengthen job security for casual workers.

Review and amend the Fair Work Act

7.25 A majority of inquiry participants—including workers and their representatives, academics, and state and local governments who made submissions—agreed that amendments made to *Fair Work Act 2009* (Fair Work Act) in March 2021 entrenched casual employment, and that a review and further amendment is warranted.²¹ A small number of submitters asserted that the existing legislation should not be disturbed, but they were significantly outweighed by participants who argued in favour of revision.²²

Statutory definition of casual employee

7.26 As discussed in Chapter 4, many inquiry participants agreed that there is a clear need to clarify work status, but that the statutory definition of a casual employee is too restrictive and does not consider the substance of casual employment relationships.

7.27 Concerns were raised that the new definition of casual employee would exacerbate job insecurity amongst casual workers. The Victorian Government submitted that consequently, engaging workers casually may now be preferred by employers because, by simply 'applying the casual label they can

²⁰ Associate Professor Angela Knox & Associate Professor Susan Ainsworth, *Submission 35*, p. 4.

²¹ See, for example: Australian Institute of Employment Rights, *Submission 6*, pp. 53–54; Victorian Government, *Submission 16*, pp. 27–28; The Australia Institute, Centre for Future Work, *Submission 41*, pp. 18–19; Isaac Regional Council, *Submission 184*, [p. 1]; and, Australian Workers Union, *Submission 199*, [p. 7].

²² ACCI, *Submission 71*, [p. 17]; National Retail Association, *Submission 29*, p. 8.

shift risk and engage workers on an insecure basis, regardless of whether a permanent employee is required'.²³

7.28 Unions NSW submitted that the definition is 'fundamentally flawed', and that, whilst they support a statutory definition, it needs to be one that 'accurately reflects the common law definition that has evolved over time'.²⁴

7.29 The overarching recommendation from submitters was that the definition of casual employee should be amended again.²⁵ For example, the NFAW recommended:

- ... the insertion in the Fair Work Act ... of a new objective definition of casual employment in which employment status is determined by post-contractual employment history as well as the nominal employment contract itself.²⁶

7.30 Referring to the High Court case, *Workpac Pty Ltd V Skene* [2018], the Isaac Regional Council recommended that the casual work definition should further clarify 'how the character of the work undertaken forms the core determining factor for employment classification'.²⁷

Casual conversion

7.31 Chapter 4 also outlined the pessimism shared by submitters concerning the introduced casual conversion provisions. The common critique, in sum, being that it enables employers to avoid making an offer of conversion to casual workers at all.

7.32 For example, Unions NSW submitted that the vague 'reasonable grounds' on which an employer can refuse an offer 'creates a convenient loophole to release employers from a requirement to provide their workers with security'. Furthermore, the union argued that the inadequacy of this provision was 'compounded by the apparent absence of an avenue for arbitration to dispute that decision'.²⁸

7.33 Many submitters recommended in favour of introducing provisions to address this inadequacy. The Australian Council of Trade Unions (ACTU) submitted that the provision should be:

²³ Victorian Government, *Submission 16*, pp. 27–28.

²⁴ Unions NSW, *Submission 78*, pp. 11–12.

²⁵ See, for example: NFAW, *Submission 11*, p. 31; Australian Institute of Employment Rights, *Submission 6*, pp. 53–54; Victorian Government, *Submission 16*, pp. 27–28; The Australia Institute, Centre for Future Work, *Submission 41*, pp. 18–19.

²⁶ NFAW, *Submission 11*, p. 31.

²⁷ Isaac Regional Council, *Submission 184*, [p. 1].

²⁸ Unions NSW, *Submission 78*, p. 12.

A meaningful and enforceable right for casual employees to transition to permanent employment, including the capacity to have conversion issues arbitrated in the Fair Work Commission.²⁹

Committee View

- 7.34 The committee is concerned that the provisions newly introduced into the Fair Work Act favour employer interests and take advantage of those who can least afford it—marginalised and precarious workers.
- 7.35 The committee notes that the need for a definition of casual work is supported by many participants. However, the introduced definition did not strike the right balance and may encourage artificial characterisations of casual work. Further, the committee is not persuaded that the introduced casual conversion provisions will improve pathways to permanent work for casual workers.
- 7.36 While the Attorney-General's Department was unable to provide any data on casual conversion offers to this committee, throughout the course of the inquiry data has been provided by unions and employers which illustrates the utter and complete failure of the casual conversion laws.
- 7.37 Across employers as diverse as the Universities of Sydney, Melbourne and Newcastle, TAFE NSW, Commonwealth Bank, ANZ Bank, PwC, and Spotless, approximately 2 per cent of casuals have received conversion offers. It was evident in some cases—such as at the University of Newcastle where thousands of casuals received an identical form letter informing them they would not receive an offer—that no real assessment ever took place of their eligibility for conversion.
- 7.38 At the time the casual conversion laws were introduced into Parliament, unions, academics and other submitters were very clear that the proposed conversion laws would not deliver any meaningful prospect of attaining permanent employment, and this is precisely the situation that has eventuated. It is apparent these laws were not designed to increase job security; they were designed to flatter and fail.
- 7.39 Not only are the laws ineffective, but they also lack a fair and accessible appeal mechanism. The committee notes evidence from Mr Gerard Dwyer, National Secretary-Treasurer of the Shop, Distributive and Allied Employees Association (SDA) who indicated that a worker may face costs of up to \$100 000 should they pursue redress through the courts.³⁰
- 7.40 The understandable reluctance for workers to pursue lengthy and costly redress options, which may not even result in a worker being converted, is a key concern for the committee. There should be a simple, low or no-cost

²⁹ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 34.

³⁰ Mr Gerard Andrew Dwyer, National Secretary-Treasurer, Shop, Distributive and Applied Employees Association, *Committee Hansard*, 13 April 2021, p. 7.

process via the Fair Work Commission to apply for mediation in a dispute about casual conversion.

- 7.41 In the committee's view the Fair Work Act should contain fundamental safeguards that are designed to ensure the benefits of productivity growth are shared by both employers and employees.
- 7.42 Given this, and the concerns raised by submitters, the committee is firmly in favour of a revision of the Fair Work Act, to implement such safeguards, and believes that their implementation would materially improve the security of casual workers.

Recommendation 6

- 7.43 The committee recommends that the Australian Government urgently assesses the performance of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*. As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.**

Establish a national portable leave scheme

- 7.44 Chapters 5 and 6 demonstrated the problems associated with casual employees not having an entitlement to paid sick leave, namely: workers working whilst sick or injured, including working whilst potentially exposed to, or infected with COVID-19. In response, some inquiry participants, including two state governments, flagged the creation of portable leave entitlements as a solution.³¹
- 7.45 Portable leave schemes follow the worker, as opposed to an employee being required to be employed for a specific period of time with one employer before being eligible for leave entitlements.
- 7.46 Professor Michael Quinlan and Dr Elsa Underhill argued that while such a scheme would be beneficial, it should be an 'interim measure to support casual workers' and should not be prioritised over 'discouraging and/or limiting precarious work'.³²

³¹ See, for example: Ms Mairead Lesman, Acting Director, Young Workers Centre, *Committee Hansard*, 20 April 2021, p. 24; Queensland Council of Unions, *Submission 117*, pp. 8–9; McKell Institute Victoria, *Submission 86.1*, p. 47.

³² Professor Michael Quinlan and Dr Elsa Underhill, *Submission 2*, p. 27.

7.47 The Ai Group were opposed to the development and establishment of any portable leave scheme, citing that such a scheme would be an 'inhibitor to growth and competitiveness'. It estimated that the implementation of a national portable long service leave scheme would cost Australian businesses over \$16 billion per annum, with the cost of portable annual leave and personal/carer's leave being even greater.³³

7.48 The committee was made aware of existing portable leave schemes operating in Victoria and Queensland. The Queensland Council of Unions outlined the 2020 introduction of portable long service leave in the Queensland building and construction industry, contract cleaning, and the community sector in 2020. The Union further submitted:

The importance of introducing initiatives such as portable long service leave into sectors with high rates of insecure work such as the construction industry and the community services sector, helps to ensure that workers are not disadvantaged or that employers don't seek to casualise jobs as a cost savings initiative.³⁴

7.49 The McKell Institute, an independent public policy institute, presented evidence on how such a scheme may operate, including consideration of the benefits to employees, employers and taxpayers. In giving evidence to the committee, Executive Director of the McKell Institute, Mr Ryan Bachelor, highlighted the policy opportunity that exists:

... to deliver better outcomes for workers, increase their job security and provide them with the kind of security that means that they don't have to turn up to work sick or that they know that they can take some time off on school holidays because they've got to take care of their kids. We need to think about work as being more than just a financial transaction between an employer and employee and about supporting and sustaining the lives of all workers beyond work as well. That's been the foundational principle of industrial relations in this country since the Harvester judgement, and we should never lose sight of that.³⁵

7.50 Mr Bachelor pointed to research produced in a January 2021 report entitled, *Insecure Work and Portable Entitlements*, which concluded that the implementation of a portable entitlement scheme would require:

... the close collaboration between government, workers, and businesses to ensure its feasibility and accessibility for individuals. Detailed modelling would be required to determine appropriate contribution rates, and to work through the range of legislative changes that might be needed to the Fair Work Act to enable leave portability.³⁶

³³ Ai Group, *Submission 77*, p. 22.

³⁴ Queensland Council of Unions, *Submission 117*, pp. 8–9.

³⁵ Mr Ryan Bachelor, Executive Director, McKell Institute Victoria, *Committee Hansard*, 19 April 2021, pp. 56–57.

³⁶ McKell Institute Victoria, *Submission 86.1*, p. 47.

Committee view

- 7.51 The committee believes that the benefits of extending entitlements for all workers are clear.
- 7.52 COVID-19 has exacerbated fundamental inequalities that beset the Australian industrial landscape prior to the pandemic. As expected, casual workers were the first to experience financial hardship during the pandemic, enabled in large part by a lack of leave entitlements.
- 7.53 In the trade-off between working whilst sick and potentially contributing to the spread of COVID-19 or staying home and foregoing financial security for that week, the worker lacking entitlements always loses.
- 7.54 The Government should comprehensively investigate the potential benefits of expanding coverage of existing portable leave schemes to workers in some other industries, through close consultation with employer and employee groups, and state and territory governments.

Recommendation 7

- 7.55 The committee recommends that the Australian Government undertakes a review of the current portable leave schemes operating in Australia, and examines where such schemes could be extended to workers in other industries. This should be done in consultation with employer and employee groups, and state and territory governments.**

Minimise the use of casual work

- 7.56 Dr James Stanford, an Economist and the Director of Centre for Future Work, was concerned about the 'misuse of casual labour', stating that the casual labour relationship should be limited to:
- ... situations where fluctuations in demand for seasonal reasons or the ups and downs of normal business are fitting for casual labour rather than the current practice of employers using a casual labour relationship even for flows of work that are quite regular and predictable.³⁷
- 7.57 When asked about the 'removal of choice' implied in this statement, Dr Nahum further clarified that this did not mean that Australians should be deprived of the option to work casually.³⁸
- 7.58 In terms of what role the Government can take to disincentivise use of unnecessary casual employment, General Secretary of the Western Australian Branch of the SDA Mr Peter O'Keeffe said:

³⁷ Dr James Stanford, Economist and Director, The Australia Institute, Centre for Future Work, *Committee Hansard*, 20 April 2021, p. 49.

³⁸ Mr Dan Nahum, Economist, Centre for Future Work, The Australia Institute, *Committee Hansard*, 20 April 2021, p. 54.

I refer to it as 'employment with your fingers crossed behind your back'. They'll take the view: 'Although this person may have worked for me for seven years doing the same hours every week, they're a casual and I can click my fingers and send them on their way.' I think there needs to be something that also breaks the mindset ... I think there really needs to be a focus on how you dissuade the employers from that notion that insecure employment is a good thing. Maybe that's an issue of cost; maybe casuals should cost more than they do currently. It's hard to say, but there certainly is, in my view, a mindset out there that will take some breaking.³⁹

Committee view

- 7.59 The committee firmly disagrees with the perspective that casual Australian workers must accept that job insecurity is the reality of a profitable and dynamic economy.
- 7.60 Rather, it seems that the Australian industrial relations system is increasingly encouraging 'flexibility' for employers, while casuals and other insecure workers take on an unfair burden of business risk and forego the core benefits of employment, like job security and paid leave.
- 7.61 As evidenced by this inquiry, there are a very narrow set of stakeholders who value the 'flexibility' in casual work benefits. The lives of many casual workers who live with less power and opportunity than many of their fellow Australians stand as proof of that. They are the ones who live in constant precarity, not knowing when their next shift will be, if they will be able to provide for their families, or if they will have a job next week.
- 7.62 Most importantly, as demonstrated by the COVID-19 pandemic, they are the ones who keep this country running in times of crisis.
- 7.63 The committee acknowledges that there needs to be available casual labour to support seasonal peak workloads and when there is a crisis. However, the committee believes this form of employment should only be utilised when necessary to perform work which is genuinely casual, and not be used as a quasi-permanent arrangement for ongoing work.
- 7.64 Given this, the committee is firmly of the view that casual working arrangements should be minimised unless genuinely preferred by the employee.
- 7.65 The recommendations above, which would provide a revised definition of casual employment, make casual conversion easier, and provide avenues for arbitration, would help to reduce the overuse and misuse of casual employment contracts.

³⁹ Mr Peter O'Keefe, General Secretary, Western Australia Branch, SDA, *Committee Hansard*, 26 July 2021, p. 37.

7.66 However, the committee also believes there are some positive steps that can be taken to encourage employers to understand the benefits of investing in a permanent workforce.

Recommendation 8

7.67 The committee recommends that the Australian Government provides encouragement and incentives for businesses to hire permanent staff instead of casuals through investigating the use of:

- education campaigns around the benefits of ongoing employment for businesses and employers;
- training and employment subsidies with secure, ongoing employment requirements attached to the funding;
- increasing reporting requirements for publicly-listed companies in relation to work status, pay and conditions; and
- introducing a procurement framework to prioritise firms that favour a permanent, directly engaged workforce.

Recommendation 9

7.68 The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman, unions and employer associations to provide tripartite support and education to small businesses about their regulatory obligations—and their employees about their industrial rights—in order to increase the proportion of permanent employment in the small business sector.

Part 3
The future of work in Australia

Chapter 8

Challenging the Amazon effect and Uberisation

- 8.1 The most significant disruption to industrial relations (IR) in Australia and around the world in the last decade has been the emergence of the gig economy and on-demand platform work.
- 8.2 As discussed in the committee's first interim report, jobs associated with online platforms like Uber and Deliveroo can be some of the lowest-paid jobs in the Australian economy, and many of them lack basic employment protections and standards. These companies operate largely outside of Australia's IR system and have so far resisted attempts to have their workers brought under its protection.¹
- 8.3 This chapter looks at the Uberisation of work in Australia and the emergence of the Amazon effect, specifically discussing responses to the committee's first interim report along with new evidence submitted during the inquiry.
- 8.4 It revisits the recommendations from the committee's first and third interim reports as they relate to these issues, and either restates or revises those recommendations.

Uberisation

- 8.5 The committee's first report weighed up evidence from a diverse range of submitters and witnesses, including employee and employer groups, industry, academics, and others. It was important to the committee to understand both the benefits provided by these new forms of work, and the potential risks they pose to individual workers, care recipients, and job security more broadly.
- 8.6 The report made a number of recommendations aimed at improving the conditions of workers engaged in on-demand platform work and seeking to reverse the trend towards the Uberisation of work in Australia.²
- 8.7 After the publication of its first interim report, the committee wrote to all relevant submitters and witnesses, inviting them to provide feedback on the conclusions and recommendations in that report. This feedback is considered

¹ Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 164, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report (accessed 17 January 2022).

² For instance, the committee heard evidence that entrepreneurial platform companies have moved into the disability care sector, offering jobs with employment arrangements that may be ill-suited to the sector. This is further discussed in Chapter 9. Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 171.

in this chapter and the next chapter, Chapter 9, which discusses increasing security in publicly-funded jobs.

- 8.8 In addition, while national data and statistics on the size and nature of the platform workforce in Australia are not currently available, this chapter includes information on steps that are being taken to address these gaps, and provides some new data and evidence on the growth of the on-demand platform sector.

The Amazon effect

- 8.9 In its third interim report, on labour hire and contracting, the committee identified a growing Amazon effect, where 'new wave' or new technology companies exert influence on the traditional transport and distribution sector through downward economic pressure.³ According to the Transport Workers Union (TWU), these companies are bypassing traditional employment models in favour of on-demand models, and as such are able to reduce costs and undercut their competitors:

Gig companies are outside the system, and this has led to them dragging down standards and leading otherwise good transport operators into reflex panic reactions, pushing down standards in an effort to compete with those that don't even have to obey the rules. This is what we call the Amazon effect.⁴

- 8.10 The committee made a number of recommendations designed to defend these traditional industries from the corrosive and undermining effect of being forced to compete with companies operating outside of Australia's IR regulation.

The committee's recommendations: regulating on-demand platform work

- 8.11 Recommendations made in the committee's first interim report were designed to provide greater protections for workers in the on-demand platform sector and included:
- Recommendation 6, which would see the Commonwealth lead the reform of state-based workers' compensation schemes so that they would 'extend to platform workers, regardless of their visa or work status'.
 - Recommendation 7, which would expand the definitions of 'employment' and 'employees' in the *Fair Work Act 2009* (Cth) (Fair Work Act) to 'capture new and evolving forms of work', and extending the coverage of the Fair

³ Select Committee on Job Security, *Third interim report: labour hire and contracting*, November 2021, p. 91, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Third_Interim_Report (accessed 17 January 2022).

⁴ Mr Michael Kaine, National Secretary, Transport Workers Union of Australia (TWU), *Proof Committee Hansard*, 13 October 2021, p. 14.

Work Act to workers who fall outside the definition of employment, 'including low-leveraged and highly dependent workers'.

- Recommendation 8, which recommended the Government 'investigates options for a Federal regulator to be empowered to request data [on pay rates, hours and conditions] from platforms that employ and contract workers'.
- Recommendation 9, designed to expand the powers of the Fair Work Commission to allow it to 'resolve disputes and make orders for minimum standards and conditions in relation to all forms of work', as well as to:
 - adjudicate work status disputes;
 - set 'binding minimum standards and conditions in relation to non-standard forms of work, regardless of employment status'; and
 - resolve disputes 'in a low-cost and effective manner'.
- Recommendation 10, empowering the Fair Work Commission to provide pathways to permanency via arbitrations for casual conversion.
- Recommendation 11, aiming to provide:
 - ... greater protections for independent contractors who are sole traders by establishing an accessible low-cost national tribunal to advise on, oversee, and make rulings relating to employment relationships involving low-leveraged independent contractors, such as those in the rideshare and other platform sectors.⁵

Responses to these recommendations

8.12 While most participants in the inquiry agreed there is an urgent need for reform to provide greater protections for on-demand platform workers, a small number of participants cautioned that changing Australia's current workplace laws could stymie growth in the platform sector, reducing opportunities offered by emerging employers.

8.13 Responses to the recommendations are discussed below.

Australia's IR framework 'should not be disturbed'

8.14 The Australian Industry Group (Ai Group) highlighted the benefits that platform work provides for some workers—including the flexibility to work around study, family commitments and other paid employment—and for some businesses. Ai Group submitted:

Australia's workplace laws must recognise and accommodate the need for Australian businesses to engage employees and contractors in different ways. The vast majority of employment and contracting relationships rely on Australia's current workplace relations framework, including the

⁵ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. x–xi, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report (accessed 19 January 2022).

flexibility afforded by the common law tests in determining whether a worker is an employee or an independent contractor.⁶

- 8.15 Arguing that Australia's existing IR framework 'should not be disturbed', Ai Group said implementing laws that are too 'prescriptive' would simply 'stifle innovation to the detriment of businesses, workers and the whole community'.⁷
- 8.16 In a supplementary submission responding to the committee's first interim report, Ai Group stated its opposition to recommendations 6, 7, 9, 10 and 11 on a number of grounds; these grounds are detailed below.
- 8.17 Ai Group did not support Recommendation 6 because it believed other forms of accident insurance 'are better aligned with the circumstances of contract workers than workers' compensation schemes'.⁸
- 8.18 Ai Group was opposed to Recommendation 7 because it did not support 'capturing independent contractors and the self-employed under expanded statutory definitions of "employment" and an "employee"', saying this would likely have negative implications on existing contractors and small business owners, such as 'plumbers, electricians, truck drivers, graphic designers and countless other independent contractors who have no desire to be employees'.⁹
- 8.19 Instead, Ai Group argued for retaining the common law approach to differentiating an independent contractor from an employee. Ai Group also argued that the *Independent Contractors Act 2006* (Cth) (IC Act) offers 'protection against unfair contracts' for independent contractors that are covered by the Act, saying: 'If a relevant court determines that a contract is harsh or unfair, the Court may set aside the whole or part of the contract or vary the contract'.¹⁰
- 8.20 However, Ai Group did not respond to the committee's concerns that the IC Act imposes no penalties on companies for including unfair terms, that parties have to pay their own court costs (likely to be out of reach for most platform workers), and that the provisions in the IC Act do not appear to be well-utilised—and perhaps have *never* been used by any platform worker.¹¹
- 8.21 In addition to the IC Act, Ai Group highlighted the existing sham contracting provisions in the Fair Work Act, saying these provisions:

⁶ The Australian Industry Group (Ai Group), *Submission 77*, p. 3.

⁷ Ai Group, *Submission 77*, p. 3.

⁸ Ai Group, *Submission 77.4*, p. 7.

⁹ Ai Group, *Submission 77.4*, p. 8.

¹⁰ Ai Group, *Submission 77.4*, p. 9.

¹¹ See: Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 115.

... provide a range of protections and remedies for contractors. These may be pursued under the FW [Fair Work] Act's General Protections provisions, including by application to the FWC or the Federal Circuit Court. The FW Act's reverse onus of proof and penalty regime for these contraventions serves as a major deterrent to unlawful behaviour.¹²

8.22 Other provisions contained within the Fair Work Act may also provide protection for *employees* who find themselves the victims of sham contracting arrangements, including:

- Underpayment orders and penalties for breaches of the National Employment Standards and modern awards;
- The unfair dismissal laws;
- A prohibition on taking adverse action against an independent contractor because the contractor has a workplace right, has or has not exercised a workplace right, or proposes to exercise a workplace right (s.340);
- A prohibition on coercion in relation to workplace rights (s.343); and
- A prohibition on misrepresentations in relation to workplace rights (s.345).¹³

8.23 Ai Group noted that amendments to the Fair Work Act made in 2017 designed to protect vulnerable workers added 'additional protection' and increased 'obligations on employers'. These amendments introduced 'a new "serious contravention" penalty' of up to \$666 000 per breach for a company, which is ten times higher than the previous maximum penalty.¹⁴

8.24 The committee notes, however, that many of these provisions only protect *employees*, and most on-demand platform workers are not classed as employees, despite many being 'highly dependent' on the platforms that engage them.¹⁵

Some platforms continued to push for a 'third way'

8.25 Companies whose business primarily revolves around engaging workers as independent contractors (or 'partners') to transport people or goods, or deliver products for third parties, continued to oppose moves that would see their workers classified as employees.

8.26 Uber argued its drivers and delivery partners value 'flexibility' above all else, and 'the flexibility offered through working with Uber today is incompatible with traditional employment':

¹² Ai Group, *Submission 77.4*, p. 10.

¹³ Ai Group, *Submission 77.4*, p. 10.

¹⁴ Ai Group, *Submission 77.4*, p. 10.

¹⁵ Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, p. 130, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Second_Interim_Report (accessed 22 December 2021).

We believe a better approach is to evolve Australia's workplace relations framework to preserve this valued flexibility while removing the disincentives and regulatory barriers that prevent independent contractors receiving benefits.¹⁶

8.27 Similarly, Deliveroo submitted that it wants to maintain the status quo in which its riders are independent contractors, while being able to provide more 'employee-like' benefits:

We would like to go further in offering benefits to riders, but are constrained by the law. Our 'ask' is for future governments to create new legislation, which makes clear that the provision of protections and security to riders does not impact on their self-employed status.¹⁷

8.28 Deliveroo argued that bringing food delivery drivers and riders under the employment umbrella would:

- 'remove the flexibility riders currently have';
- 'create a new balance of power in the relationship between the platform and the rider';
- prevent riders from multi-apping, which is how many maximise their earnings;
- lead to there being 'fewer riders in total'; and
- cause 'knock-on impacts for Australia's hospitality sector'.¹⁸

8.29 While the platforms argue that their motivation for wanting to continue the independent contractor model is because that is what their workers want, the committee has previously been provided with evidence indicating that using employed delivery workers in compliance with relevant laws would cost up to 'twice as much'.¹⁹

8.30 In an apparent effort to avoid a possible Federal Court ruling that one of its workers was an employee, the committee heard that Uber paid a \$400 000 settlement to Uber Eats driver, Amita Gupta²⁰—significantly more than Ms Gupta would have been entitled to had she won her case.²¹

¹⁶ Uber, *Submission 19.1*, [p. 2].

¹⁷ Deliveroo, *Submission 20.1*, [p. 4].

¹⁸ Deliveroo, *Submission 20.1*, [pp. 5–6].

¹⁹ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 37.

²⁰ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 117.

²¹ While the TWU said the claim if pursued and taken to a decision in the Fair Work Commission was unlikely to be worth more than \$15 000, on notice, the Fair Work Commission stated that the 'compensation cap' at the time Ms Gupta's engagement ended was \$72 700. As such, \$72 700 would have been the maximum Ms Gupta could have been entitled to had she won her case. Fair

8.31 There have been three other cases in which the Fair Work Commission determined a platform worker *not* to be an employee; none of them has been appealed, and each concerned rideshare rather than food delivery:

- Suliman v Rasier Pacific Pty Ltd [2019] FWC 4807;
- Pallage v Rasier Pacific Pty Ltd [2018] FWC 2579; and
- Kaseris v Raiser Pacific V.O.F [2017] FWC 6610.²²

Others platforms are moving forward with employment models

8.32 Not all on-demand platforms are opposed to employing their workers. Hireup already employs its workers and argues this is the most appropriate model in the disability sector. This is further discussed in the next chapter.

8.33 While Menulog's delivery partners in Australia have been contractors up until this point, the company is moving towards an employment model with a trial under way in Sydney CBD. In June 2021, the company announced the first group of 'employed couriers' began delivering for Menulog, kicking off the company's employment trial.²³

8.34 The Attorney-General's Department noted that Menulog commenced an application on 24 June 2021 in the Fair Work Commission with the intention of creating 'a new industry modern award, the "On Demand Delivery Services" Award'.²⁴

8.35 As part of the application, Menulog contested the idea that delivery riders are already covered by the Fast Food Industry Award, the Road Transport and Distribution Award, or the 'catch-all Miscellaneous Award'. Before it can agree to create any new award, the Fair Work Commission must determine if any existing award can be amended instead.²⁵

8.36 The media release from Menulog explained that the new employed couriers would form a new division of Menulog, alongside the 'self-service and independent contractor delivery offerings'. The new division would enable

Work Commission, Answers to questions taken on notice and answers to written questions from Senator Sheldon, Canberra, 15 June 2021, [p. 3] (received 30 July 2021),

²² Fair Work Commission, Answers to questions taken on notice and answers to written questions from Senator Sheldon, Canberra, 15 June 2021, [p. 4].

²³ Menulog, *Media Release: Australian first: employed food couriers delivering with Menulog*, 30 June 2021, www.menulog.com.au/explore/media-centre/articles/employed-couriers (accessed 24 January 2022).

²⁴ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 2.

²⁵ David Adams, 'Menulog's proposed delivery rider industry award has been revealed, including plans for a minimum wage and employee entitlements', *Business Insider Australia*, 26 August 2021, www.businessinsider.com.au/menulog-award-fair-work-commission-delivery-rider (accessed 24 January 2022).

Menulog 'to expand on its trial, working towards the employment of food couriers right across Australia if the application for a new modern award is successful':

Ultimately, we want to employ couriers, however the current regulatory framework presents a number of challenges, with specific regards to existing modern awards, the lack of flexibility they present and subsequent cost. As such, we intend to investigate avenues for employment by making an application for a new Modern Award with the Fair Work Commission and consulting with key stakeholders. We believe learnings from the trial of employed couriers will provide invaluable insight to help inform this proposal.²⁶

8.37 On 28 January 2022, the full bench of the Fair Work Commission handed down a decision that the:

... Road Transport Award currently covers employers and their courier employees in the 'on demand delivery services industry' as defined in Menulog's proposed award, and that the Fast Food Award does not cover such courier employees. It also necessarily follows from this conclusion that the Miscellaneous Award does not cover them by reason of clause 4.1 of that award.²⁷

8.38 The Commission noted that Menulog and 'some other parties to the proceedings' are wanting to undertake 'consultation and/or conciliation' prior to any further steps in the process occurring, and a directions hearing would be listed soon 'to facilitate this'.²⁸

Workers' compensation or voluntary industry codes?

8.39 A number of inquiry participants agreed that the Commonwealth should lead the reform of state-based workers' compensation laws, in order to ensure that the 'presumed' or 'deemed' worker provisions existing in state schemes apply to on-demand workers.²⁹

8.40 Professor Joellen Riley and Dr Michael Rawlings submitted that including provisions 'expressly' stating that platform workers are covered by workers' compensation schemes would 'foreclose attempts by platform operators to use contract terms that attempt to exclude workers from workers' compensation coverage'.³⁰

²⁶ Menulog, *Media Release: Australian first: employed food couriers delivering with Menulog*, 30 June 2021.

²⁷ [2022] FWCFB 5, p. 19, www.fwc.gov.au/documents/sites/on-demand-delivery-award/decisions-statements/2022fwcfb5.pdf (accessed 4 February 2022).

²⁸ [2022] FWCFB 5, p. 19.

²⁹ Professor Joellen Riley & Dr Michael Rawlings, *Submission 3.1*, p. 1. See also: Maurice Blackburn Lawyers, *Submission 17.1*, p. 2.

³⁰ Professor Riley & Dr Rawlings, *Submission 3.1*, p. 2.

- 8.41 Maurice Blackburn Lawyers 'fully supported' Recommendation 6, noting the Joint Select Committee on Road Safety is currently 'looking at similar issues': 'We encourage both Committees to seek to ensure that the findings and recommendations from both Committees are aligned and consistent'.³¹
- 8.42 However, platform companies including Uber and Deliveroo were focussed on *their own* safety and insurance models. Uber submitted that it 'share[s] the Committee's commitment to safety' and is working with state and territory governments and relevant stakeholders 'to improve safety standards'.³²
- 8.43 Uber announced that Uber Eats signed up to the *National Food Delivery Platform Safety Principles* (Safety Principles) in July 2021, along with Deliveroo, DoorDash and Menulog. The Safety Principles:
- ... are intended to give effect to how safety duties can be met by food delivery platforms in respect of food delivery platform workers and other persons.
- The signatories are committed to continuous improvement and implementing initiatives that reduce the risks associated with online food delivery platform work and to provide protection when incidents occur.³³
- 8.44 Uber said the Safety Principles incorporate 'an accountability mechanism', consisting of an annual review and 'platform compliance', facilitated by industry peak body, Ai Group.³⁴
- 8.45 According to Uber, the Safety Principles commit signatories to provide 'free, automatic insurance protections that cover delivery workers for accidental injuries that arise while delivering on food delivery platforms'. Rather than applying state workers' compensation schemes to platform workers, Uber argued state and territory governments should require platforms to 'provide insurance protection for workers and agree on a minimum insurance standard for platform work'.³⁵
- 8.46 Deliveroo argued that state-based workers' compensation schemes are not the best form of insurance for its riders, because:
- they are not employees
 - riders can delegate their work to others;
 - riders engage in multi-apping;

³¹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 2.

³² Uber, *Submission 19.1*, [p. 2].

³³ Deliveroo, *Launching the National Food Delivery Platform Safety Principles*, 14 July 2021, <https://foodscene.deliveroo.com.au/food-trends/national-food-delivery-platform-safety-principles.html> (accessed 21 January 2022).

³⁴ Uber, *Submission 19.1*, [p. 6].

³⁵ Uber, *Submission 19.1*, [p. 6].

- many workers' compensation schemes 'are not designed to provide insurance to an individual (contractor/sole trader) whose Deliveroo's earnings are only a portion of their overall income'; and
 - Deliveroo's bespoke policy 'is broadly equivalent, and in some instances better than, the state-based workers' compensation schemes'.³⁶
- 8.47 Deliveroo submitted that, on top of its existing free insurance offering, which includes income protection and personal injury insurance:
- ... insurance cover for riders working with Deliveroo will [now] include earnings protection for those who can't work due to illness and payments for new parents. We also offer free public liability insurance, so riders are protected in case something goes wrong in the course of making a delivery.³⁷
- 8.48 Deliveroo proposed that insurance policies that are managed and funded by the platforms provide 'a simple process for riders to follow', reduce red tape, and make claiming 'accessible for riders'.³⁸
- 8.49 Dr Tom Barratt and Dr Caleb Goods were asked to comment on the industry's Safety Principles, which they saw as 'a step in the right direction', but not sufficient to protect food delivery workers, for three reasons:
- (a) the voluntary nature of the code and lack of independent oversight and accountability;
 - (b) the fact that not all companies in the sector are participants, including one where a contractor died in 2020; and
 - (c) the commitments in the Principles 'do not always square with the experience of work', for instance the "piece rate' remuneration schedule' remains, meaning riders/drivers 'retain economic incentives to expose themselves to workplace risks'.³⁹
- 8.50 Evidence from rideshare drivers indicated safety issues relating to the pandemic were not necessarily being addressed in practice, and that the use of an app to manage issues and disputes may be putting drivers and riders at risk.
- 8.51 Uber drivers, Ms Lorna Berry and Uber Driver X, both reported having passengers refuse to wear masks in their vehicles despite public health orders, or simply 'forget' to bring one. Both drivers said they carry masks in the car with them so they can offer one to any passenger who doesn't have their own,

³⁶ Deliveroo, *Submission 20.1*, [p. 3].

³⁷ Deliveroo, *Submission 20.1*, [p. 2].

³⁸ Deliveroo, *Submission 20.1*, [p. 3].

³⁹ Dr Caleb Goods and Dr Tom Barratt, Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 5 August 2021), p. 1.

and both reported that Uber seemed to have no policy to protect drivers from exposure to COVID from unvaccinated passengers.⁴⁰

8.52 The Attorney-General's Department submitted that the Australian Government 'is taking a leadership role in advancing the issue of rider safety in the gig economy'. In its response to the first interim report, the Department stated that, on 20 May 2021, the Attorney-General and the Minister for Industrial Relations co-hosted a national meeting of WHS Ministers, at which Ministers:

... agreed to refer work on compliance and enforcement initiatives for food delivery platforms and riders to the Heads of Workplace Safety Authorities for consideration, and to refer work on promoting and strengthening education to Safe Work Australia.⁴¹

8.53 In addition, the Department said the Commonwealth continues to contribute to the development of WHS guidance for business and workers in the gig economy through Safe Work Australia.⁴²

Expanding definitions in the Fair Work Act may not work

8.54 The committee was clear in its first interim report that it may revisit its recommendations in later reports.

8.55 Recommendation 7—which looked at expanding the definitions of 'employment' and 'employees' in the Fair Work Act, and extending the coverage of the Act to workers who fall outside the definition of employment—elicited some constructive criticism from submitters.

8.56 Professor Riley and Dr Rawlings were concerned that expanding these definitions may not represent 'the most effective mechanism' for extending rights and protections to gig workers, and that platform companies would simply find another way around them. As an alternative, Professor Riley and Dr Rawlings suggested that 'a general "deeming" power for the Fair Work Commission' would be 'preferable', where the Commission could 'deem' workers to be employees for certain purposes.⁴³

⁴⁰ Uber Driver X, Private capacity, *Committee Hansard*, 4 November 2021, p. 2. Note: Uber Driver X gave evidence anonymously to protect his identity with the committee's agreement. Ms Lorna Berry, Private capacity, *Committee Hansard*, 4 November 2021, p. 2.

⁴¹ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 1.

⁴² Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 1.

⁴³ Professor Riley & Dr Rawlings, *Submission 3.1*, p. 3.

8.57 A number of inquiry participants identified possible unintended consequences of such a change.⁴⁴ For instance, the Australian Institute of Employment Rights (AIER) said changing the definition may not work as intended, especially owing to the 'current wording of other provisions of the Act':

Many of the provisions in the National Employment Standards are framed on the assumption of certain work patterns which are not easily accommodated to the nature of all forms of gig work. Also, experience has shown that hirers are adept at drafting labour engagement contracts in ways that deliberately evade classification according to statutory definitions. So the inclusion of a new statutory definition of 'employee' may not resolve all problems, and may create new ones.⁴⁵

8.58 Uber was opposed to this recommendation and others that it saw as being aimed at 'attempting to pull independent contractors' closer to the definition of traditional employment.⁴⁶

8.59 Conversely, Maurice Blackburn Lawyers *supported* this recommendation. Though, it too cautioned about the need to avoid unintended consequences:

We encourage the Committee to be very specific in what it wants to see captured in these expanded definitions, in order to minimise the risk of creating loopholes which employers/platforms might seek to exploit.⁴⁷

8.60 The Australian Small Business and Family Enterprise Ombudsman expressed general support for recommendations that 'would clarify the employment status' of on-demand platform workers, saying: 'This is critical in reducing potential points of industrial conflict'.⁴⁸

Extend minimum standards and protections to all workers

8.61 While they did not support Recommendation 7, Professor Riley and Dr Rawlings proposed instead what they called a 'beyond employment' approach:

... a more effective method of ensuring that vulnerable gig workers are legally protected is to ... institute a legislative regime that applies regardless of whether the workers are employees or contractors. That is, work standards might be explicitly applied to digital labour platforms who engage gig workers even if they are engaged as contractors. This approach

⁴⁴ See for instance: Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan & Dr Alex Veen, who submitted: 'The research team expresses reservations about such a change without wider reform of the Fair Work Act more generally. While we see why this change would be appealing, it would also have wide-reaching consequences beyond the gig economy'. *Submission 10.1*, [p. 3].

⁴⁵ Australian Institute of Employment Rights (AIER), *Submission 6.1*, pp. 1–2.

⁴⁶ Uber, *Submission 19.1*, [p. 2].

⁴⁷ Maurice Blackburn Lawyers, *Submission 17.1*, p. 2.

⁴⁸ Australian Small Business and Family Enterprise Ombudsman, *Submission 65.1*, [p. 1].

has been tried and tested in the road transport industry for a number of decades under Chapter 6 of the *NSW Industrial Relations Act*. It was also the approach taken under the (now abolished) federal road safety remuneration system.⁴⁹

8.62 Similarly, the AIER proposed the committee amend its recommendation to say that the Fair Work Act should be amended to:

... expand its scope beyond regulating employment to regulating all forms of work (regardless of contractual form) and the Fair Work Commission should be empowered to make orders for minimum standards and conditions in relation to all forms of work and assign appropriate rights and protections to non-employees to ensure a universal safety net.⁵⁰

8.63 Maurice Blackburn Lawyers expressed their support for Recommendations 9, 10 and 11, saying the 'adoption of these recommendations would greatly enhance the experience of workers in the gig and on-demand workforce'.⁵¹

Expand the Fair Work Commission's remit

8.64 The 'beyond employment' approach described above would see the Fair Work Commission's remit extended to allow it to set 'minimum wages and conditions for contract workers', 'arbitrate contract termination disputes', and 'make class orders'.⁵²

8.65 The AIER noted that Recommendation 11 calls for a national tribunal to be established to 'advise on, oversee, and make rulings related to "low-leveraged" independent contractors'—such as those gig workers doing rideshare and food delivery—and suggested this recommendation be clearer. The AIER proposed the committee clarify:

- that this role should be played by the Fair Work Commission, 'or a body within it with devolved functions'; and that
- the tribunal should be 'tasked with setting generally binding minimum standards of remuneration and other conditions' for contractors, ensuring contractors are protected by minimum standards that are 'functionally equivalent' to those enjoyed by employees under the Fair Work Act.⁵³

8.66 A strong argument in favour of this approach is that much of the evidence the committee received from rideshare drivers and food delivery workers during the inquiry related to deactivation, or 'being kicked off the app'. **Box 8.1** below provides a selection of evidence from these workers.

⁴⁹ Professor Riley & Dr Rawlings, *Submission 3.1*, p. 4.

⁵⁰ AIER, *Submission 6.1*, p. 2.

⁵¹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 3.

⁵² Professor Riley & Dr Rawlings, *Submission 3.1*, p. 4.

⁵³ AIER, *Submission 6.1*, p. 3.

Box 8.1 Evidence from platform workers—deactivation

'[Uber] have a history of deactivating people, with no right of reply. Many drivers can be cut off immediately. If a rider in your Uber makes a complaint about you, the first thing Uber does is deactivate your account without a right of reply.

When they do this, they also take away your ability to phone them. You have to talk to them through generic emails, and it's very hard.

I have been deactivated three times with no evidence against me that warranted deactivation.

The other thing about it is that Uber operates as if they're your employer, but you are a subcontractor. It's a strange situation.'—Uber Driver X⁵⁴

'Earlier this year I drove to a job, and on arrival to that job there were four passengers ... we're only allowed to take three passengers due to social distancing. The riders also did not have masks. I explained to them that I was unable to take all four of them ... and that they would have to wear masks. They started to abuse me. ... So I cancelled the trip and drove away. ... About 24 hours after that I received a notification through the app that I had been deactivated. Somebody had reported that I'd been violent. This of course was a false claim and I was horrified.

My only method to contact Uber was through the app My phone privileges were withdrawn. ... I contacted them several times through the app, only to have robotic Zendesk responses from them. In spite of the fact that I've done thousands of trips with a really high rating and I've done the highest level of premium Uber that you can do, there was no way of contacting them or knowing what was going to happen for something that I actually hadn't done. Then, about four to five days later, I was reactivated.'—Ms Lorna Berry, Uber driver⁵⁵

'When complaint is made against you [it's] simple one-click and your either terminated on the spot or temporary deactivated and stood down.

When a complaint is made. Your past and future complaint or account strikes could lead to permanent deactivation and termination of account status there no policy in place or regulation to appeal complaints via 3rd party. ...

[Companies] Use technology to make unfair deactivation hard to appeal or complain about.'—Mr Adam Nelson, Uber driver⁵⁶

8.67 Platform workers with long tenures working for Uber in particular felt aggrieved that, despite many months or years of service on the app, and high ratings and reviews, one bad review (often by a vexatious passenger) could

⁵⁴ Uber Driver X, Private capacity, *Committee Hansard*, 4 November 2021, p. 1.

⁵⁵ Ms Lorna Berry, Private capacity, *Committee Hansard*, 4 November 2021, pp. 1–2.

⁵⁶ Mr Adam Nelson, *Submission 216*, p. 2.

lead to deactivation. It could take days to get reinstated, with no compensation for the income lost, and no apology; just a 'very robotic' reactivation message.⁵⁷

8.68 Uber Driver X explained that when he started driving for Uber in Sydney, 'they had offices' and 'people you could talk to'; that Uber had 'a public face and phone number' and 'you had a right of reply if anything went wrong'. Now, he said, the call centre has been moved offshore and anyone who has been deactivated cannot access it.⁵⁸ Ms Berry agreed saying 'you need to be able to talk to a human'.⁵⁹

8.69 The research team submitted that there is a need to examine the 'growing role' of 'dehumanised management practices in the form of algorithmic management', which remains an 'under-investigated' area. Algorithmic management of work leads to concerns about 'equity, fairness and voice at work', impacts on collective bargaining, and workplace discrimination, and raises questions about 'what constitutes decent (or indecent) work'.⁶⁰

The need for low-cost dispute resolution

8.70 The Australian Small Business and Family Enterprise Ombudsman commented on the need for an 'accessible low-cost national tribunal' which could provide protection for independent contractors in 'employment relationships', saying:

While the consideration of employment relationships is important, independent contractors engaging in work through digital platforms face other disputes for which they may require external dispute resolution services.⁶¹

8.71 The Ombudsman suggested that a Federal Small Business Claims List should be formed, as part of the Federal Circuit Court of Australia, to provide:

... affordable, determinative, dispute resolution services to small businesses (including independent contractors) who engage in work through a digital platform. ... the List 'should include the ability for a small business to apply for a no adverse costs order'. This would afford 'low-leveraged independent contractors' the opportunity to pursue legal resolution of their disputes with digital platforms without the fear of debilitating debt associated with costs orders that might be sought by powerfully resourced digital platforms.⁶²

International developments

⁵⁷ Ms Lorna Berry, Private capacity, *Committee Hansard*, 4 November 2021, p. 3.

⁵⁸ Uber Driver X, Private capacity, *Committee Hansard*, 4 November 2021, p. 4.

⁵⁹ Ms Lorna Berry, Private capacity, *Committee Hansard*, 4 November 2021, p. 4.

⁶⁰ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen, *Submission 10.1*, [p. 6].

⁶¹ Australian Small Business and Family Enterprise Ombudsman, *Submission 65.1*, [p. 1].

⁶² Australian Small Business and Family Enterprise Ombudsman, *Submission 65.1*, [p. 1].

8.72 While this report is not the place for a comprehensive summary of the international landscape in relation to regulating platform work, a few key developments are worth mentioning.

8.73 In his submission to the inquiry, commissioned by the International Transport Workers Federation (the ITF submission), Dr Jason Moyer-Lee observed that, despite the company's fervent attempts to resist all regulation, there are currently places in the world where:

... Uber is paying pension contributions for their drivers, where rideshare companies are paying the equivalent of a minimum wage of US\$16.39 per hour—one of the highest minimum wages in the US—and sick pay, and where courier companies are negotiating collective agreements with trade unions and providing employee rights to food delivery couriers.⁶³

8.74 The ITF contended that Australia could learn from international experiences and apply these learnings to our choice of regulatory options, noting first and foremost that international law grants workers' rights to all workers, irrespective of employment status. For instance, *Article 2 of the International Covenant on Civil and Political Rights* grants every worker the right to 'form and join trade unions for the protection of his interests'.⁶⁴

8.75 The ITF added:

... whether or not 'gig economy' workers fall into a domestic legal category which provides them with workers' rights in an individual country, if the country is not providing them with certain trade union rights, protection from discrimination, and other rights (subject to country ratifications), the country is in violation of international law.⁶⁵

Proposition 22 is challenged

8.76 One recent international development relates to Proposition 22 (Prop 22)—the 'ballot initiative' in California financed by major gig platforms that successfully 'overrode' Californian law 'AB-5'.⁶⁶

8.77 On 20 August 2021, in a case backed by the Service Employees International Union (SEIU), the California Superior Court in Alameda County 'ruled that Prop 22 was in violation of the Californian Constitution and invalid'. According to the ITF, the court found that a requirement in Prop 22 that any

⁶³ International Transport Workers Federation (ITF), *Submission 229*, p. 9.

⁶⁴ ITF, *Submission 229*, p. 22.

⁶⁵ ITF, *Submission 229*, p. 27.

⁶⁶ AB-5 requires businesses to apply an 'ABC test' to determine if a worker is an employee or a contractor. To categorise a worker an independent contractor, businesses must prove that the worker: 'A': is free from the company's control; 'B': is doing work that isn't central to the company's business; and 'C': has an independent business in that industry. Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. 201–202.

changes to would 'be subjected to a seven eighths majority vote in the California Assembly' was in violation of the constitutional power of the Californian Assembly to determine who is considered an employee for the purposes of workers' compensation.⁶⁷

- 8.78 While the ruling will be appealed, parties involved in the case said it provides hope and challenges the idea that corporations can simply 'spend their way out of following the law'.⁶⁸

The European Union moves closer to regulating

- 8.79 In its first interim report, the committee reported on the February 2021 European Commission consultation to address 'working conditions for digital platform workers in the gig economy'.⁶⁹

- 8.80 In December 2021, the European Commission published draft legislation resulting from the consultation process, saying the legislation would shift 'the burden of proof on employment status ... to companies, rather than the individuals that work for them'. According to *The Guardian*, under the proposed legislation, workers would 'gain rights over algorithms', guaranteeing human intervention in key decisions, and preventing situations where a worker could be 'fired as a result of machines' decisions'.⁷⁰

- 8.81 European Trade Union officials were quoted saying the laws could 'signal the end of the free for all' for Uber, Deliveroo and other platform companies, who 'have made huge profits' while 'dodging their most basic obligations as employers at the expense of workers' in the name of flexibility.⁷¹

Lessons for Australia

- 8.82 The ITF submitted that overseas experience has provided a number of principles for effective regulation of the platform work. These are summarised below:

- (1) The technology involved should not be the focus of regulation: whether a driver or courier is given work via an app or over the telephone, or via any other means, all workers deserve the protection of workers' rights.

⁶⁷ ITF, *Submission 229*, p. 78.

⁶⁸ ITF, *Submission 229*, p. 78.

⁶⁹ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. 214–215.

⁷⁰ Jennifer Rankin, 'Gig economy workers to get employee rights under EU proposals', *The Guardian Australia*, 9 December 2021, www.theguardian.com/business/2021/dec/09/gig-economy-workers-to-get-employee-rights-under-eu-proposals (accessed 24 January 2022).

⁷¹ Jennifer Rankin, 'Gig economy workers to get employee rights under EU proposals', *The Guardian Australia*, 9 December 2021.

- (2) Collective organising is 'an effective means of articulating the needs of the workers' and 'should be a starting point for anyone looking to change their conditions'.
- (3) Data—including data from platform companies—is critical to 'effective regulatory intervention', and also to combatting attempts by platform companies to undermine arguments in favour of regulation.
- (4) In relation to certain parts of the platform sector, regulating the industry by 'capping' the number of workers companies can take on 'is essential'. International examples demonstrate that companies like Uber 'saturate the market with as many low-paid workers as possible ... lowering customer wait times as well as workers' wages'. The example of New York City shows that imposing a cap on the number of rideshare drivers can be done successfully and lead to better earnings without negatively impacting customers.
- (5) It should be about rights: whether or not platform workers are categorised as employees or independent contractors (and this may vary for different industries), the aim of regulation should be 'to provide these workers with a broadly comparable package of rights as others in an employment relationship have', including: whistle-blower protections; minimum pay, accounting for wait time and expenses; 'access to social protections'; health and safety protections; the right to claim against unfair dismissal; trade union rights; and protection from discrimination.
- (6) Effective and active enforcement is necessary, as platform companies have been known to ignore or flout laws. As such, it can be more effective to write workers' rights into a licensing regime, thus making it a cost of doing business in the first place.⁷²

Committee view

8.83 The committee was clear in its first interim report that we may revisit and refine our recommendations in relation to on-demand platform work, and we have done so here.

8.84 We wish to thank all of the submitters and witnesses who responded to the first interim report for your considered feedback and suggestions.

8.85 We also note the statement in the Attorney-General's Department's response to the committee's first interim report that the Government 'will consider the

⁷² ITWF, *Submission 229*, pp. 138–148.

Committee's final report, including any recommendations, once it is released'.⁷³

- 8.86 The recommendations below set out the committee's response to the need to protect on-demand platform workers from exploitation and to reverse the trend towards Uberisation of work in Australia. If implemented, many of these recommendations would also address the worrying 'Amazon effect', which is putting downward pressure on the transport and distribution sector.
- 8.87 There will always be a place for genuine independent contractors in Australia's workforce, but governments cannot allow companies to use technological and legal gymnastics to disguise what are essentially employment relationships as something they are not.
- 8.88 The committee believes that food delivery in particular is better suited to an employment model, and the relative certainty of protection that could be offered by the coverage of state-based workers' compensation schemes. Voluntary, self-assessed, industry-based codes of conduct are no substitute for proper regulation.
- 8.89 Rather than incrementally offering benefits and insurances to their workers in an attempt to avoid formal regulation, companies like Uber and Deliveroo should see the writing on the wall and join Menulog in seeking to provide a minimum wage and entitlements to their workers.
- 8.90 The committee also notes approvingly of the recent decision of the Fair Work Commission that Menulog workers should be classified under the Road Transport and Distribution Award. This decision ensures that food delivery workers are paid a rate commensurate with the rest of the courier industry.

The committee's preferred approach

- 8.91 While the committee originally made a recommendation around changing the definitions of 'employment' and 'employee' and in the *Fair Work Act 2009*, feedback on this recommendation has convinced the committee that there are better ways to achieve its aims without risking unintended consequences.
- 8.92 Expanding the remit of the Fair Work Commission 'beyond employment', to include roles in relation to contracted workers, would better achieve the committee's aims. The Fair Work Commission should be able to: set minimum wages and minimum standards and conditions for contracted workers that are commensurate with those enjoyed by employees; arbitrate contract termination disputes; and make orders relating to classes or groups of

⁷³ Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 1.

Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 2.

workers, such as to be able to order that a group of workers be classed as employees, not contractors.

- 8.93 The committee notes additional evidence received over the course of the inquiry about deactivation, and concerns raised about mechanised or algorithmic management of work, and shares these concerns.
- 8.94 Decent and meaningful work requires a connection with your employer and your workplace, a clear understanding of your rights and responsibilities and those of your employer, the right to raise concerns with your employer, and the right to be heard and respected.
- 8.95 The committee believes the issue of mechanised management through platforms is related to the issue of dispute resolution, and we believe this is an area that warrants further consideration.

Revised recommendations: regulation

- 8.96 In relation to the committee's first interim report, the committee supports and reiterates Recommendation 6, on workers' compensation; and Recommendation 10 on casual conversion, which has not been discussed in this chapter.
- 8.97 The committee provides the following revised recommendation to replace Recommendation 7 from the first interim report:

Recommendation 10

- 8.98 **The committee recommends that the Australian Government amends the *Fair Work Act 2009*, expanding the scope of the Act to encompass all forms of work, and empowering the Fair Work Commission to:**
- **determine fair rates and conditions for all categories of workers, including contractors;**
 - **arbitrate on contracts with independent contractors that are unfair or harsh; and**
 - **make orders and determinations for groups or classes of workers.**

- 8.99 The committee recognises that there may be some overlap between Recommendation 6 (above) and the original Recommendation 11 from the first interim report. As such, the committee provides the following refined recommendation to replace Recommendations 9 and 11 from the first interim report:

Recommendation 11

- 8.100 **The committee recommends that the Australian Government support independent contractors who are sole traders by establishing and promoting accessible low-cost pathways for dispute resolution.**

8.101 Recommendations 12, 13 and 14 on the National Disability Insurance Scheme (NDIS) are covered in the next chapter, on supporting publicly-funded jobs, as is Recommendation 15, on government procurement.

The committee's recommendations: Improving data collection and reporting

8.102 In its first interim report, the committee made four recommendations designed to improve data collection and the availability of statistics. Inquiry participants largely echoed⁷⁴ views that have been expressed by academics⁷⁵ that currently-available labour statistics do not adequately facilitate the identification of gig workers as a specific subset of workers and the additional collection and reporting of data in this area would be invaluable.

8.103 In their response to the committee's first interim report, Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan and Dr Alex Veen (the research team) observed that the current 'paucity of data' on gig workers makes it hard for policymakers to 'understand the scope, nature and scale of the gig economy'; thus making it difficult to 'enact policy settings which meet the needs of various stakeholders'.⁷⁶

8.104 In Recommendations 1 and 2, the committee recommended that the Australian Bureau of Statistics (ABS):

- expands its Labour Force Survey to capture quarterly estimates in relation to the number of workers engaged in the on-demand platform sector; and
- enhances its Work-Related Injuries Survey to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector.

8.105 In Recommendation 3, the committee also recommended that Safe Work Australia enhances its national data collection process to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector.⁷⁷

⁷⁴ See for instance: Ai Group, *Submission 77.4*, p. 8; Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen, *Submission 10.1*, [p. 1]; Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75*, p. 18.

⁷⁵ See for instance: Actuaries Institute, *The rise of the gig economy*, p. 7; and Michael Leith Cowling and Mark Wooden, 'Chapter 6: Self-employment and independent workers', in: Roger Wilkins and Inga Lass, *The household, income and labour dynamics in Australia survey: selected findings from waves 1 to 16*, The Melbourne Institute, 2018, p. 95, https://melbourneinstitute.unimelb.edu.au/data/assets/pdf_file/0005/2839919/2018-HILDA-SR-for-web.pdf (accessed 15 October 2021).

⁷⁶ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen, *Submission 10.1*, [p. 1].

⁷⁷ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. ix.

8.106 Recommendation 8 of the committee's first interim report suggested that the Government investigate options for a Federal regulator that would be empowered to request data on pay rates, working hours, and conditions from platform businesses that employ and contract workers.⁷⁸

Responses to Recommendations 1, 2 and 3

8.107 Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen 'strongly supported' adding additional questions to the ABS Labour Force survey, to gather more data on gig workers, and even offered to use their experience and professional expertise to 'assist in the design of such survey questions'.⁷⁹

8.108 Platform companies also supported the need for more data. Uber submitted:

As the on-demand platform sector continues to evolve, it is sensible to ensure the Government has a comprehensive understanding of the sector based on accurate and timely data.⁸⁰

8.109 The Attorney-General's Department submitted that the Department is working with the ABS 'to enhance collection' of IR data on the on-demand economy, casual workers and award-reliant workers. The Government has provided '\$2.8 million over four years' to the ABS 'to support this work' and is 'undertaking preliminary scoping work with the ABS on workers engaged in the gig economy'. The Department added that the new data will 'support the development of evidence-based policy responses'.⁸¹

8.110 The ABS confirmed that the Government provided additional funding in the 2020–21 Mid-Year Economic and Fiscal Outlook which will allow it to collect new information from individuals—by adding new questions to the annual Characteristics of Employment supplement to the Labour Force Survey—and from businesses, through the two-yearly Survey of Employee Earnings and Hours.⁸²

8.111 The ABS argued that was 'the best approach' for mapping the 'nature and extent of this work', because it 'will provide information across all key on-demand platforms' and provide data that 'can be directly reconciled and compared with other information on working arrangements'.⁸³

⁷⁸ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. x–xi.

⁷⁹ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen, *Submission 10.1*, [p. 1].

⁸⁰ Uber, *Submission 19.1*, [p. 2].

⁸¹ Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources, *Submission 75.1*, p. 1.

⁸² ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021 (received 12 January 2022), p. 2.

⁸³ ABS, Answers to written questions on notice from Senator Sheldon, 22 November 2021, p. 3.

Responses to Recommendation 8

8.112 Ai Group opposed this recommendation, while supporting the committee's other data-related recommendations. Ai Group submitted:

A well-resourced and effective Federal regulator—i.e. the Fair Work Ombudsman (FWO)—already exists, with broad statutory powers to obtain information from businesses about wages and working arrangements for employees and contractors, including powers to enter premises, interview persons, inspect records and take compliance and enforcement action. ... WHS regulators are empowered to undertake investigations and take enforcement action in relation to health and safety matters. ... Establishing an additional regulator is unnecessary and inappropriate. This would only duplicate existing functions, create confusion and lead to potential inconsistency in the application of relevant laws.⁸⁴

8.113 However, the research team supported this recommendation,⁸⁵ as did Professor Riley and Dr Rawlings, who argued that data from platform operators would support and make 'more meaningful' the data that would be collected if Recommendations 1 to 3 were implemented.⁸⁶ They also observed that the current lack of 'extensive and reliable data' on platform workers 'is an obstacle to effective policy development'.⁸⁷

8.114 Online disability services platform, Hireup also supported this recommendation, saying the platform sector in disability services is currently a 'modern-day "Wild West", where the usual rules of employment law don't apply':

This recommendation would provide the information necessary to understand the depth of this currently under-regulated space, and the impact this could be having on workers. It would allow the Government to have appropriate oversight over platform operations in order to ensure fairness for workers and platform users, while providing foundational information for governments to apply appropriate employment and tax law (PAYG and payroll tax) settings to platform work and revenue.⁸⁸

8.115 Maurice Blackburn Lawyers also supported this recommendation, and suggested an additional item of data be collected: 'Incidents of workplace harassment (including sexual harassment) and bullying'.⁸⁹

⁸⁴ Ai Group, *Submission 77.4*, p. 11.

⁸⁵ Dr Goods, Dr Barratt, Dr Smith, Mr Sullivan & Dr Veen, *Submission 10.1*, [p. 4].

⁸⁶ Professor Riley & Dr Rawlings, *Submission 3.1*, p. 4.

⁸⁷ Professor Riley & Dr Rawlings, *Submission 3.1*, p. 1.

⁸⁸ Hireup, *Submission 23.1*, p. 2.

⁸⁹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 3.

New data submitted by Uber and Deliveroo

8.116 As part of its response to the committee's first interim report, Uber submitted new research on platform workers and the impacts on the pandemic on the sector. The report, *Platforms Work*, commissioned by Uber and prepared by Accenture, incorporated a survey of nearly 5 000 workers from six countries,⁹⁰ analysis of Uber's 'administrative data covering 7 million drivers and delivery people', and a review of literature from academic and other sources.⁹¹

8.117 The *Platforms Work* report found that—contrary to Uber's evidence earlier in the inquiry that most platform workers engage in this work to earn *supplementary* income⁹²—almost 80 per cent of respondents 'said platform work was an important or essential source of income during the pandemic'. In addition:

Across countries, between 57–73% of new platform workers had lost work or experienced a decline in hours prior to signing up and between 51–79% of new platform workers surveyed reported being ineligible for government support or not being able to access support.⁹³

8.118 The report stated that in 2020, Uber 'facilitated the transfer of over US\$22 billion in earnings to rideshare drivers and delivery workers' globally. The report also indicated that pandemic-related growth in food delivery sector is likely to be permanent, saying:

It is noteworthy that while restaurant spending has returned to normal levels, spending on food delivery continues to be three times higher than pre-COVID levels in Australia.⁹⁴

8.119 The 'majority' of workers surveyed for the *Platforms Work* report use only one app, but 'more than a third use multiple platforms' (multi-apping). Workers surveyed had the following additional responsibilities:

- 49 per cent were undertaking other part-time or full-time work
- 19 per cent were undertaking study;
- 7 per cent were providing 'caregiving support'.⁹⁵

8.120 One interesting set of statistics submitted by Uber in the Accenture report was that pertaining to women's use of the app during the pandemic. The graphics

⁹⁰ Accenture's notes on methodology state that the survey included between 553 and 1044 respondents per country. Uber, *Submission 19.2* (Accenture, *Platforms Work: Research with workers using the Uber app during the first year of the COVID-19 pandemic*, 2021), p. 46.

⁹¹ Uber, *Submission 19.1*, [p. 3].

⁹² Mr Dominic Taylor, General Manager, Uber Australia, *Proof Committee Hansard*, 12 April 2021, p. 17.

⁹³ Uber, *Submission 19.1*, [p. 3].

⁹⁴ Uber, *Submission 19.2*, p. 42.

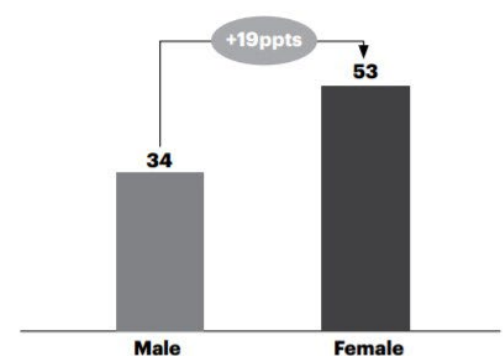
⁹⁵ Uber, *Submission 19.2*, p. 25.

below (Figure 8.1) suggest that women turned to working for Uber because they were unable to find other work (left), and that a number may have been caring for children or others *while working* (right).

Figure 8.1 Selected women's responses to Uber worker survey during pandemic, 2021

Platform work offered opportunities for women to work

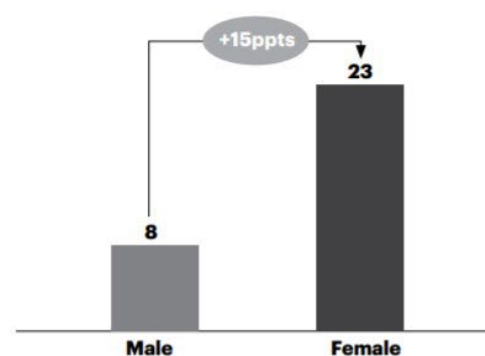
% of new platform workers surveyed who said that not being able to find other work was a motivation for joining platform work



Women were more likely to say that they could not find another job compared to men

Women surveyed were more likely to be undertaking caregiving activities while working during the pandemic

% of new platform workers surveyed, by gender



Women were more likely to undertake caregiving activities while undertaking platform work compared to men

Source: Uber, Submission 19.2, p. 38.

8.121 The committee notes that there is more than one way to interpret this data. While some may say this data shows the success of flexible working arrangements for women, the committee believes this data paints a different picture.

8.122 This data indicates that during the pandemic, more women than men lost work, and more women took on caring for children and elderly relatives while lockdowns and other measures were in place. Compounding this, jobs in many lower-skilled sectors, such as hospitality and retail were harder to get at various points due to pandemic measures, so women were driven to seek employment where they could find it.

8.123 Deliveroo also provided statistics in its supplementary submission. According to Deliveroo, the company has:

- around 10 000 riders engaged;
- 75 per cent of riders in Australia are students;
- over a third (35 per cent) are completing post graduate degrees;
- many riders 'have caring responsibilities for children';
- the 'average tenure' for a Deliveroo rider 'is only 44 weeks'; and

- around 1900 riders apply to work via the Deliveroo platform each week.⁹⁶
- 8.124 The reports from Accenture often lead to more questions than answers. Without seeing the actual surveys and the raw data, it is impossible to get a complete understanding of how Uber drivers and delivery partners genuinely feel about their work.
- 8.125 One Uber driver submitted that the companies distribute 'random' surveys 'preloaded with questions and answers that favour a particular expected "desired" outcome', or that sometimes the surveys 'don't work or break', preventing him from completing them.⁹⁷
- 8.126 Access to the platforms' administrative data would allow governments and regulators to make more informed decisions in relation to the sector. The success of this approach in New York, where access to rideshare company data was key to regulating the sector, is evidence of the need for this type of approach.

Data and statistics

- 8.127 The committee is encouraged to see the investment made by Government into the collection of new data around platform sector workers but cautions that collecting meaningful data may require new approaches.
- 8.128 The limited data currently available suggests that a large proportion of workers who engage in platform work in Australia are temporary residents and/or international students; many are young; English may be a second language; and some may not be legally entitled to work in Australia (or may be working more hours than their visa allows).⁹⁸
- 8.129 Simply adding questions about platform work to existing ABS Labour Force surveys may not sufficiently capture this vulnerable cohort of workers. Some additional measures may be needed to ensure meaningful data is collected.
- 8.130 The committee reiterates its support for Recommendations 1, 2, 3 and 8 made in its first interim report, noting the progress already made in this area. The committee agrees with Maurice Blackburn Lawyers that adding 'Incidents of workplace harassment (including sexual harassment) and bullying'⁹⁹ to Recommendation 8 from the interim report would be beneficial.
- 8.131 In order to ensure data collection on platform workers provides a realistic impression of the sector, and is able to reach vulnerable cohorts of workers, the committee has added one additional recommendation.

⁹⁶ Deliveroo, *Submission 20.1*, [pp. 1–2].

⁹⁷ Mr Adam Nelson, *Submission 216*, p. 2.

⁹⁸ Australia Institute, Centre for Future Work, *Submission 41.1*, pp. 11–12.

⁹⁹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 3.

Recommendation 12

8.132 The committee recommends that the Australian Bureau of Statistics consults with relevant migrant and international student community groups, community leaders, unions, employer associations and experts to ensure that its methods for data collection in relation to the on-demand platform workforce include effective and appropriate approaches to collecting data from key worker cohorts.

The committee's recommendations: protecting jobs in transport and distribution

8.133 The committee's third interim report included Recommendations 16 and 17, aimed at supporting jobs in the transport sector threatened by outsourcing and labour hire.

8.134 It also included Recommendation 18, which called for the creation of an independent body, such as a National Transport Tribunal, to set and enforce minimum standards of pay, safety and conditions for all transport workers (including contractors), and across supply chains, to adjudicate disputes, and to facilitate collective bargaining.

Committee view

8.135 The committee echoes its support for Recommendations 16 and 17 from its third interim report, relating to outsourcing and labour hire.

8.136 In relation to Recommendation 18, the need for a National Transport Tribunal to challenge the corrosive effects of Amazon's 'last mile' delivery is clear from Amazon's response to the committee's questions about its rates of pay.

8.137 Amazon continues to insist that its Amazon Flex Delivery Partner rates 'align with the relevant industry standards', when the 'type of work performed' and the type of 'vehicles used' are taken into account.¹⁰⁰ However, the pay rate of approximately \$27 an hour—being lower than any industry award—could easily end up being lower than minimum wage when vehicle operating and maintenance costs are taken into account (depending on the amount of work a partner does for Amazon Flex).

8.138 Delivery partners engaged by Amazon should either be employees, with proper training, WHS protections, and fair rates of pay, or be properly regulated and remunerated contractors, with contracts negotiated with the support of a union, or under the supervision of a National Tribunal.

8.139 The committee urges the Government to implement Recommendation 18 from the committee's third interim report as a matter of priority.

¹⁰⁰ Amazon Australia, Answers to additional written questions on notice from Senator Sheldon, related to public hearing on 4 November 2021 (received 3 December 2021), p. 3.

Chapter 9

Restoring security in publicly-funded jobs

- 9.1 Publicly-funded jobs are traditionally secure and well-paid with good conditions, setting a standard for the private sector. However, as the committee's second interim report identified, this legacy has increasingly come under threat.
- 9.2 Public sector jobs have faced unprecedented outsourcing in recent decades and there has been a growing use of consultancy firms, contractors, labour hire and fixed-term roles. Meanwhile the capacity of the permanent public service has been diminished.¹
- 9.3 Likewise in publicly-funded employment sectors, like aged care and disability care services, there has been a shift towards casual employment and the use of independent contractors through on-demand platforms ('Uberisation'), compounding a pre-existing, widespread, insidious use of low minimum-hours permanent part-time contracts.²
- 9.4 In these sectors, significantly less than 10 per cent of direct care workers hold full-time permanent jobs, despite the fact that almost half of employees in these sectors regularly work a full-time load of more than 35 hours a week—often for years with the same employer.³
- 9.5 In its second interim report, the committee considered the significant purchasing power of the Commonwealth—as an employer, as the primary funder of the National Disability Insurance Scheme (NDIS) and the aged care sector, and as a major buyer of goods and services across the Australian economy—and made a number of recommendations.
- 9.6 These recommendations were aimed at ensuring the Australian Government would continue to play a role in creating and supporting secure jobs across the nation.

¹ Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, pp. 283–284, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Second_Interim_Report (accessed 22 December 2021).

² Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, pp. 283–284.

³ The 2016 Aged Care Workforce Census reported that 44 per cent of the residential aged care workforce were working for 35 hours or more per week, which meets the Australian Bureau of Statistics definition for full-time work. See: Department of Health, *2016 National Aged Care Workforce Census and Survey*, Canberra, 2017, pp. 24–25, https://gen-agedcaredata.gov.au/www_aihwen/media/Workforce/The-Aged-Care-Workforce-2016.pdf (accessed 20 January 2022).

- 9.7 The committee reiterates its support for Recommendations 2 to 38 of the second interim report, relating to aged care, disability care, higher education and public sector workers, the National Broadband Network and Commonwealth procurement.
- 9.8 This chapter is primarily focused on the 'Uberisation' of aged and disability care services and the need for governments to act decisively to negate the potential negative impacts of this trend on job security, and as such, primarily revisits the committee's first interim report.
- 9.9 However, it begins with a brief look at the Finance and Public Administration References Committee's 2021 report into the Australian Public Service (APS).

Rebuilding the APS

- 9.10 The committee notes that the Senate Finance and Public Administration References Committee (F&PA Committee) completed its inquiry into the current capability of the APS shortly after this committee's second interim report was published.
- 9.11 The F&PA Committee's substantial report made 36 recommendations, aimed at:
- limiting the use of labour hire and consultants by the APS;
 - increasing direct, permanent employment and building the skills and capacity of the APS;
 - improving data collection and use;
 - better equalising pay rates;
 - increasing transparency and monitoring, and improving guidelines; and
 - bolstering the integrity and independence of the APS.⁴
- 9.12 The committee supports the recommendations in the F&PA Committee's report and notes that many of the F&PA Committee's recommendations were in line with those in our second interim report. The committee echoes these words from their executive summary:

The committee believes that the APS must end its overreliance on external workforce and consulting arrangements and find other ways to be flexible within the funding envelope set out in the Budget, while building core skills, knowledge, and APS capability.⁵

⁴ Senate Finance and Public Administration References Committee, *APS Inc: undermining public sector capability and performance: The current capability of the Australian Public Service*, November 2021, pp. xi–xvii, www.apf.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CurrentAPSCapabilities/Report (accessed 27 January 2022).

⁵ Senate Finance and Public Administration References Committee, *APS Inc: undermining public sector capability and performance: The current capability of the Australian Public Service*, November 2021, p. xx.

Recommendations relating to on-demand platforms in the care sector

- 9.13 In its first interim report, the committee identified that platform companies have been moving into a number of publicly-funded employment sectors—most notably aged and disability care—purporting to provide a service connecting workers directly with consumers, while claiming to have little or no responsibility to the workers engaged through their platforms.
- 9.14 The Australian Services Union (ASU) submitted that platform or gig work is 'more prevalent than previously thought' and is 'growing in the disability sector', with recent years seeing 'a steady increase in [Australian Business Number] ABN registrations'.⁶
- 9.15 The online disability services platform company, Hireup, which *employs* its workers, said that, while reliable data is difficult to obtain, it has observed that:
- At one of the largest contractor platforms, the number of contracted workers more than doubled in one year from August 2019 to August 2020, reaching more than 8,000 contracted workers. The figure is now more than 10,000 workers.
 - At a smaller platform, the number of contracted workers increased by nearly 50% in 7 months from February 2020, to more than 1,700 workers.
 - There are now approximately eight contractor platforms operating. In 2014, there was one.⁷
- 9.16 The committee reported that governments have signed small-scale contracts with some of these platform companies, trialling their service offerings alongside more traditional options. One example was the \$5.8 million contract awarded to Mable by the Federal Government in 2020 to provide surge workforce capacity during the pandemic.⁸
- 9.17 The committee heard evidence about risks posed by on-demand platform models in these sectors, including work health safety (WHS) concerns, low rates of pay and substandard conditions for workers. Inquiry participants were also concerned that a growth in these jobs may undermine employment conditions in the industry more broadly,⁹ which are already some of the most precarious in the economy.

⁶ Australian Services Union (ASU), *Submission 33.1*, [p. 2].

⁷ Hireup, *Submission 23.1*, p. 2.

⁸ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 174, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_report (accessed 19 January 2022).

⁹ See for instance Ms Lori-Anne Sharp, Assistant Federal Secretary, Australian Nursing and Midwifery Federation, Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. 64.

9.18 To address these concerns, the committee made a number of recommendations, which are summarised below:

- Recommendation 4 aimed to have Safe Work Australia develop high-level guidelines on the application of the model Work Health and Safety Laws to the on-demand platform sector, specifically to prevent companies engaging in practices that incentivise unsafe behaviours—such as using algorithms that encourage speeding or working excessive hours.
- Recommendation 5 was designed to clarify a possible 'grey area' in the law. The committee recommended the Australian Government 'urgently' clarifies which party/parties owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws when it comes to individual support workers engaged through on-demand platforms like Mable. The committee made its view clear that the law should state that the platforms that engage these workers should be considered the PCBU under the law, and owe the 'duty of care' to the worker, 'regardless of that worker's work status (employee or contractor), or their visa status'.
- In Recommendation 12 the committee expressed its view that the Joint Standing Committee on the National Disability Insurance Scheme should 'give specific consideration' to a number of matters relating to platform-based work in the disability sector as part of that committee's ongoing inquiry into the NDIS Workforce. Those matters included: the prevalence and growth of on-demand employment in the sector; earnings and conditions; training, safety and insurance; and issues relating to WHS law.
- Recommendation 13 followed on from 12, stating that, pending the outcome of such an inquiry, the Australian Government should consider 'regulatory options' to ensure that all NDIS workers receive 'fair pay and conditions, including those engaged through on-demand platforms'.
- Finally, Recommendation 14 envisaged the design of a national scheme to connect and extends current state and territory long service leave schemes in order to provide 'portable long service leave, sick leave and other leave entitlements, and portable training entitlements', to all workers delivering services under the NDIS.¹⁰

Responses and new evidence

9.19 After the publication of its first interim report, the committee wrote to all relevant submitters and witnesses and invited them to provide feedback on the conclusions and recommendations from that report.

¹⁰ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. xi–xii.

9.20 This section considers these responses along with additional evidence collected over the course of the inquiry.

Work Health and Safety

9.21 This section discusses responses and new evidence in relation to Recommendations 4 and 5.

9.22 Professor Joellen Riley and Dr Michael Rawlings agreed that Safe Work Australia should develop new guidelines applying WHS standards to on-demand work, with the guidelines to recognise that, in many on-demand platform sector jobs, the workers are 'rarely ... 'persons conducting' their own enterprises for the purposes of WHS legislation'. They also agreed that legislation should clarify that the platform business is the PCBU and owes the duty of care.¹¹

9.23 The ASU said 'growing evidence' indicates that platform and agency workers are at higher risk of injury 'than other workers undertaking the same task', while current WHS legislation leaves open the possibility that they could be 'denied protection'.¹²

9.24 If these workers are to be protected, the ASU suggested the *Fair Work Act 2009* should be amended to ensure *all* workers are covered, regardless of their work status. The union added it believes 'a PCBU owes a duty of care to worker, regardless of that worker's work status'.¹³

9.25 However, the ASU was opposed to any workplace health and safety legislation being 'contingent upon' an employer *making money* from the arrangement, on the basis that 'few employers' in the care sector actually 'make money'.¹⁴

9.26 The ASU was also critical of suggestions that people with disabilities should be considered incapable of having responsibilities as employers, should they choose to engage workers directly; and suggested instead:

... that there should be appropriate access arrangements in place, including the use of 'easy read' and other strategies, to ensure that people with disability, including cognitive disabilities, are able to directly engage support workers if that is their preference. To do otherwise is to specifically demean people with disability and refuse their right to dignity of risk within the NDIS framework.¹⁵

9.27 Hireup, on the other hand, agreed with the committee's assertion that there is a risk that an NDIS participant who hires a worker through certain platforms 'as

¹¹ Professor Joellen Riley & Dr Michael Rawlings, *Submission 3.1*, p. 1.

¹² ASU, *Submission 33.1*, [p. 2].

¹³ ASU, *Submission 33.1*, [p. 3].

¹⁴ ASU, *Submission 33.1*, [p. 3].

¹⁵ ASU, *Submission 33.1*, [p. 3].

a contractor may later be deemed as the worker's employer'—and thus considered the PCBU for WHS purposes when they never intended, understood, or, indeed, wanted this to be case. This could, Hireup submitted:

... leave the NDIS participant exposed to potentially substantial claims for underpayment or legal claims for failing to provide lawful working conditions and entitlements to the worker.¹⁶

9.28 Hireup provided examples of terms and conditions used by online platforms that are currently active in the disability sector which attempt to shift all responsibility onto workers and the participants who engage them. A selection of these terms and conditions are reproduced below:

- <the platform> makes no representation that the service provider is suitably qualified, skilled and trained.
- <the platform> does not guarantee the quality, appropriateness, safety or otherwise of the NDIS services, nor that the NDIS service meet the NDIS Quality and Safeguards Framework. You accept the risks arising out of Your use of the Platform to the maximum extent permitted by law.
- Participants are the potential employers of Disability Services Providers (depending on frequency of use) and are responsible for compliance with all applicable employment and other laws in connection with any employment relationship they establish (such as applicable employment standards legislation (including minimum wage laws), occupational health and safety legislation, and worker's compensation insurance or benefit programs.
- Members seeking care or support workers are solely responsible for the selection and recruitment process including compliance with all applicable State, Territory and Federal laws.
- The care or support worker is liable for all acts or omissions in the provision of care services.¹⁷

9.29 The committee notes evidence provided in its first interim report suggesting these terms and conditions are unlikely to exclude platforms from an obligation to workers as a PCBU, and that platforms cannot transfer their responsibilities onto another party. However, there has never been a test case,¹⁸ and companies like Mable continue to operate with these kinds of terms and conditions publicly displayed on their websites.¹⁹

9.30 The ASU made three additional recommendations in relation to WHS, which are summarised here:

¹⁶ Hireup, *Submission 23.1*, p. 3.

¹⁷ Hireup, *Submission 23.1*, pp. 3–4.

¹⁸ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. 127–129.

¹⁹ Mable, *Terms of Use (Updated 2021)*, <https://mable.com.au/terms-of-use/> (accessed 25 January 2022).

- (a) That the National Disability Insurance Agency (NDIA) should establish a 'floor price' which incorporates 'sufficient funding for all providers ... to comply with workplace health and safety standards, including WHS training'.
- (b) That WHS Regulators should be funded to ensure 'access to workers and enforcement' of WHS legislation for all workers under the NDIS.
- (c) That NDIS Quality and Safeguards Commission, the Fair Work Commission and Fair Work Ombudsman must be 'adequately resourced' to allow them to enforce relevant industrial legislation and instruments, for all workers within the NDIS, including platform workers.²⁰

Committee view

- 9.31 The committee acknowledges and thanks the ASU and Hireup for their feedback in relation to Recommendation 5.
- 9.32 The committee did not intend that Recommendation 5 limit responsibility as a PCBU only to those entities which *make money* from engaging and deploying workers, though it is conceivable that the recommendation may be read that way.
- 9.33 Nor did the committee intend to disenfranchise people with disabilities who hold a role as *direct* employers, in circumstances where that relationship exists in a way that is genuinely desired and beneficial for both parties.
- 9.34 The committee acknowledges that there are legitimate circumstances in which an NDIS participant may be a PCBU, but notes that this is not the norm. We also note that these are not the circumstances that were the intended focus of the committee's recommendation.
- 9.35 In the interests of clarity, the committee provides the following revised recommendation to replace Recommendation 5 of the first interim report:

Recommendation 13

9.36 The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms like Mable. The law should make it clear that:

- **any platform that engages workers to provide support work under the NDIS, or similar schemes, is a PCBU and owes a duty of care to those workers, regardless of workers' work status (employee or contractor), or their visa status; and**

²⁰ ASU, *Submission 33.1*, [p. 4].

- **platform companies cannot transfer their obligations as a PCBU onto other parties.**

NDIS-specific recommendations

- 9.37 There was strong support from a number of responders for recommendations aimed at reversing the trend towards the 'apparent "Uberisation" of the disability support workforce'.²¹
- 9.38 Maurice Blackburn Lawyers disputed arguments that "'flexibility" is core' to meeting future demand in relation to the disability support workforce:
- We are concerned that the appearance of a highly casualised, piecemeal approach to work will deter potential new entrants into the disability sector workforce, particularly with respect to carers.²²
- 9.39 Hireup said that employment laws have failed to keep up with the 'disruption' of platform work, 'opening the door' to significant risks for workers and people with disability, and 'incentivising a two-tier disability sector':
- ... one side being providers and employers with strong obligations on the provider, lower risks to support workers and people living with disability and higher operating costs; the other side being contracting platforms with, in our view, fewer obligations on the provider, potentially higher risks to support workers and people living with disability, and lower operating costs.²³
- 9.40 Hireup argued that failing to address this issue would impact the ability for government to create 'a sustainable NDIS workforce for the future'.²⁴
- 9.41 The Federation of Ethnic Communities' Councils of Australia (FECCA) encouraged the committee to consider how Australia's aged care and disability care workforces have become increasingly dependent on migrant labour, and how this has shifted over recent years. Where once these roles were filled by 'recently arrived permanent migrants', they are now generally filled by 'a mix of temporary migrants on partner visas, international students and working holiday makers'.²⁵
- 9.42 FECCA pointed to data from the 2016 Census which indicated 'a significant increase' in overseas-born aged and disability carers, while the share of overseas-born workers overall 'increased only slightly'. This is of concern because, at the same time, FECCA observed, the aged and disability care workforce 'has become increasingly casualised', meaning 'migrant workers

²¹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 3. See also: Hireup, *Submission 23.1*, pp. 3–4; ASU, *Submission 33.1*, [p. 2].

²² Maurice Blackburn Lawyers, *Submission 17.1*, p. 3.

²³ Hireup, *Submission 23.1*, p. 7.

²⁴ Hireup, *Submission 23.1*, p. 7.

²⁵ Federation of Ethnic Communities' Councils of Australia (FECCA), *Submission 224*, p. 4.

who are already more exposed to economic security, are more vulnerable to significant pay and job insecurity'.²⁶

Further inquiries? Or time to regulate?

9.43 When developing recommendations for its first interim report, the committee was mindful of the complexity of NDIS workforce matters. Recommendation 12, which referred the issue of on-demand platform work to the Joint Standing Committee on the National Disability Insurance Scheme, was designed to ensure that the subject received attention within the context of broader NDIS issues, and with the benefit of the committee's expertise.

9.44 Hireup expressed strong support for this recommendation, saying it is 'critical' that the platform work in disability sector 'is considered by an appropriate investigative authority in order for sector-specific reform' to be considered:

We submit that platforms offering services related to person-to-person care and support, whether that be aged care or disability support or other forms of care, are clearly not the same as food delivery, or landscaping, for example. ... Disability support work is paid by the hour for the support worker's labour—it is not paid for specific individual tasks. Support work is directed by the client, especially under the NDIS principles of choice and control, and it's ideally re-engaged on an ongoing basis. As personal trust and safety is critical to good support, the best support relationships are ongoing, not one-off. ... For this reason, the disability sector is worthy of special consideration when it comes to the growth of the workforce in the context of large-scale contracting and marketplace models through online platforms.²⁷

9.45 Pending the outcome of any inquiry, the committee recommended that the Australian Government 'considers regulatory options' to ensure support workers engaged under the NDIS 'are provided with fair pay and conditions', including platform workers.

9.46 Hireup stated its support for this recommendation, saying disability support work 'fundamentally shows the hallmarks of an employment relationship', and that, in its view:

... disability support workers arguably operate in the NDIS from a position of bargaining weakness (less so where there are workforce shortages, but that will not be the case indefinitely). As workers are generally paid by the hour and directed by their clients, support workers are not likely able to take sufficient entrepreneurial and professional steps to bargain for entitlements or conditions in a market of similar service offerings.²⁸

9.47 Maurice Blackburn Lawyers proposed that governments should invest in 'a high-quality, better skilled workforce', supported by 'agreed minimum

²⁶ FECCA, *Submission 224*, p. 4.

²⁷ Hireup, *Submission 23.1*, pp. 16–17.

²⁸ Hireup, *Submission 23.1*, p. 19.

wages, agreed minimum shift length, and agreed minimum employment standards'.²⁹ Specifically, Maurice Blackburn recommended that:

- technology-based NDIS 'matching services' should employ workers, rather than 'merely connect contractors to clients';
- firms wishing to register as an NDIA provider should be able to 'provide details of their employment model and processes', or not be able to register; and
- 'coordinated engagement with unions' should be encouraged, as a key method of ensuring that 'a race to the bottom does not accelerate'.³⁰

9.48 Hireup questioned whether 'the classification of independent contracting' could be 'reasonably applied' when platform workers are 'almost completely dependent' on these platforms for 'finding, undertaking, and receiving payment for their work'.³¹

9.49 Hireup provided a detailed explanation of the business model that Mable and similar platforms have created, showing how these platforms *interact with* workers in an employee-like fashion by: engaging them, collecting their personal details, checking their referees, requiring workers to agree to terms of use, approving the worker to use the platform, uploading the worker's profile, connecting workers and care recipients via the platform, requiring workers to book through the platform, providing insurances and requiring the worker and care recipient to confirm the care took place via the platform. The platform then collects the worker's earnings from the care recipient and takes a cut of the worker's earnings. Hireup also noted that, while most platforms have 'an incident reporting system for either party to contact', they generally do not accept any responsibility to the worker or care recipient.³²

9.50 The ASU reiterated its position that all workers engaged under the NDIS should be covered by the relevant modern Award, generally the Social, Community, Home Care and Disability Services Industry Award,³³ regardless of their work status, saying: 'This would provide a basic safety net for all workers, including "gig" and "platform" workers in the NDIS'. The ASU suggested this be achieved through an amendment to the NDIS Act.³⁴

9.51 Hireup cautioned that allowing these practices to continue and expand is creating concerns for the sector more broadly, because:

²⁹ Maurice Blackburn Lawyers, *Submission 17.1*, p. 3.

³⁰ Maurice Blackburn Lawyers, *Submission 17.1*, p. 4.

³¹ Hireup, *Submission 23.1*, p. 7.

³² Hireup, *Submission 23.1*, pp. 9–11.

³³ See: www.fairwork.gov.au/employment-conditions/awards/awards-summary/ma000100-summary.

³⁴ ASU, *Submission 33.1*, [p. 3].

Even now, many platforms permit workers to offer the same services that employed workers perform, but potentially without access to certain entitlements under the Award set by the Fair Work Commission (for example, the national minimum wage).³⁵

Committee view

9.52 In its first interim report the committee identified that the unchecked and largely unregulated 'Uberisation' of the disability care workforce presented a significant threat to the future quality and sustainability of disability sector employment.

9.53 The committee agrees with the warning issued by the ASU, that:

Regulators have been slow to recognise the risks posed to the quality of work by the expansion of precarious work and the evasion of traditional labour regulations; they have failed to adapt regulatory models to encompass workers in these growing categories of insecure, nominally 'independent' work.³⁶

9.54 The committee originally chose to ask the Joint Standing Committee on the National Disability Insurance Scheme to examine this issue, recommending that the committee give 'specific consideration' to a number of matters relating to platform-based work in the disability sector as part of that committee's inquiry into the NDIS Workforce.

9.55 The committee had hoped that the Joint Standing Committee would leverage its expertise and network connections to inquire more deeply into the issue than this committee was able to do in the context of this inquiry.

9.56 At the time of writing, the Joint Standing Committee has not yet tabled its final report into the NDIS workforce. However, the NDIS Workforce inquiry is due to conclude. The committee understands that—while it may have given the matter some consideration—the Joint Standing Committee has *not* had an opportunity to consider the issue of on-demand platform employment in the NDIS in any significant depth.

9.57 This is perhaps understandable considering the broad scope of the committee's workforce inquiry, the limited timeframe, and the considerable complexity of some of the other challenges facing the NDIS workforce.

9.58 Nevertheless, the committee notes the Joint Standing Committee's comments in the interim report, which acknowledged that:

... promoting the sector as an employer of choice is not sufficient ... attracting and retaining a suitably qualified workforce will require **measures to ensure that workers have secure jobs with pay and**

³⁵ Hireup, *Submission 23.1*, p. 19.

³⁶ ASU, *Submission 33.1*, [p. 2].

conditions reflecting the value and complexity of their work, relevant and appropriate training, and opportunities for career progression.³⁷

- 9.59 This committee is increasingly convinced of the urgent need for regulatory intervention in relation to platform work in the disability and other care sectors.
- 9.60 The Government should not wait for changes to be made to Australia's industrial relations (IR) framework more broadly to clarify that its approach to building Australia's care workforce includes a genuine commitment to supporting secure jobs through properly regulated employment relationships.
- 9.61 As the primary funder of aged and disability care, and the primary source enabling legislation (and the ability to amend such legislation), the Australian Government has an opportunity to put an end to these quasi-employment models, where low-level support roles are rebadged as 'independent contracting opportunities', and both workers and care recipients are put in precarious situations.
- 9.62 All disability service providers should compete on a level playing field, including online platforms that supply workers to clients. The business model that Mable and similar platforms have created sees them *treat* workers in an employee-like fashion and take a cut of their earnings, while failing to provide superannuation or penalty rates, encouraging workers to charge less than award wages, and providing insufficient support.
- 9.63 Government funding should not be spent in this way. NDIS funding should be spent as intended—to fund qualified and dedicated workers to provide supports in a way that is safe for both workers and care recipients, and ultimately supports the creation of a larger, more sustainable NDIS workforce.
- 9.64 The committee is supporting the recommendation from the ASU that all workers engaged under the NDIS should be covered by the relevant modern award, generally the Social, Community, Home Care and Disability Services Industry Award, regardless of their work status.
- 9.65 If there are any issues with the award not meeting the needs of people with disability in terms of flexibility or adaptability, then the award could be reviewed. Creating a second, unregulated jobs market for disability support workers that undercuts the already precarious and underpaid award workforce can only lead to a further disintegration of working conditions in the sector.

³⁷ Joint Standing Committee on the National Disability Insurance Scheme, *NDIS Workforce Interim Report*, December 2020, p. 147, www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/workforce/Interim_Report (accessed 25 January 2022). Emphasis added.

Recommendation 14

- 9.66 **The committee recommends that the Australian Government amend the *National Disability Insurance Scheme Act 2013* to provide that all workers engaged to provide support as part of the National Disability Insurance Scheme must be covered by the Social, Community, Home Care and Disability Services Industry Award, or receive pay and conditions at least equivalent to that Award.**
- 9.67 The committee reiterates its view that this issue is of great significance to the future of the NDIS. As such, the committee strongly suggests that, if the Joint Standing Committee on the National Disability Insurance Scheme is re-appointed in the 47th Parliament of Australia, and the NDIS Act has *not* been amended as above, the Joint Standing Committee should commence an inquiry into the issue of platform work in disability care sector *as a matter of priority*.

The Uberisation of care work more broadly

- 9.68 While disability care has been the key industry for the expansion of on-demand platforms, other parts of the health, aged care and social services sectors have reported an expansion of these models.
- 9.69 Amendments to the NDIS Act would only address the issue in relation to NDIS workers. Thus, a broader approach may be needed to reduce the impacts of this trend on other parts of the health and social services sectors.
- 9.70 As such, the committee is recommending an inquiry into the experience and impacts of on-demand platform employment, increasing casualisation, use of labour hire/agency work, contract labour in aged care, disability care, social services and health care more broadly, to the Senate Standing Committees on Community Affairs.

Recommendation 15

- 9.71 **The committee recommends that the Senate give consideration to the referral of an inquiry to the Community Affairs References Committee, examining:**

The extent and impact of on-demand platform employment, increasing casualisation, use of labour hire/agency work, and contract labour in aged care, disability care, social services and health care more broadly, with specific regard to:

- **impacts of on-demand platform employment models on care workers' experiences of work and sense of job satisfaction;**
- **pay and conditions for workers engaged through platforms, labour hire and agency roles, and casual staff, compared with permanent staff;**
- **training and career progression for on-demand platform workers and labour hire/agency workers;**

- **impacts of work status and worker experiences on retention and motivation to stay in the sector;**
- **the interactions of gender and migration/visa status with work status in the care sectors;**
- **any evidence regarding the impacts of different employment models on pay rates and conditions across the sectors more broadly; and**
- **any related matters.**

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Portable leave schemes

9.72 Recommendation 14 in the first interim report proposed a portable leave scheme for all NDIS workers.

9.73 Ai Group was opposed to this recommendation, saying that expanding portable leave schemes beyond the small number of industries in which they currently operate would function as 'a tax on employment and destroy jobs':

Portable leave schemes are typically funded by a levy on employers of up to 3% for long service leave alone. A portable leave scheme covering annual leave, sick leave and long service leave would require a very large levy on employers—at least 15% of payroll.³⁸

9.74 The committee supports and reiterates Recommendation 14 from the first interim report.

Recommendation 15 on government procurement

9.75 In its first interim report the committee briefly touched on the issue of government procurement and included a recommendation that the Australian Government should work to 'achieve an intergovernmental agreement' that would ensure that government procurements require all companies engaged by Federal and state and territory governments to provide 'minimum standards of pay, safety and insurance, workers' compensation and basic protections for workers'.³⁹

9.76 This recommendation was a forerunner to related recommendations in the committee's second interim report, including:

³⁸ Ai Group, *Submission 77.4*, p. 10.

³⁹ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. xii.

- Recommendation 3, which called for a national policy making the promotion of secure employment an 'objective of all public funding for employment, or the provision of goods and services'.⁴⁰
- Recommendation 34, which proposed the introduction of a 'social procurement framework' into the Commonwealth Procurement Rules, in order to leverage Commonwealth procurement to 'achieve positive social, economic, and environmental outcomes for the benefit the Australian community'; and
- Recommendations 35 and 36, calling for the introduction of a 'supplier code of conduct' and minimum requirements for suppliers around ethics, conflict of interest, labour and human rights and other metrics.⁴¹

Responses and new evidence

9.77 Inquiry participants had different perspectives in relation to this recommendation.

9.78 Ai Group argued there is no 'need for such an intergovernmental agreement', because businesses are already 'required to comply with relevant Federal and State laws relating to pay, safety, insurance, etc'.⁴²

9.79 However, Suicide Prevention Australia argued that procurement represents 'a significant lever through which governments can drive both economic and social impact in the broader community'. Suicide Prevention Australia referred to research from Social Procurement Australasia which estimates that governments across all jurisdictions in Australia spent around \$141 billion in 2020, including \$41 billion at the Commonwealth level.⁴³

9.80 Suicide Prevention Australia suggested that the Commonwealth Government should implement 'a social procurement approach' so it can 'leverage this expenditure to support broader social and economic outcomes':

For example, were Governments to restrict this spending to businesses that meet a minimum requirement for job security or employment conditions, this could influence or raise the standard of working conditions.⁴⁴

9.81 The Centre for International Corporate Tax Accountability and Research estimated that the amount of tax revenue lost to Australia 'due to tax avoidance by the largest labour hire multinationals' annually is between

⁴⁰ Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, pp. xiii–xiv.

⁴¹ Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, October 2021, pp. xx–xxi.

⁴² Ai Group, *Submission 77.4*, p. 12.

⁴³ Suicide Prevention Australia, *Submission 181*, p. 12.

⁴⁴ Suicide Prevention Australia, *Submission 181*, p. 12.

\$82 million and \$360 million. A number of these companies, including Hays and Manpower provide employment services for the Commonwealth Government.⁴⁵

Committee view

- 9.82 The committee supports and reiterates Recommendation 15 from its first interim report and Recommendations 3, 34, 35 and 36 from its second interim report which, if implemented, would help the Commonwealth leverage its considerable spending power to promote the creation of secure, high-quality jobs.
- 9.83 The committee reiterates the need for revised Commonwealth Procurement Rules to stipulate that government spending should be directed to businesses that do not engage in tax avoidance in Australia.

⁴⁵ Centre for International Corporate Tax Accountability and Research (CICTAR), Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 8 December 2021), p. 1.

Chapter 10

Reversing the trend towards insecure work: policy options

- 10.1 As discussed in Chapter 6, the COVID-19 pandemic exposed the vulnerability of large parts of Australia's workforce, whose insecure and precarious employment left them suddenly without income as a consequence of pandemic-related public health measures.
- 10.2 Casual employees lost their jobs at *almost 10 times* the rate of permanent employees (over 20 per cent, compared with just over 2 per cent).¹
- 10.3 Without historically unprecedented levels of government support and intervention, many of these Australians would have faced poverty and homelessness, and the economy would have been severely damaged.
- 10.4 Job security has never been more valuable or more important, and yet, according to the Australian Council of Trade Unions (ACTU), over half of the jobs created since 'the worst period of the pandemic' are casual jobs, with two-thirds of them being part-time:
- Casual employment grew by over 400,000 positions in the rebound between May and November 2020—an average of 2,200 new casual jobs per day. That is by far the biggest and fastest expansion of casual employment in Australia's history.²
- 10.5 In this chapter, the committee reviews a number of policy options suggested by submitters. These policy options are all designed to reverse the trend towards insecure work that has dominated in recent decades, and put Australia on a path towards more secure job creation.
- 10.6 The next chapter, Chapter 11, presents the committee's conclusions and final recommendations.

Arguments against reform

- 10.7 Before evaluating the options for reform made by submitters to the inquiry, it is prudent to consider arguments *against* reform submitted by some industry participants.

¹ Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment', *Parliamentary Library Research Paper Series*, 2021-22, Canberra, 24 November 2021, p. 2, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/TrendsCasualEmployment (accessed 26 January 2022).

² Australian Council of Trade Unions (ACTU), *Submission 98*, p. 3.

10.8 The Australian Chamber of Commerce and Industry (ACCI) urged the committee to 'exercise caution' in order to 'avoid damaging the performance and competitiveness' of Australian business, saying the private sector in Australia represents around 87 per cent of employment.³

10.9 Concerned about recommendations that might 'increase the regulatory burden' on business, in an already 'complex system', the ACCI suggested that the committee prioritise recommendations that would support 'doing business and growing jobs in Australia', or make no change at all:

ACCI sees no basis to recommend regulatory changes in this area. As set out in this submission, long standing, robust and adaptable regulation already exists and there is no basis to conclude it cannot address changes in how work is undertaken during the next decade, as it has in preceding decades.⁴

10.10 The Australian Industry Group (Ai Group) argued against making any significant changes to Australia's 'current workplace relations framework', in particular 'the flexibility afforded by the common law tests in determining whether a worker is an employee or an independent contractor'. Ai Group submitted that Australia's workplace laws 'must recognise and accommodate the need for Australian businesses to engage employees and contractors in different ways' and '[o]verly prescriptive laws would stifle innovation to the detriment of businesses, workers and the whole community'.⁵

10.11 Specifically, Ai Group argued for:

- maintaining the use of the common law test for determining the distinction between employees and independent contractors;
- no changes to the current sham contracting laws, which Ai Group said are 'appropriate and effective';⁶
- replacing the current state-based labour hire licencing schemes with a 'light-touch' National Labour Hire Registration Scheme that would reduce the 'regulatory burden' on labour hire operators currently subject to more onerous schemes in Queensland and Victoria;⁷
- the removal of payroll taxes, which it described as 'discriminatory' and the cause of 'deadweight losses' across the economy;⁸ and

³ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 5].

⁴ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 5].

⁵ The Australian Industry Group (Ai Group), *Submission 77*, p. 3.

⁶ Ai Group, *Submission 77*, p. 18.

⁷ Ai Group, *Submission 77*, p. 20.

⁸ Ai Group, *Submission 77*, p. 24.

- Ai Group was opposed to the idea of a portable leave schemes for platform workers, saying it would be a 'crippling levy' that would 'most likely lead to many business closures and a significant decline in platform work'.⁹

10.12 Ai Group further argued that 'union claims inhibit the ability of businesses to be responsive and adaptable to market changes'. The only way jobs can be secure, Ai Group submitted, is by having policy settings in place that ensure that 'businesses remain profitable and competitive'.¹⁰

Committee view

10.13 The committee took these concerns on board in drafting its final conclusions and recommendations, and acknowledges the need for industrial relations (IR) policy and regulations to be developed in conjunction with both industry and employee representatives.

10.14 However, the majority of evidence received during the course of the inquiry—alongside the growing indicators of insecure work discussed in Chapter 2—reveal that current policy and regulatory settings *do not* provide sufficient protections for some workers. Nor do they incentivise the creation of secure, high-quality jobs.

Options for reform

10.15 The following options for reform represent a number of key regulatory and policy areas that have *not* been substantially covered in the committee's interim reports.

10.16 This list does not include *every* suggestion made by submitters, but focusses on those likely to have the biggest impact on levels of insecure work in Australia.

10.17 What follows are positive initiatives the Australian Government could pursue to chart a new course in Australia's IR policy, linking the nation's economic recovery from the pandemic to the creation of more secure and sustainable jobs.

Codify job security

10.18 Amending the *Fair Work Act 2009* (Fair Work Act) to incorporate job security was an idea supported by a number of submitters.

10.19 National Youth Commission Australia submitted that including job security 'as an object of the Act', along with a re-definition of casual work that limited its use 'to genuine casual work', could help address 'society's failure to ensure that

⁹ Ai Group, *Submission 77*, p. 22.

¹⁰ Ai Group, *Submission 77*, p. 5.

current and future generations of young people will be at least as well off as the immediate past generations'.¹¹

- 10.20 Similarly, the NFAW recommended the Fair Work Act be amended 'to balance employer-oriented and employee-oriented flexibilities in award-setting' by inserting 'job security ... as a principal object of the Act as a whole', as well as specifically recommending that 'job security' and 'gender equality' be inserted into the list of 'objectives and tests of the award review process in the Fair Work Act'.¹²

Incentivise secure job creation

- 10.21 Inquiry participants maintained that the pandemic offers an opportunity to rethink economic, IR and industry policy, using government investment and policy levers to incentivise the creation of secure jobs, allowing *more* Australians to better weather such shocks in the future.¹³
- 10.22 The Centre for Future Work at The Australia Institute (Centre for Future Work) said the Government should focus 'continued support and stimulus' on helping the workers 'who experienced the worst effects of the crisis in 2020'. Rather than 'accelerating the trend toward insecure jobs', the Centre for Future Work said Government should 'work to stabilise employment relationships', providing 'more Australians with the benefits of stable, decent work'.¹⁴
- 10.23 Professor Michael Quinlan and Dr Elsa Underhill highlighted how the pandemic has exposed Australia's 'vulnerability associated with the long-term decline in domestic manufacturing', as demonstrated by disruptions to supply chains for essential goods. They suggested the Government implement an industry policy 'that promotes more skilled, stable employment in manufacturing' to build local capacity, and encourage regional job creation.¹⁵
- 10.24 The Victorian Trades Hall Council (VTHC) urged the Federal Government to 'utilise fiscal and economic mechanisms' to create new, full-time, permanent and well-paid jobs, instead of introducing 'perverse incentives that make the job market more insecure'. The VTHC pointed to the 2017 PaTH (Prepare, Trial, Hire) Internship scheme¹⁶ and the 2020 JobMaker Hiring Credit scheme,¹⁷ saying these schemes 'incentivised' companies to hire young people in low-paid, part-time jobs, 'with no guarantee of continued employment after

¹¹ National Youth Commission Australia, *Submission 32*, p. 5.

¹² NFAW, *Submission 11*, p. 5.

¹³ Professor Michael Quinlan & Dr Elsa Underhill, *Submission 2*, p. 23.

¹⁴ Australia Institute, Centre for Future Work (Centre for Future Work), *Submission 41*, p. 9.

¹⁵ Professor Quinlan & Dr Underhill, *Submission 2*, pp. 23–24.

¹⁶ See: <https://www.dese.gov.au/newsroom/articles/explainer-youth-jobs-path>.

¹⁷ See: <https://www.ato.gov.au/general/JobMaker-Hiring-Credit/>.

the scheme', often replacing older, full-time workers with a 'revolving door' of insecure temporary workers. The VTHC concluded:

Wage subsidies can ... be powerful tools for job creation, but these jobs need to be good, secure jobs that grow our economy. This is why impacts on job security needs to be a key consideration in evaluating the merit of policy proposals. VTHC recommends that the Federal Government develop an evaluation tool whereby policy proposals can be assessed for its impact on job security.¹⁸

10.25 Professor Anthony LaMontagne from Deakin University suggested that governments should focus on not just *creating jobs*, but creating jobs that are sustainable and promote social and 'environmental sustainability'. Professor LaMontagne described a employment program where workers build social housing, helping to address 'a social problem at the same time as providing work for building contractors and construction workers'.¹⁹

Regulate labour hire and disincentivise its over-use

10.26 The committee's third interim report on labour hire and contracting included three key recommendations on labour hire:

- Recommendation 1, that the Australian Government amends the Fair Work Act to 'ensure the wages and conditions of labour hire workers are at least equivalent' to directly-employed workers (the 'same job, same pay' principle).
- Recommendation 2, calling for the introduction of 'a comprehensive national labour hire licensing scheme covering all business sectors, and requiring mandatory registration and continuous compliance with all legal obligations'; and
- Recommendation 4, urging government to increase its 'monitoring and compliance activities' in relation to labour hire operators.²⁰

10.27 Noting these recommendations, inquiry participants made suggestions indicating there may be scope to use amendments, or other policy levers, to reduce the use of labour hire over the long term.

10.28 Professor Quinlan and Dr Underhill observed that the movement towards licensing labour hire employers 'has gained momentum in recent years', and its time has come. According to Professor Quinlan and Dr Underhill, a licence to operate as a labour hire provider should be 'contingent upon':

¹⁸ Victorian Trades Hall Council (VTHC), *Submission 31*, [pp. 9–10].

¹⁹ Professor Anthony Daniel LaMontagne, Professor of Work, Health and Wellbeing, Institute for Health Transformation, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 4.

²⁰ Select Committee on Job Security, *Third interim report: labour hire and contracting*, November 2021, p. xi, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Third_Interim_Report (accessed 17 January 2022).

- employment practices 'consistent with minimum labour standards';
- not disadvantaging workers for taking sick leave or lodging workers' compensation claims; and
- accepting 'limits on the proportion of subcontracting/labour hire in high-hazard industries like abattoirs and mines'.²¹

10.29 Deeming casual labour hire workers as permanent employees 'after a set time period' could also lead labour hire employers towards building a more permanent workforce, and decrease the impetus for multiple job holding amongst labour hire workers.²²

Increase multi-employer and sector-wide bargaining

10.30 A number of inquiry participants proposed that increasing sectoral or collective bargaining would lead to an increase in job security for workers, especially those in the lowest-leveraged jobs and industries.

10.31 Data from the ABS indicates that award-reliant workers are the fastest-growing category of workers, far outstripping workers on collective and individual agreements—both in number and in the pace of growth (see **Figure 13.1**).

10.32 The ACTU argued that Australia's bargaining system is extremely decentralised, compared with other OECD countries. With only 11 per cent of private sector employees covered by an enterprise agreement, the ACTU submitted that the system 'is failing to extend bargaining rights to the majority of workers', and many employers are exploiting the 'power imbalance' created by the system.²³

²¹ Professor Quinlan & Dr Underhill, *Submission 2*, p. 25.

²² Professor Quinlan & Dr Underhill, *Submission 2*, p. 25.

²³ ACTU, *Submission 98*, p. 36.

Figure 10.1 Number of employees covered by awards, collective agreements and individual agreements, 2008 to 2018

('000)	Award only	Collective agreement	Individual arrangement
May-00			
May-02			
May-04	1539.2	3147.7	3009.2
May-06	1584.9	3436.8	3328.4
May-08	1454.0	3507.2	3850.8
May-10	1361.2	3891.9	3714.7
May-12	1544.1	4033.6	4028.2
May-14	1860.7	4070.1	3968.0
May-16	2307.3	3695.2	4144.5
May-18	2234.8	4033.6	4378.8
May 08 to May 18 ('000)	780.8	526.4	528.0
% change May 08 to May 18	53.7	15.0	13.7
Average annual change (%) - May 08 to May 18	4.4	1.4	1.3

Source: Parliamentary Library research, ABS, *Employee Hours and Earnings*, cat. No. 6306.0 (back issues).

10.33 Professor Peetz said Australia's collective bargaining system is too complex, compared with New Zealand and other countries. There are too many 'restrictions on multi-employer or industry bargaining', creating a 'distinction between the legal treatment of single- and multi-employer bargaining' that is uncommon in industrialised countries:

The OECD in recent years has shifted from its fairly consistent support for decentralisation in industrial relations to a much more nuanced approach, that recognises that, empirically, coordinated or sectoral bargaining on average produces better outcomes than fully decentralised bargaining. ... There are a number of reasons for saying that industry bargaining is a good thing. It gives both labour and capital more options on how best to collectively organise themselves, given that both will do it anyway. It reduces transaction costs. It reduces inequality. ... It puts a brake on the race to the bottom.²⁴

²⁴ Professor Peetz, *Submission 88*, p. 22.

10.34 The Centre for Future Work argued that the ability for workers 'to exercise bargaining power' through collective bargaining is 'essential' if workers are to have a chance 'of demanding and receiving more stable jobs, entitlements, and working conditions'. The Centre for Future Work recommended:

- The Better Off Overall Test (BOOT) be maintained.
- Capital-intensive sectors like construction, mining and resources 'should not be exempt' from rules mandating regular renegotiation of Enterprise Agreements.
- Agreements should be 'subject to the genuine review and approval of workers'.
- Introducing a 'notification system' to alert the Fair Work Commission and relevant unions when an Enterprise Agreement is due to expire.
- Strengthening 'statutory obligations on employers to bargain' in order to ensure employers participate, thus encouraging and facilitating collective bargaining.²⁵

10.35 The Centre for Future Work also suggested that sectoral or industry bargaining is necessary for resolving 'imbalances' created by increased outsourcing and contracting out (including of government-funded social services), and use of labour hire:

An economy comprised of smaller firms, fragmented workplaces, and insecure work arrangements demands bargaining scope be expanded to re-aggregate workers across sectors or industries, and allow them to fairly bargain for pay increases and other improvements. By fixing wages across similar businesses, sectoral bargaining can also drive new employer incentives toward real productivity-enhancing investments (such as new technologies and workforce skills), rather than just reducing labour costs.²⁶

10.36 The ACTU observed that the impacts of the pandemic on insecure workers demonstrated that the need for collective bargaining is more urgent than ever:

Inclusion of all workers in a functional system of collective bargaining, that goes beyond the enterprise that happens to directly employ them, is not just a matter of economic power. It is a vital mechanism to ensure workers have control over the safety of their work, across sectors, industries, franchises, labour hire arrangements, supply chains—or however work is configured. While its precise shape requires much further consideration, for industry bargaining to be successful it must follow these three principles:

- It must be universal: it must meet the needs of workers who have fallen through the gaps in the current system.
- It must be accessible in that all workers, including labour hire and contractors, must be able to benefit.

²⁵ Centre for Future Work, *Submission 41*, pp. 20–21.

²⁶ Centre for Future Work, *Submission 41*, p. 21.

- It must give workers a real voice and restore their power to determine their living standards.²⁷

10.37 The Australian Institute of Employment Rights (AIER) recommended 'removing all hurdles in the Fair Work Act regime to bargaining beyond the single enterprise'.²⁸

Focus on marginalised and disadvantaged workers

10.38 A number of inquiry participants made suggestions directed towards boosting job security among cohorts of workers that face greater levels of disadvantage or marginalisation.

10.39 For instance, the Centre for Future Work highlighted the need to build skills and capability among disadvantaged workers, recommending:

... the provision of targeted skills programs and employment services to the groups of workers most likely to be recruited into precarious employment: displaced workers, young workers who can't break into conventional jobs, international migrants, students and others.²⁹

10.40 Some of the most significant suggestions are detailed below.

Increase women's participation and job security

10.41 According to Ms Kate Jenkins, Australia's Sex Discrimination Commissioner, as at August 2021:

- The gender pay gap in Australia is 14.2%
- At retirement age (60-64 years), 23% of women have no superannuation compared to 13% of men
- There are 18 women CEOs across all ASX300 companies
- Majority of Australian industries are gender segregated, with women dominating in the lower paid industries of healthcare and social assistance (79%) and education and training (73%)
- 1 in 3 workers in the previous 5 years had been sexually harassed
- One woman a week is killed at the hands of current or former intimate partner.³⁰

10.42 Participants made a number of suggestions aimed at increasing women's participation and improving the quality and security of jobs for women.

10.43 The ACTU submitted that women were impacted more heavily by the pandemic because they 'hold jobs with less employment security'. Despite the 'absolute' rise in *levels* of women's employment over recent decades, a rise in job security 'has not followed suit':

²⁷ ACTU, *Submission 98*, p. 37.

²⁸ Australian Institute of Employment Rights (AIER), *Submission 6*, p. 53.

²⁹ Centre for Future Work, *Submission 41*, p. 18.

³⁰ Ms Kate Jenkins, Sex Discrimination Commissioner, *Submission 202*, [pp. 2-3].

... 57% of women workers experienced one or more forms of precarity in their work pre-COVID-19 with women more likely to be employed in reduced hours, casual, and temporary positions than men. Women's jobs are characterised by fewer and less predictable hours, and fewer standard entitlements like sick leave, long service leave, holidays and superannuation. Insecure work in the social and community services sector is also less likely to have access to redundancy entitlements.³¹

10.44 National Foundation for Australian Women (NFAW) noted that, even before the pandemic 'upended' the Australian labour market, women's participation had been about 10 percentage points lower than men's, at just over 61 per cent, compared to the male participation rate of almost 71 per cent.³²

10.45 Ms Jenkins advocated broader measures to remove barriers that prevent women participating 'on an equal basis to men', and make women more likely to engage in insecure or precarious work. Strategies Ms Jenkins proposed were:

- Eliminate discrimination in hiring and promotional practices in the formal economy
- Implement measures that increase women's representation in male dominated industries and occupations, and vice versa, and
- Improve women's representation in decision making and leadership roles
- Dismantle gender-based stereotypes that confine women to the home and characterise men as breadwinners, and that contribute to occupational and industrial segregation
- Recognise, reduce, and redistribute care work, including improving access to affordable and flexible early childhood education and care.³³

10.46 The NFAW recommended a number of 'systemic measures' to raise women's workforce participation and increase women's job security, saying:

The federal Government must take a lead in supporting the more equal division of paid work and unpaid care between women and men by:

- legislating for stronger protections from sexual violence in work and strengthening the response by government in relation to its own parliamentary and public service workforces
- legislating ... to reduce the incidence of insecure work and better protect workers
- developing campaigns to support families more equally share unpaid work
- providing leadership to create stronger norms and culture of gender equality.

³¹ ACTU, *Submission 98*, p. 40.

³² National Foundation for Australian Women (NFAW), *Submission 11*, p. 9.

³³ Ms Kate Jenkins, Sex Discrimination Commissioner, *Submission 202*, [p. 6].

The federal Government should better focus federal budgets towards ameliorating women's greater workforce disadvantages.³⁴

10.47 The ACTU suggested a 'legislated positive duty to address gender inequality' could assist in inspiring organisations to reduce the use of insecure forms of work.³⁵

Reform tax and superannuation measures that disadvantage women

10.48 Inquiry participants suggested that a number of rules and measures in the tax and superannuation system disadvantage women and need to be reformed.

10.49 For instance, the \$450 per month minimum threshold for superannuation guarantee payments means employers are exempt from making superannuation contributions for workers who earn below this threshold. The NFAW submitted that 63 per cent of these workers are women and described the exemption as 'anachronistic':

The exemption affects primarily low paid and casual employees, and it encourages employers to limit the hours offered to those employees to ensure that they remain below that threshold. This exemption has been in place since the introduction of the superannuation guarantee, and it predates the ability for current payroll technology to process small amounts cost effectively. This anachronism must be removed in the interests of fairness.³⁶

10.50 In relation to the 30-hour exemption, the NFAW reported that this exemption is used to avoid paying superannuation to disability and aged care workers engaged under the National Disability Insurance Scheme (NDIS) and Home Aged Care packages.³⁷

10.51 Where workers are engaged 'directly by the user'—without an employing agency acting as an intermediary—the NFAW said NDIS clients are 'actively advised' to use the 30-hour exemption in section 11(2) of the *Superannuation Guarantee (Administration) Act* (cth) for 'work that is wholly or principally of a domestic or private nature'³⁸ by using 'multiple part time workers instead of one full time worker', which removes the obligation to pay super:

Although this does make administration easier for the client, and it makes the funding stretch further, this is at the expense of the long-term economic security of the worker.³⁹

³⁴ NFAW, *Submission 11*, p. 4.

³⁵ ACTU, *Submission 98*, p. 38.

³⁶ NFAW, *Submission 11*, p. 26.

³⁷ NFAW, *Submission 11*, p. 27.

³⁸ See: www5.austlii.edu.au/au/legis/cth/consol_act/sga1992430/s11.html.

³⁹ NFAW, *Submission 11*, p. 27.

10.52 The NFAW recommended that 'the \$450 monthly earnings threshold for the superannuation guarantee should be repealed', and that:

The 30-hour exemption in s.11 (2) of the Superannuation Guarantee Administration Act for work that is wholly or principally of a domestic or private nature should be reduced to 10 hours per week.⁴⁰

Support migrants and refugees to find and maintain secure, high quality jobs

10.53 FECCA pointed out that, while migrants and refugees are 'some of the most educated, driven and entrepreneurial members of our society', many (especially newly-arrived migrants and refugees) face 'barriers to obtaining employment', including:

- difficulties obtaining recognition of skills, qualifications and experience earned overseas
- English language proficiency, including employer discrimination with regards to accent
- experiences of discrimination, prejudice or racism
- lack of networks for seeking and securing employment
- limited familiarity with the Australian workforce, employment systems and culture
- pre-migration experience, including experiences of torture and trauma.⁴¹

10.54 These barriers can often mean migrants and others from culturally and/or linguistically diverse backgrounds 'find themselves in lower-skilled and low-paid jobs'. One way of addressing this disadvantage would be for governments to 'to improve access to recognition of overseas qualifications' so migrants can 'work in their area of expertise'.⁴²

Concluding note

10.55 The committee thanks inquiry participants for these and the many other suggestions that were made over the course of the inquiry.

10.56 The committee's first, second and third interim reports have already addressed a number of areas in need of reform. While those areas have not received attention here, the committee notes that recommendations made in those reports are intimately connected with many of the matters discussed in this chapter.

10.57 The committee's concluding comments and final recommendations follow.

⁴⁰ NFAW, *Submission 11*, p. 5.

⁴¹ Federation of Ethnic Communities' Councils of Australia (FECCA), *Submission 224*, pp. 5–6.

⁴² FECCA, *Submission 224*, p. 6.

Chapter 11

Conclusions and final recommendations

11.1 During his appearance at a public hearing on 16 September 2021, Professor Anthony LaMontagne talked about the notion of *sustainable work*:

In an ideal society we would like any working person to be able to work without being harmed by their work and we would like them to be able to do that job for a working lifetime. That would be an ideal. We're far from that.¹

11.2 Throughout this inquiry, the committee has heard from dozens of working Australians who are hurting. Everyday working people who feel they cannot get ahead in life; who feel they are being harmed by their work. Like Simon, who said:

... we have not had a pay rise in 2 years. In the 14 years my pay has gone up less than \$5 an hour. Sydney is a bloody expensive city to live and wages should reflect that.²

11.3 Or Kristie, who graduated as a teacher in 2015, and said:

... due to rampant casualisation of teaching, I have still not, like THOUSANDS of others, gained permanent employment. Teachers, with degree qualifications, are working day to day casual or on temporary contracts for literal YEARS on end, not knowing what we are doing from one day to the next.³

11.4 Or Alison, who works full-time hours for a major supermarket, and said:

... the wage that I make is not enough to live on. The last year and a half have been tough at work, dealing with customers panic shopping. Thanks to the LNP I have also had my penalty rates cut. I work every Sunday and most of the public holidays as well just to bring a bit more money into the household, yet there never seems to be enough...⁴

11.5 Or Rigzin, who works for a charity helping *other people* to find work, but whose own job is insecure:

Our program is funded for three years every round and there is no security that the job will be there. ... I have found it difficult to apply for a mortgage or another loan because my work is insecure.⁵

¹ Professor Anthony Daniel LaMontagne, Professor of Work, Health and Wellbeing, Institute for Health Transformation, Deakin University, *Proof Committee Hansard*, 16 September 2021, p. 4.

² Simon, *Submission 131*, [p. 1].

³ Kristie, *Submission 143*, [p. 1].

⁴ Alison, *Submission 145*, [p. 1].

⁵ Rigzin, *Submission 175*, [p. 1].

- 11.6 The committee has balanced the evidence received from employers and industry, with what it has heard from workers around Australia. We have interrogated the popular narrative in which commentators use certain data and statistics to argue that insecure work has not increased. That narrative does not gel with what Australians are experiencing in their own lives.
- 11.7 As the committee demonstrated in Chapter 2 of this report: dig a little deeper into the statistics and data and it becomes clear that insecure work *has* increased, and *is* increasing. It will continue to do so unless governments use the legislative, investment, expenditure, and policy levers under their control to reverse this trend.
- 11.8 In service of this aim, the committee has already made recommendations to address:
- gaps and misinformation in national datasets;
 - the impacts of insecure work on mental and physical health and wellbeing;
 - casual employment and causal conversion;
 - on-demand platform work and the 'Uberisation' of work in disability care and other sectors;
 - the impact of on-demand platforms on the transport sector through the 'Amazon effect';
 - defending secure jobs through public sector procurement, and rebuilding the Australian Public Service; and
 - reducing and better regulating labour hire, contracting and outsourcing— including in mining, agriculture and across the public sector.
- 11.9 This final chapter presents the committee's remaining recommendations, designed to contribute to a positive vision for Industrial Relations reform and begin the process of reversing the trend towards insecure work.

Codifying job security

- 11.10 The committee notes that the ACTU has called for 'a national target to halve the proportion of insecure jobs in Australia by the end of 2030'.⁶
- 11.11 While there is currently no accepted measure of insecure work, and no national metric, the committee believes this is a laudable aim. The committee is instead supporting a proposed amendment to the *Fair Work Act 2009* (Fair Work Act) that would see 'job security' inserted as a principal 'Object of the Act', at section 3 of the Fair Work Act.
- 11.12 The Object of the Act is currently stated as:

... to provide a balanced framework for cooperative and productive workplace relations that promotes **national economic prosperity** and **social inclusion** for all Australians by... [a number of sub clauses follow]⁷

⁶ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 4.

11.13 These are worthy aims but more needs to be done. The committee believes that adding 'job security' as a criterion in the Object of the Act would provide a firm legislative foundation, elevating secure job creation to the status it deserves.

11.14 The committee also supports the suggestion that 'job security' and 'gender equality' should be added into the list of 'objectives and tests of the award review process in the Fair Work Act'.⁸

Recommendation 16

11.15 The committee recommends that the Australian Government amends the *Fair Work Act 2009* by inserting the words 'job security' and 'gender equity' into the principal Object of the Act (section 3), and adding 'job security' and 'gender equity' into the list of matters that need to be taken into account as part of 'The modern awards objective' (section 134) in the *Fair Work Act 2009*.

Incentivising secure job creation

11.16 As the economy slowly recovers from the impacts of the pandemic, wage subsidies and job creation programs will likely be a feature of the recovery.

11.17 Wage subsidies can be powerful tools to assist in the process of creating new jobs, but if the jobs created are casual, part-time, low-paid jobs, and/or those jobs *cannibalise* existing permanent jobs, there is a net loss for society.

11.18 Government programs and subsidies must be carefully designed to ensure they will lead to the creation of good, secure jobs that grow the economy and benefit families and communities.

11.19 Potential impacts on job security should be a key consideration in evaluating the design and relative merit of policy proposals that relate to employment.

11.20 As such, the committee is supporting the suggestion that an evaluation tool be developed, and its use mandated for assessing relevant policy proposals for their impacts (positive and negative) on job security.

Recommendation 17

11.21 The committee recommends that the Australian Government considers developing a tool for evaluating and rating policy proposals in respect of their potential impacts (positive and/or negative) on job security, and makes assessment against the tool mandatory for all relevant new policy proposals.

⁷ Section 3, *Fair Work Act 2009* (cth), www.legislation.gov.au/Details/C2021C00421 (accessed 27 January 2022). Emphasis added.

⁸ NFAW, *Submission 11*, p. 5.

Policy initiatives that are likely to lead to the creation of insecure jobs should be redesigned.

Supporting disadvantaged workers

11.22 The following recommendations are designed to provide additional support for vulnerable workers through bolstering the Fair Work Ombudsman and better supporting migrant agricultural workers.

Recommendation 18

11.23 **The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman to investigate and penalise employers and companies for contraventions of workplace laws and obligations, drawing on the Ombudsman's enhanced powers provided under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.**

Recommendation 19

11.24 **The committee recommends that the Australian Government accept Recommendation 23 of the National Agricultural Labour Advisory Committee, which read:**

'The Committee recommends that the Australian Government require all 417 and 462 visa holders, prior to arrival in Australia, to apply for an Australian tax file number. Information should be provided to 417 and 462 visa holders in their own language, on their rights and entitlements as migrant workers in Australian workplaces, and on how to take action if they are not being treated ethically and lawfully.'

Continuing the committee's work

11.25 While this committee was able to speak with a number of workers and employers, and consider a wide variety of evidence in relation to insecure work in Australia, we know that we have only scratched the surface of this issue.

11.26 There is still so much to understand about the changing nature of Australia's workforce in 2022 and beyond. The effects of the pandemic are only just beginning to be understood, and many industries are still in crisis.

11.27 It is critical that the Australian Senate continues to interrogate this issue; to speak to workers and their representatives; to hear from academics, NGOs and industry bodies; and to bring major private sector employers before its committees to explain their employment practices and conditions.

11.28 With more Australians than ever working multiple jobs, casual employment growing at a faster rate than it ever has in Australia's history, and the gig economy still growing and unregulated, the following recommendation is

designed to ensure that the issue of job security remains squarely on the Senate's agenda.

Recommendation 20

11.29 The committee recommends that the Senate give consideration to the referral of an inquiry to the Education and Employment References Committee, examining:

The extent, growth and impact of insecure work in Australia, with specific regard to:

- **definitions and measures of insecure and precarious work, and the need to develop national measures, and a national data set, to understand changes over time;**
- **the growth in insecure work since the 1970s and the impacts of government policies on this growth;**
- **the impacts of the pandemic on the growth of insecure and precarious jobs, including those in the on-demand platform sector;**
- **job insecurity among vulnerable workers, including migrants and temporary residents;**
- **the experiences of workers in insecure jobs, their pay and conditions, and the impacts on their health, wellbeing, social connection and prosperity;**
- **perspectives of employers on the use of casual, fixed-term contract, labour hire and platform workforce arrangements;**
- **impacts on the level of casual and insecure work of the reforms made in 2021 to the *Fair Work Act 2009* through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*, particularly those concerning casual conversion;**
- **the adequacy of existing legislative and regulatory regimes to address the challenges of insecure and precarious work; and**
- **any related matters.**

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

**Senator Tony Sheldon
Chair**

Dissenting report by Liberal and National Senators

- 1.1 At the outset, it must be noted that this report is being tabled in the context of Australia's current unemployment rate of 4.2 per cent, which in a single statistic, exposes the Labor lie that job insecurity is a widespread issue in this nation. Unemployment is projected to fall below 4 per cent for the first time in half a century, with businesses across the nation seeking workers as the economy recovers.
- 1.2 The Morrison-Joyce Government is determined to continue with the economic plan that is helping more Australians into work. Lower unemployment is also creating the economic conditions that will see wages rise. This is the power of an economic plan, supported by the strong economic management that has seen Australia as one of only nine countries in the world to have a AAA credit rating.

Nothing more than a stunt

- 1.3 This Senate Select Committee on Job Security gave the senators participating in the inquiry the opportunity to investigate potential reform to the employment arrangements in those Australian industries and sectors that have been disrupted by active technological and economic forces over time, as well as the acute impacts of the COVID-19 pandemic.
- 1.4 Liberal and National Senators are strongly of the view that successful reform delivers positive outcomes for individuals, businesses, local communities and our nation as a whole. Our economic prosperity is what affords us the ability to care for our most vulnerable, protect our environment and to give our children the best start in life. Successful reform would drive improved productivity and efficiency, while increasing the opportunity for more Australians to benefit from the dignity of work with additional flexibility working to mutual advantage. Australians increasingly want to fit work around life, rather than life around work—that demands flexibility. Coalition economic reforms have seen 1.7 million more jobs since being elected in 2013, and there have never been more women in the workforce—ever.
- 1.5 It is concerning that the inquiry has amounted to little more than a political farce by the Labor-Greens Alliance, staged with two primary objectives: developing a predetermined, internally cultivated narrative to discredit the success of the Morrison Government's economic management, whilst simultaneously campaigning for big government and union control of Australians in the workplace—imposing more restrictions and intrusion upon both workers and businesses.

- 1.6 Liberal and National Senators have passed down a dissenting report with each interim report and sought to improve the honesty and integrity of the inquiry whilst limiting the shameful partisanship exhibited by Labor and Greens Senators. Unfortunately, Labor and Greens Senators continued to engage from a hostile, predetermined ideological position, using many witnesses in a dishonest way to cherry-pick data and accounts that supported their negative narrative, whilst being dismissive of any alternative view.
- 1.7 The worst example of this came from evidence from the Transport Workers Union (TWU), who were invited to appear on multiple occasions, despite their evidence being discredited by other witness testimony. For instance, the TWU asserted earnings of \$10.42 per hour as being representative of average Australian food delivery driver earning by basing it on a self-selected survey of only 209 respondents.¹
- 1.8 In stark contrast to these claims by the TWU, the data provided by Uber's submission (who are best placed to provide data on earnings) places the average hourly income for gig workers at well over \$20 per hour from that platform alone, notwithstanding earnings on other platforms. The evidence provided was:
- ... people have an average take-home earnings of \$20.47 per hour if they drive a car, \$21.97 per hour on a motorcycle and \$21.92 per hour on a bicycle.²
- 1.9 Uber were called before the committee a second time in November 2021, where earnings during the period of the Sydney and Melbourne lockdowns were considered. The average earnings per hour before costs was revealed at \$29 per hour for food delivery and \$32.25 per hour for rideshare—which is incredible when you consider that workers could have been using multiple platforms at once, and that these averages included all 'online time' rather than just the 'engaged time'. From Hansard:

Senator SMALL: Thanks, Chair, and good morning. I would like to pick up on the conversation we've been having. You mentioned a figure for the mobility business of \$32.25 an hour for online time. Just to be clear: is that for online time, or for engaged time?

Mr Taylor: I confirm that it is for all time on the app. That will include times when people are engaged and times when they are not engaged—when they may be taking trips on competitor apps or doing all sorts of things. They are well within their rights to do what they want in that period when they are not engaged.

Senator SMALL: So the data you presented showing the average of \$32.25 an hour for online time in the mobility business is for Uber alone and it is entirely plausible—in fact, given your survey data, it is entirely likely—

¹ Transport Workers Union (TWU), *Submission 39*, p. 22.

² Uber, *Submission 19*, p. 6.

that driver partners are working for other platforms and, therefore, earning on other platforms at the same time.

Mr Taylor: That's right. The survey we got back suggested that 40 per cent of the drivers and delivery people are operating on other platforms at any point in time.

To further highlight how debased the TWU's claims are, consider the evidence given by two separate Uber drivers:

Senator GROGAN: Thank you very much for appearing today. It does seriously help in our deliberations. Would you be able to tell me what you believe your approximate hourly rate is when you're driving for Uber?

Uber Driver X: I'll start. It varies. It all depends on how busy the platform is running on the day. If I'm in a quiet area around where I live, which is out of the city a bit, I could probably get about 20 bucks an hour, but in peak times when I'm working I can get up to 50 to 60 bucks an hour.

Ms Berry: Yes, I would agree with that.³

- 1.10 The outrageous, and subsequently discredited claims made by TWU Secretary, Mr Michael Kaine, were not limited only to earnings, as he even stated that:

We've had security incidents. We've had passengers at Perth Airport being allowed airside to collect their baggage because there was only one baggage handler left to unload the entire aircraft. We've had evidence of staff being forced back to work while they're injured.⁴

- 1.11 After further information was sought on notice, the TWU response was a shameful assertion that it was not the TWU's job to 'perform the role that should be performed by adequately funded Government agencies'.⁵ If the TWU was genuine in its preaching about the need for safety and improvements in parts of industry, demonstrating that need with evidence is surely a reasonable expectation for any Parliamentary Committee considering legislative reform.
- 1.12 This sort of shamefully hypocritical behaviour is to be expected from the TWU, given that it advertised in 2021 for 'food delivery union organisers' in Sydney, on a part-time (10-20 hours per week) fixed-term contract for 3 months—thereby itself utilising the 'precarious' and 'insecure' work arrangements it vocally decries when used by other employers.
- 1.13 The relentlessly negative politicking undermined the committee's proceedings resulting in an inquiry that has amounted to nothing more than a partisan political campaign in advance of the upcoming federal election. Labor's shamelessly ideological campaign should remind every business owner that

³ See: *Proof Committee Hansard*, 4 November 2021, p. 20.

⁴ Mr Michael Kaine, National Secretary, TWU, *Proof Committee Hansard*, 8 December 2021, p. 26.

⁵ TWU, Answers to questions on notice, public hearing, 8 December 2021, Canberra and Answers to written questions on notice from Senator Small (received 29 January 2022), [p. 2].

the Labor-Greens alliance is extremely dangerous for every Australian business and their workers. The Labor-Greens alliance would sooner have no jobs and no pay in any given sector than see an employment relations framework that does not ensconce their union mates in power.

Notes on recommendations from this report

- 1.14 Recommendation 3 exposes this inquiry for what it is. There can be no doubt that every Australian should be safe in the workplace, but to debase such an important issue with the idea of job insecurity as a psychological hazard is farcical. The fundamental point is that legislating 'job security' does not make jobs more secure—creating a strong economy and new job opportunity does.
- 1.15 The Morrison Government has supported the economy with an unprecedented safety net during the ravages of COVID-19. Economy-wide programmes such as JobKeeper, Cash Flow Boost and the extended Instant Asset Write-off were supplemented with targeted provisions such as HomeBuilder and direct support for the tourism industry. Additionally, the Morrison Government took the decision to permanently increase JobSeeker payments by the largest amount since 1986. To have Labor and Greens Senators recommending further direct support in an economy that is now larger than pre-pandemic is fiscally irresponsible. Providing more support would require taking out more debt and increasing taxes, and highlights that a Labor-Greens government would risk to our economic recovery.
- 1.16 Recommendation 7 of the majority report is completely rejected by Liberal and National Senators. The *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021* was passed less than a year ago, with new standards and definitions surrounding casual work and casual conversion only being fully implemented from 27 September 2021. The Bill was widely consulted, with ministerial round tables across Australia, to find a balance that provided beneficial outcomes to employers and employees.
- 1.17 The passage of the bill removed employers from the shackles of a potential \$39 billion double-dip liability and gave them the confidence they needed to invest and employ. These measures were critical to supporting Australia's economic recovery from COVID-19, so the fact that the Labor-Greens alliance would seek to unwind them is a risk to that recovery.
- 1.18 The intention of the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021* was for it to operate into the long-term and contribute to stabilising workplace relations well into the future, providing certainty to all parties involved. Australia needs economic stability, not chaos and confusion.
- 1.19 In what is possibly the first announcement of Labor's next tax on jobs, they have opted to use this report to call for a review of national portable leave schemes, with a view to expanding them across the economy. This partisan

recommendation conveniently aligns with Labor's already-announced policy of developing 'portable entitlement schemes for annual leave, sick leave and long service leave for Australians in insecure work'.⁶ Extending casual employees—who already receive 25 per cent loading in lieu of these entitlements—and independent contractors four weeks annual leave, two weeks sick leave, and long service leave entitlements at the average rate of earnings would create a \$20.3 billion liability for businesses. This is just a \$20.3 billion jobs tax announced by Labor.⁷ Portable leave schemes would be a tax on jobs that would also be open to the rorting that we have seen in state-based schemes to an unimaginable extent.

1.20 The concept of portable leave was considered by this committee during the inquiry. Despite serious concerns being exposed, and witnesses who were unable to articulate any satisfactory defence of the schemes they had already promoted, the recommendation to expand these schemes was made. Those serious concerns exposed by Liberal and National Senators include the extensive employment of union-linked persons, significant donations of money to unions, and so-called entitlements only being paid out at the discretion of a trustee, rather than by any entitlement at law, without being subject to merits and legal review in the case of a dispute. This exchange should horrify every working Australian as it highlights the shameless exploitation of workers for political purposes by the ALP and their union masters:

Mr Batchelor: We drew on the examples and the experience that we've seen here in Victoria in the construction industry but also more recently in expansion of portable entitlements, particularly in relation to long service leave, in security, cleaning and other parts of community services... The report that we put out says that, based on the successful models we've seen in construction and community services, we think that could be rolled out in other industries.

Senator SMALL: You point to the construction sector as an example where this has been established, so I want to flesh that out a little bit.

Mr Batchelor: In Victoria, in the construction industry, there's a trust fund that exists to oversee and manage those entitlements. It has a long name, but the trading name of the organisation is Incolink.

Senator SMALL: The reason I ask this series of questions is that I have grave concerns with the model that you point to as a viable option for dealing with this. For instance, in 2015–16, \$8.5 million was donated to the

⁶ 'Labor's Secure Australian Jobs Plan', www.alp.org.au/policies/job_security_plan (accessed 9 January 2022).

⁷ The Hon. Christian Porter MP, Attorney-General, Minister for Industrial Relations and Leader of the House, *Media Release: Labor's \$20 billion tax on jobs*, 10 February 2021, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpress_rel%2F7800645%22 (accessed 9 January 2022).

CFMEU, \$742,000 to the AWU and \$493,000 to the CFMEU by Incolink. You're pointing to a model that is supposed to address a very noble cause, and that's dealing with pandemic illness. I guess my concern is that nine per cent of private sector employees choose union membership and yet an organisation that effectively covers 100 per cent under the model that you're proposing shovels money their way.

Mr Batchelor: I'm not here to speak up behalf of Incolink. I'm not aware of the circumstances.⁸

- 1.21 In the face of such serious concerns around existing schemes, it defies any rational belief that the Labor-Greens report could countenance such a scheme being rolled out on a national scale.
- 1.22 Recommendation 8 exposes Labor's plans to use taxpayer money to dance to the tune of their union masters in order to destroy the ability for people to make their own choices about undertaking casual work. Whilst no detail exists around the new or higher taxes that Labor would use to pay for the 'campaigns', 'subsidies' and 'prioritisation' of non-competitive firms, at least the increased red tape for business in the form of 'increased reporting requirements' is clear. This is just another example of Labor demonising casual work when it is a worthy employment arrangement that allows thousands of Australians to balance work with other activities, including caring responsibilities, transitioning to retirement, and full-time study.
- 1.23 As the Australian Chamber of Commerce and Industry (ACCI) noted, following its appearance on 21 April 2021:

We emphasise in particular that effective access to casual work will never be more important for young Australians at greatest risk of sustained damage to their careers and earnings arising from the impact of the pandemic on their labour market entry. We urge the Committee to not recommend any measures or changes of policy which would have the effect of seeing fewer young Australians having opportunities to work, gain experience, gain referees etc.⁹

- 1.24 Recommendation 9 reveals another secret Labor plan, to funnel taxpayer money directly to their union mates who help fund them. Political donation data released by the Australian Electoral Commission (AEC) shows that in 2020–21, unions provided more than \$6.7 million to Labor. This is in addition to the \$3.7 million being spent from union coffers on campaigns against the Coalition Government. At the same time, union membership has consistently decreased over the last three decades (40 per cent to just 14.3 per cent over the last 30 years), with small business employees leaving unions in droves as Australian workers opt to have more flexibility and control over their own

⁸ Mr Ryan Bachelor, Executive Director, McKell Institute Victoria, *Committee Hansard*, 20 April 2021, p. 51.

⁹ Australian Chamber of Commerce and Industry, Answers to written questions taken on notice, Senator Sheldon, 3 May 2021 (received 11 August 2021), p. 5.

employment agreements. Australians are voting with their feet when it comes to the forms of work that suit them best. Under the Coalition Government, more than 60 per cent of total jobs growth has been in the form of full-time employment, and more people are employed full-time now than before the onset of the COVID-19 pandemic.

- 1.25 Critically, and as RBA Governor Philip Lowe noted, 'we should not think of part-time jobs as being bad jobs, and full-time jobs as being good jobs', because over 75 per cent of part-time workers are happy with current employment status and do not desire to increase their hours of work. Labor just doesn't get what Australians want—they are seeking to fit work around life, rather than trying to fit life around work.
- 1.26 Recommendation 10 is a trojan horse for the unions to seize control of the gig economy, despite the committee having heard extensive evidence about the benefits of flexibility and freedom that such arrangements provide to tens of thousands of Australians. The committee heard repeated evidence that individuals can engage in work without doing a job interview; work that doesn't require a uniform; work that doesn't require you to show up for shifts or apply for leave, and doesn't require you to work for only one business at a time. Indeed, the committee has repeatedly heard evidence that individuals are not even obligated to accept a task when online. Individuals are empowered with unparalleled flexibility, and that seems to be what has made the gig economy Public Enemy Number One for the union movement.
- 1.27 Recommendation 10 seeks to remove the capacity of Australians to decide what is best for them through a bargaining process, and instead centralise that power in the hands of bureaucrats. This overreach is no surprise when TWU Secretary, Mr Michael Kaine, told the Committee that wage fixing was required: 'Because those individuals have no capacity to determine what the value of their work is and what they should be paid'.¹⁰
- 1.28 The fact that the TWU's most senior representative believes that individuals cannot determine their own worth, make decisions for themselves, or exercise their own prerogative to work, earn and live as they wish is shocking—but it should not be a shock that Labor and Greens Senators are dancing to the tune of their union masters by way of their Recommendation 10.
- 1.29 Flexibility and autonomy also happen to be one of the most desirable aspects of gig work, in the eyes of those who actually do it. Uber's submission to the inquiry notes:

78% of driver-partners signed up to Uber because of its flexible opportunities—and 3 in 5 would not work at all without the flexibility the app provides. More than 4 out of 5 (83 per cent) of delivery people tell us

¹⁰ Mr Michael Kaine, National Secretary, TWU, *Proof Committee Hansard*, 12 April 2021, p. 7.

the same thing: they would no longer work on the Uber Eats app if they are required to deliver during set shifts.

The flexibility of Uber Eats also allowed delivery people to engage in other activities such as studying or other work. Four in five delivery people indicated they were working at least one other job ...

Uber's own recent survey with over 16 000 drivers and delivery people across Australia, found that flexibility and independence offered by the Uber app was the top area of satisfaction.¹¹

- 1.30 The shift of many workers and service recipients in the aged care industry into on-demand platforms, whether earning money via new models or receiving better services via bespoke arrangements, is a hugely positive outcome as technology disrupts the rigidity of traditional employment arrangements. These innovative on-demand platforms that are so popular with workers and support service clients alike could fail and disappear in Australia if a Labor-Greens government imposed inappropriate regulations. This is not a fanciful scenario—Uber reported to the committee that some of the changes that Labor and Greens Senators seek to impose have already been implemented in other countries to devastating effect.
- 1.31 Geneva mandated that food delivery drivers be classified as employees in a traditional sense, rather than independent contractors. The immediate effect of this change was to put 77 per cent of couriers, or 1000 people, out of work. Over the three months before September, around 1300 couriers worked on Uber Eats in Geneva. Under the new operating model, couriers needed to formally apply for a position with the delivery company. The delivery company has only extended employment offers to 300 couriers and all others have lost the ability to earn money with Uber Eats.
- 1.32 Recommendation 17 would be a restriction on any job-creating policy attempted by the Government. Labor and Greens Senators, at the bidding of their union masters, use the term 'insecure work' to reference any type of work that is temporary or non-ongoing, which is normally work that unions have less control over. This goes to the heart of the issue—Labor's union mates will say or do anything to arrest the declining membership of unions in Australia, even if that means demonising the diverse forms of work that allow people to fit work around their life, rather than being forced to fit life around work.
- 1.33 The Morrison Government has always made clear it has zero tolerance for any exploitation of workers, including underpayment of wages and entitlements by any employer. It is disappointing this partisan inquiry refuses to acknowledge that since 2016, the Coalition Government has given more evidence-gathering powers, and committed over \$180 million in new funding,

¹¹ Uber, *Submission 19*, p. 4.

to the Fair Work Ombudsman,¹² as well as increasing penalties for lawbreaking employers by up to ten-fold. As a part of this funding, the Fair Work Ombudsman has enhanced their capacity to conduct investigations into underpayments and related issues. If the Labor-Greens Alliance was serious about Recommendations 18 and 19, they would not have voted on 23 February 2021 against legislating a wage theft provision in the Fair Work Act.¹³ All while doing the bidding of their union donors by opposing this legislation, Labor labelled workers who missed out on receiving new rights and protections 'collateral damage'.¹⁴

- 1.34 Recommendation 20 continues to make disingenuous claims about increasing 'extent, growth and impact of insecure work in Australia'. These claims just don't stack up. In fact, what Labor will not admit is that the rate of non-permanent employment—including people who choose casual employment, independent contracting, labour hire and fixed-term contracting—has remained stable for at least a decade before COVID-19.¹⁵ We know that the highest levels of fixed-term contracting, labour hire and independent contracting all occurred under the last Labor Government.

Employment truths expose Labor's lies

- 1.35 National statistics from the Australian Bureau of Statistics expose the lies that Labor like to tell about employment in Australia today. The fact that those independent statistics don't suit Labor's pre-election scare campaign explains why they are ignored in favour of statistics provided by their union masters.
- 1.36 Labour hire engagement has held steady as a proportion of the workforce over the previous decade, hovering at around 1 per cent. This dispels Labor's oft-repeated claim of 'increased rates of casualisation and the utilisation of insecure labour hire workers and independent contractors', with this baseless claim also being pushed for partisan political purposes by the Australian Council of Trade Unions.
- 1.37 In stark contrast, the highest ever recorded rate for labour hire was 1.5 per cent, which occurred twice on Labor's watch, in both 2008 and 2011.
- 1.38 For additional context, in Australia's workforce of 13.2 million people, less than 115 000 employees Australia-wide are employed by a labour hire firm.

¹² APH, [Views on the Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2020](#), Section 3.230; Select Committee on Job Security, [Joint-Submission of AGD, DESE and DISER](#), April 2021, (Additional \$18.1m in MYEFO 2021-22) MYEFO 2021-22, [Appendix A: Policy Decisions taken since the 2021-22 Budget](#), Table 2, p.190, December 2021

¹³ Hansard, [Division 577 on Second Reading of Fair Work Amendment \(Supporting Australia's Jobs and Economic Recovery\) Bill 2020](#), 23 February 2021

¹⁴ AFR, Phillip Coorey, [IR Bill faces rough ride with the crossbench](#), 3 Feb 2021.

¹⁵ ABS, [Characteristics of Employment, August 2021](#), public data.

- 1.39 The proportion of independent contractors has remained broadly stable over the last decade at between 8 and 9 per cent. The all-time record high of 9.8 per cent also occurred under Labor in 2010.
- 1.40 The proportion of fixed-term contractors has remained steady at approximately 4 per cent since 2004, rising from 3.7 per cent to a peak of 4.2 per cent under Labor's watch in 2011.
- 1.41 Labor and Greens Senators, at the bidding of their unions, promote an idea of 'insecure work' to replace the classical definitions of non-ongoing employment. This 'same job, same pay' campaign is misleading and serves only as a trojan horse for job-destroying policies that will lead to increased unemployment across all sectors and industries. Labor really stands for 'no job, no pay' unless you are one of their union mates.
- 1.42 Under the Coalition Government, more than 60 per cent of total jobs growth was in the form of full-time employment. More people are employed full-time now than before the onset of the COVID-19 pandemic, and more women are employed now than at any time in history.

Agricultural workforce issues

- 1.43 The inquiry heard evidence from overseas seasonal workers about mistreatment including substandard living conditions and very low wages. The Australian Government recognises that mistreatment has occurred from a minority of employers in the agricultural workspace. The Government has supported enforcement efforts against those that have done the wrong thing.
- 1.44 There were specific allegations made in regards to employment by MADEC Australia, who employed these workers to work at Sunny Ridge Farms.¹⁶ We recognise that MADEC and Sunny Ridge have disputed the intent of the statements made to imply that deductions are made unlawfully or to the advantage of their employer.¹⁷ Deductions are payments made by workers to reimburse the actual cost incurred by employers for services provided to the workers. It is our understanding that the committee will offer the opportunity for MADEC and Sunny Ridge an opportunity to respond to these claims at a public hearing.
- 1.45 More generally, we believe that more could be done to make it easier for seasonal workers to change employers in the same industry for which they have an eligible visa. We heard evidence that transferring employment can be

¹⁶ See: *Committee Transcript*, Canberra, 2 February 2022 (still to be published).

¹⁷ Sunny Ridge Strawberry Farms, Response to adverse comment at public hearing, 2 February 2022 (received 4 February 2022), www.aph.gov.au/DocumentStore.ashx?id=1502fd3a-4595-42df-9613-430e5bca12da; MADEC, Response to adverse comment at public hearing, 2 February 2022 (received 9 February 2022), www.aph.gov.au/DocumentStore.ashx?id=23293b32-0bf0-4b50-879b-073b6a69ea9f (accessed 10 February 2022).

a bureaucratic and restrictive exercise. Making it too hard for workers to leave bad employers can only help sustain the business models of those that exploit the law. This has the effect of also making it harder for the majority of employers and farmers who do the right thing but by doing so may have higher labour costs than the 'cowboys' in the industry.

- 1.46 The Government indicated that it is exploring more 'portability' options to allow workers to change employers. We encourage it to offer this greater flexibility so that things are made harder for employers that are not complying with the law.

The Labor lie of 'same job, same pay'

- 1.47 The fact that Labor have introduced a bill with far-reaching and potentially catastrophic consequences for jobs in Australia warrants consideration. 'Same job, same pay' is little more than a slogan, much less a workplace relations policy. Australians already know what employers think of this thought bubble, as they told the country before the 2019 election.
- 1.48 Worse still, many Australian employers are crying out for staff, meaning that to tie them up in red tape and make it harder to employ more people would actually threaten our economic recovery from COVID-19.
- 1.49 Innes Willox, CEO of Ai Group, said that the bill was 'unfair and unworkable ... It is all cost, all barriers ... This policy takes us back to a 1960s-style nine-to-five workplace which is unsuitable for a 21st century economy'.
- 1.50 Andrew McKellar, CEO of ACCI, said that:

This Bill means that labour hire employees won't receive the pay rates they negotiated, but instead rates negotiated by other employers and employees they have never met. Labour hire employees will become the only employees in the country denied any role in negotiating their wages.

Mr McKellar also said: 'the Federal Opposition's plan to increase labour hire regulation risks undermining the competitiveness and flexibility of Australia's workforce'.¹⁸

- 1.51 Steve Knott, CEO of the Australian Resources and Energy Group (AMMA), stated that Labor are 'using unsubstantiated claims and baseless accusations to push for excessive regulation and disincentives to high-paid labour hire arrangements'.¹⁹

¹⁸ ACCI, *Fair Work Amendment tramples the preferences of employees*, 23 November 2021, www.australianchamber.com.au/news/fair-work-amendment-tramples-the-preferences-of-employees/ (accessed 10 February 2022).

¹⁹ Australian Resources and Energy Group (AMMA), *Federal opposition slammed over labour hire policy*, 24 July 2018, www.amma.org.au/news-media/media-center/federal-opposition-slammed-labour-hire-policy/ (accessed 10 February 2022).

- 1.52 Last time Labor proposed to upset the enterprise agreement system with this policy, analysis by Deloitte Access Economics showed Labor's 'same job, same pay' policy would cost 6400 jobs every year and \$15.3 billion in lost economic activity.²⁰
- 1.53 According to the Minerals Council of Australia, Mining is Australia's largest exporter—resources exports were worth \$300 billion in 2020–21 and 2.1 trillion over the past decade. Mining is also Australia's largest industry, accounting for 9.9 per cent of GDP in 2020–21, and was the largest contributor to GDP growth over the last decade, contributing 19.9 per cent in the ten years to 2020–21. Mining is Australia's largest company taxpayer, shelling out \$132 billion in company tax between 2010–11 and 2019–20.²¹
- 1.54 Perhaps the most important contribution to Australia is the jobs that mining generates—both directly and indirectly. Deloitte Access Economics estimates that the mining industry and its suppliers together support approximately one in ten Australian jobs:
- Directly employs 480 000 people
 - Indirectly employs 650 000 through purchases from other sectors
 - Supports 1.1 million jobs or 10.8 per cent of total employment.²²
- 1.55 Not only does mining generate jobs, but those jobs are some of the most sought after in the country, as the mining industry pays the highest average wages (\$143 000 a year). According to the latest ABS data, the average employee in the mining industry paid by a labour hire firm or employment agency had a median weekly earnings of \$2618.40, more than \$300 or 13 per cent higher than directly hired employees who earned \$2301.00. Flexibility doesn't mean lower wages—in fact, as mining shows, flexibility and productivity deliver for both employers and employees.²³
- 1.56 The Centre for International Economics estimates that the ongoing expansion of mining made Australian households \$14 800 better off in 2020 than they otherwise would have been, and made all workers in Australia better off by \$120 a week.²⁴

²⁰ Deloitte Access Economics, *Economic effects of changes to labour hire laws*, Prepared for Minerals Council of Australia, June 2019, www.minerals.org.au/sites/default/files/DAE%20-%20MCA%20-%20Labour%20Hire%20Final%20Report%204%20June%202019.pdf (accessed 10 February 2022).

²¹ Mr Sid Marris, Deputy Chief Executive Officer, Strategy, State and Territory Relationships, Minerals Council of Australia, *Proof Committee Hansard*, 14 July 2021, pp. 1–2.

²² Mr Sid Marris, Deputy Chief Executive Officer, Strategy, State and Territory Relationships, Minerals Council of Australia, *Proof Committee Hansard*, pp. 1–2.

²³ Attorney-General's Department, Answers to questions on notice, public hearing, 3 February 2022 (received 7 February 2022).

²⁴ Mr Sid Marris, Deputy Chief Executive Officer, Strategy, State and Territory Relationships, Minerals Council of Australia, *Proof Committee Hansard*, pp. 1–2.

1.57 Deloitte Access Economics has estimated that if mining companies alone were impacted by Labor's proposed legislation:

- Employment in coal mining would decline (relative to where it would otherwise have been) by approximately 2300 full-time-equivalent jobs a year to 2031
- Employment in minerals and other mining would fall by 4900 jobs a year
- Employment in mining-related construction would contract by 4000 jobs a year.²⁵

1.58 As Dr Steen from the Minerals Council told the committee:

... capital is mobile and has increasingly become so. We've had an increase in competition as more emerging economies enter. We've seen it's not just developing Asia, but increasingly Africa is going to become more viable over coming decades. That's why it's very important to have the best policy settings we can, because they can have a big impact on what firms can do and the signals that are sent to international investors... you only get increased mining employment when you're able to expand and add new mines.²⁶

1.59 Labor's same job, same pay slogan is a lie and a risk to Australia's recovering economy. Liberal and Nationals Senators contend that same job, same pay would result in no job and no pay for many in Australia's highest paid industry.

1.60 In summary, the test on jobs for the Morrison Government was laid out, repeatedly, by Shadow Treasurer Jim Chalmers:

The biggest test of this Government's management of the recession and its aftermath will be what happens to jobs.²⁷

The test for the Government is whether or not unemployment stays too high for too long.²⁸

I expect that will be the main issue at the election, what happens to jobs.²⁹

That is absolutely the key test. The Government, the Opposition, any decision-maker in the economy, should be judged on what happens to unemployment ...³⁰

²⁵ Deloitte Access Economics, *Economic effects of changes to labour hire laws*, June 2019, p. 48, www.minerals.org.au/sites/default/files/DAE%20-%20MCA%20-%20Labour%20Hire%20Final%20Report%204%20June%202019.pdf (accessed 8 February 2022).

²⁶ Dr Matthew Steen, General Manager, Economic Policy, Minerals Council of Australia, *Proof Committee Hansard*, 14 July 2021, pp. 3–4.

²⁷ Dr Jim Chalmers, MP, Federal Labor Member for Rankin, Shadow Treasurer, Press conference, 16 July 2020.

²⁸ Dr Chalmers, ABC Radio, 20 July 2020.

²⁹ Dr Chalmers, Doorstop, 21 July 2020.

³⁰ Dr Chalmers, ABC Breakfast, 23 July 2020.

The most important test of this Government's management of the recession and its aftermath is what happens to jobs and the businesses which create them.³¹

- 1.61 With Australia's unemployment rate at 4.2 per cent and projected to fall below 4 per cent for the first time in half a century, businesses across the nation seeking workers as the economy recovers, 1.7 million more jobs in Australia than when the Government was elected, and more women in work today than at any time in Australia's history, the Government has passed the Labor jobs test with flying colours. Only the Coalition understands that legislating 'job security' does not make jobs more secure—creating a strong economy and new job opportunity does.

Senator the Hon Matthew Canavan
Deputy Chair
Nationals Senator for Queensland

Senator Ben Small
Liberal Senator for Western Australia

³¹ Dr Chalmers, Media release, 23 July 2020.

Additional comments from Senator Malcolm Roberts

Summary

- 1.1 I first raised this issue in July 2021, and Labor ridiculed me because it was embarrassing the Labor party and the CFMMEU in the Hunter Valley. Australian workers cannot afford a repeat of their betrayal and mistakes.
- 1.2 We have been active in industrial relations and in protecting workers. Recent examples include standing up for the rights, entitlements and safety of abused casual coal miners in the Hunter Valley and central Queensland, securing conversion rights for casuals from casual to permanent, advocating for improved conditions for casuals in enterprise agreements, and preventing discrimination between casual and permanent workers under the Coal LSL scheme.
- 1.3 Restoring the entitlements of casual miners that the union bosses, the federal government and state governments and the Labor party ignored for seven years.
- 1.4 Put simply, both the Labor and Liberal-National parties have let Australia down. In addition to the exploitation of casual coal miners, Australians are suffering from:
 - COVID mismanagement, both Federal and state due to capricious lockdowns and mandates
 - The phasing out of the coal industry and jobs under the Liberal-Nationals and Labor
 - Erosion of our rights and freedoms
 - Increasing energy prices
 - Killing manufacturing and hurting agriculture
 - Lack of much-needed tax reform
 - Lack of much-needed economic reform
 - Increasing debt
 - Work, health and safety systems being bypassed
 - Australia's productive capacity being destroyed
 - The failure of our industrial relations system and more.
- 1.5 Our industrial relations system is broken, and it suits the IR Club not to fix it. The IR Club includes big business, union bosses, industry groups, lawyers and HR consultants. They all profit from the complexity of our IR laws, and in turn the IR Club supports the Liberal-Nationals and Labor parties.
- 1.6 Further, addressing issues around the GIG economy fails to identify the broader need for improved pay, entitlements, job security and change across

our entire industrial relations system. The emergence of the GIG economy is in part a response to the failure of the *Fair Work Act 2009*.

- 1.7 We contributed to the Senate Select Committee on Job Security and we listened to stakeholders. We present additional information to highlight the poor understanding that Labor, union bosses and the Liberal/Nationals have for the real world—the business world where so many small to medium sized businesses, professionals, tradespeople, workers, self-employed people and contractors operate. Labor and the Liberal-National parties do not understand the needs of everyday Australians.
- 1.8 The private sector often lead innovation, and government is continually found running behind catching up. Why, because there is no real partnership or trust between government and business.
- 1.9 Industrial relations regulation in Australia is too prescriptive and complex. It disempowers both employees and employers from rebuilding and securing Australia's post-pandemic jobs market.
- 1.10 The Fair Work system is over-engineered and complex. Many of the provisions serve merely to protect trade union bosses and employer associations while doing little to protect or to promote the interests of workers.
- 1.11 Australia's industrial relations system was designed to favour big business and has created many problems for small to medium sized businesses, yet neither Labor nor the Liberal-National parties want to fix it.
- 1.12 The solution for the GIG economy lies in system-wide reform and the outdated IR Club has to go. Its members create conflict and cost Australian workers and Australian business too much. We need simple industrial relations that aligns with the needs of employees and employers, one that addresses the needs of workers and small, medium and large business.
- 1.13 We believe that workers deserve better pay and protections and that business, especially small to medium size business, needs clarity, simplicity and less red tape.
- 1.14 A sustainable business creates secure jobs, which is a WIN-WIN for employees and employers.
 - (1) **Job security is vital for workers.** It is a primary concern, whether an employee, a contractor or business owner. Workers have families, commitments, mortgages and more.
 - (2) **COVID, government restrictions, mismanagement and overreach have destroyed job security.** Federal and state government lockdowns and restrictions, supported by Labor and the union bosses, have had a debilitating effect on workers, on their jobs, their lives and mental health.

- (3) **Coal industry job security.** Casual coal miners did not even exist under the Black Coal Mining Industry Award, yet business and union bosses accepted them and oversaw their abuse, including lower pay and conditions than the permanent workers they work beside. All major political parties push coals demise through the UN's 2050 Net Zero.
- (4) **True economic reform.** As the tired old Liberal-National and Labor parties talk job security we are seeing the businesses that create jobs and build a strong economy being damaged by more and more red tape. Government needs to get out of the way and let the market create jobs and economic growth. Government needs to create the environment for small business and investors to create jobs for workers.
- (5) **GIG economy reform.** The GIG sector evolved out of innovation, now the union bosses and the government are trying to catch up. GIG developed outside of the rules and bureaucracy that government and union bosses created to regulate how we work and think.
- (6) **The GIG economy and government failures—the USA's AB5 experience.** AB5 refers to a Californian law and it was designed as a way to get rideshare companies like Uber to classify all their contract drivers as employees and bring them under restrictive conditions that stifled business. AB5 unintentionally captured many professionals and tradespeople and destroyed jobs.
- (7) **True industrial relations reform.** The exploitation of casual workers and the GIG economy are symptoms of a broken industrial relations system, as businesses solve the problems that government and union bosses are unwilling to address. We must reform our industrial relations system. We must create a system that meets the needs of workers and all tiers of business not just big business and union bosses.
- (8) **Safety Systems.** The GIG economy has leapt ahead of regulation. As we saw changes to the nature of casual work over the past ten to fifteen years, we saw how government and union bosses were slow to respond, ignoring casuals who were harmed. We need a new approach, so the GIG economy does not suffer the same fate. As people more and more become their own bosses, many for the first time, they need to understand how to work and how to do business efficiently and safely.
- (9) **Australia's Productive Capacity.** During COVID, Labor governments in Australia were some of the first to let go their 'on-demand' workers, the casual employees and self-employed 'independent contractors'. Why? Because they do not care about

them. The mismanagement of COVID-19 has left Australia economically vulnerable, for example, small business. This is at a time when under successive Labor and Liberal/National governments we have seen Australia's actual productive capacity drift lower and lower.

(10) **Our approach.** Since coming to Parliament, we have fought for the rights of everyday Australians, and we have stood up for casual coal miners even when the IR system and the very union bosses who were supposed to represent them cast them aside and helped exploit casuals. We support system-wide IR reform focussed on the employee-employer relationship, more simplicity and less red tape.

- 1.15 This Senate inquiry has not sufficiently considered the needs of those everyday Australians, who for lifestyle reasons may be looking for flexible work. They have not listened to the everyday people who benefit from the GIG economy and the Senate inquiry is not focussed on either job creation, on flexibility or on building Australia's productive capacity.
- 1.16 By listening and learning we understand that the GIG economy has been here for many years. Example, it is the business model used by the professions (doctors, lawyers and architects, etc.) and by trades people, electricians, plumbers and carpenters.
- 1.17 Clearly though, GIG work is not for everybody. Some witnesses referred to the harms of GIG work and others have told us that GIG is attractive to people who want to be their own bosses, who can work when and where they want to work—if so, these are lifestyle choices we should respect.
- 1.18 Unless the GIG model benefits the IR Club and union bosses, they oppose it and they rail against workers' freedoms and rights to choose—they do not want change. Yet change is here.
- 1.19 Reform of the industrial relations system in response to the expansion of the GIG economy may have unintended consequences which could affect the Australian economy, our freedoms and our way of life. Consideration must be given to the impact on workers such as:
 - Lawyers;
 - Architects;
 - Tradespeople—electricians, plumbers, carpenters and more;
 - Accountants;
 - Doctors;
 - IT workers; and,
 - Self-employed people (including entertainers and artists).
- 1.20 Before implementing any change, the government needs to take care to ensure that it is not denying the rights of people to work, as and when they want to.

- 1.21 Many people today have needs that require flexibility in work that today's inflexible laws and IR system cannot address. Many people now favour and want an alternative to the '9 to 5' office work paradigm, and they should be offered that choice.

Discussion and Recommendations

- 1.22 What Australians need, is fair pay, terms and conditions and protections for workers. Australian workers deserve secure jobs.
- 1.23 For too long in Australia we have seen workers, like casual coal miners in the Hunter Valley and Queensland, being abused because big business and the union bosses created industrial relations complexity and loopholes that they exploited for years.
- 1.24 We stood up for casual workers when the Government, Labor and the union bosses refused to even create a definition for a casual coal miner, a gap that exploited workers and placed so many injured workers at risk of not getting their rightful benefits and protections such as accident pay.
- 1.25 We supported legislative change to add casual conversion rights and protections for casual workers, giving more choice yet retaining their flexibility and casual loading.
- 1.26 The fact is that Labor, some union bosses and the Liberal-Nationals are inflexible, and they do not understand anything except big business—hence Australia has a big business focussed one-size-fits-all industrial relations system that is hard to understand, and it causes problems for the worker and employer alike.
- 1.27 We believe that more attention should be given to the employee—employer relationship, to recognising and rewarding achievement in remuneration and to improving fundamental workplace rights, entitlements and protections.
- 1.28 The GIG economy is a new threat to big business and union bosses. Union bosses do not care about the GIG people, they are worried that this innovation might take members away from unions.
- 1.29 The June 2020 Victorian report into the GIG economy included reference to a national survey of 14,000 people which discovered that 7.1 per cent were currently doing GIG work. Of that 7.1 per cent, just 2.7 per cent had GIG work as their full-time income. This points to a significant change in the way Australians work. Trends like this need to be better understood before Labor and union bosses shoot them down because it seems too hard for them to keep up with changing workforce trends and people's needs.
- 1.30 It was reported in 2020 that in the USA, the California Democrats introduced a law to 'protect' Uber drivers, etc. making them employees. The legislation is called 'AB5'. The outcome of this law was a disaster. It increased

unemployment and it pushed employers, jobs and families out of the state. Under Labor nationally and in Victoria, Australia may be at risk of doing the same.

- 1.31 Small to medium sized businesses everywhere, professionals and tradespeople could be harmed if this Inquiry leads to implementation of an Australian version of AB5. This must be discouraged.
- 1.32 Australia's IR system must become more responsive to the needs of employees and employers by adapting to changing conditions and needs. It must enable secure jobs and greater flexibility and more choice for Australians, especially for workers and small to medium business.
- 1.33 Australia's IR systems are not strategically aligned with building job security or our productive capacity. Fair Work is focussed on mediocrity and does not enable workers to be recognised and rewarded for their abilities and achievements. More attention should be given to recognising and rewarding achievement in remuneration and to securing basic workplace rights, entitlements and protections.
- 1.34 Sustainable businesses create job security not more regulations that put business at risk.
- 1.35 We need practical solutions not political posturing. That means identifying the core problems and aligning the response with people's needs. We need a simple, fit-for-purpose IR system, not more red tape.
- 1.36 Enough is enough. The GIG economy and the lack of understanding and preparedness for change by union bosses and government has demonstrated how far out of touch and inflexible the Labor and Liberal-National parties are.
- 1.37 Two years of state Labor and federal Liberal-National government mismanagement of COVID has damaged our economy, our way of working, our jobs and our businesses, at a time when business needs flexibility and workers need secure jobs. Government must enable business and jobs.

Australia and Australians need:

- Secure jobs and business enabling solutions that add value to the economy.
- Protections, rights and fair entitlements for workers.
- Government and stakeholders (Labor/union bosses) that embrace and respond to productive change, rather than fighting it.
- Bureaucrats who are responsive to community and lifestyle changes including work patterns. Who can help policy to keep up with our lifestyle and work.
- Government focussed investment in local business and job creation—future proofing jobs.
- Targeted incentives for business to manufacture in Australia—value adding and job creating.

- Removal of the one-size-fits-all industrial relations system.
- Simplify and improve the Australian taxation system and make it more efficient.
- Reduce the high cost of energy for business and households.
- Reduce business compliance costs, red tape and onerous costs to small/medium business.
- Give Australians back our freedom of choice and rights to life and liberty.

Job security is vital for workers

- 1.38 It is a primary concern whether an employee, a contractor or business owner. Workers have families, commitments, mortgages and more.
- 1.39 Yet nowhere in the Senate Select Committee Inquiry have we heard reference to the culprits of much of the abuse to workers, the IR Club. The union bosses, lawyers, interest groups and industry groups who abuse and neglect the real needs of workers. The current Industrial relations system enables shadowy figures to exploit workers for their own profit. This Committee has not raised this.

COVID and government restrictions have destroyed job security

- 1.40 Federal and state government lockdowns, vaccine mandates and restrictions supported by Labor and the union bosses have had a debilitating effect on business and on workers, on their jobs, their lives and mental health. In many sectors, especially small business, it has directly contributed to job insecurity with capricious lockdowns and vaccine mandates. The Queensland Palaszczuk Government has even sacked healthcare heroes, police and teachers for not complying with inhuman dictates.
- 1.41 It is hard to pay the bills and wages as a business when the government capriciously forces closures. Lockdowns affected the GIG sector as well, despite using protective equipment and hygiene. There were no customers, and this has resulted in many GIG workers suffering.
- 1.42 Capricious government-imposed restrictions and vaccine mandates have put more Australians out of jobs and the employment data is yet to reveal the full extent. One example is the increase in under-employment, which in some instances is forcing more Australians into the GIG economy to make ends meet.
- 1.43 Australian workers' needs for freedom, stability and job security are being ignored.
- 1.44 Another victim of COVID has been Australia's fundamental rights and freedoms. For example, the Morrison government enabled COVID tracking systems to track us and Labor states such as Victoria have imposed laws that take away rights as Australians. These laws are fundamentally changing our

ability to access businesses and entertainment, they therefore threaten the viability of business and impact job security.

- 1.45 The biggest threat to job security in Australia are Liberal-National and Labor policies.

Coal industry job security

- 1.46 In the third interim report of the Select Committee on Job Security, we see reference to the increase in labour hire, casualisation and contracting (page 1 et seq). Yet for years we did not see the ACTU or big union bosses try to fix the problem. Casual coal miners did not even legally exist under the Black Coal Mining Industry Award, yet big business and union bosses colluded to oversee their abuse, including lower pay and conditions than the permanent workers they worked beside. Union bosses exploited workers and signed sub-standard enterprise agreements and allowed contractors and sub-contractors on mine sites when it was clear that the employee—employer relationship would never be the same again, thanks to their greed.
- 1.47 We have stood up for casual coal miners even when the industrial relations system and the very union bosses who were supposed to represent them, cast them aside and helped to exploit casuals. The union bosses have admitted that they were happy to take casuals membership fees yet would not defend workers.
- 1.48 Now both the LNP and Labor threaten job security for coal miners and other industries as they promote expensive unsustainable energy policies in a kneejerk reaction to appease the UN's climate change industry. Where are the new, REAL secure jobs for our miners and workers? They are just dreams which will become our children's nightmare.

True economic reform

- 1.49 As the tired old Liberal-National and Labor parties talk job security we are seeing the businesses that create jobs and build a strong economy being damaged by more and more red tape. Government needs to stop controlling us and to get out of the way and let the market create jobs and economic growth through entrepreneurs and investors.
- 1.50 Small and medium businesses have been significantly damaged by Liberal-National and Labor policies and red tape. Removing restrictions and enabling business will result in improved productive capacity, jobs and greater job security.
- 1.51 It is time to take a Big Picture approach to job security, looking at all of the contributing factors that strangle business and jobs:
- Simplify and improve the Australian taxation system so foreign companies pay their fair share.

- Reduce the high cost of energy for business and households. Energy costs are wiping out manufacturing jobs.
- Reform—removal of the artificial controls and restrictions of a one-size-fits-all industrial relations system.
- Reduce business compliance costs and onerous costs for small to medium business.
- Give Australians back their freedom of choice and rights to life and liberty.

GIG economy reform

- 1.52 The GIG sector evolved out of innovation in response to the cost and complexity of compliance with Australia's industrial relations system. GIG developed outside of the rules and red tape that government and the IR Club created to regulate and control how we work and think. Now the union bosses and the government are trying to catch up.
- 1.53 The GIG economy is not for every industry nor for everybody. Yet there are many reasons why some everyday Australians may prefer flexible GIG work to permanent employment. These include:
- Freedom—people are given more independence and freedom to choose when and where to work—particularly for those with young families, studying or with other lifestyle interests;
 - Win-Win—through increased opportunities for the low skilled and unemployed to better themselves through new skills or additional income;
 - Risk mitigation—many people today believe they are actually more secure by having multiple jobs (i.e., they can fall back on one job if another doesn't work out);
 - Diversification—working in multiple industries builds different skills and capabilities to further career opportunities; and,
 - Extra income—for people who are 'moonlighting' to earn more money.
- 1.54 Other GIG workers may be students who have variable class and exam times. This often means that they find it hard to commit to fixed hours or days of employment. Individual employment arrangements may give them the flexibility to satisfy their needs.
- 1.55 It is quite inaccurate to say that the GIG economy is new, or that it is an excuse for exploitation. The truth seems to be quite the opposite. It may actually provide opportunities to those who would otherwise go without, and it rewards those who work harder and/or smarter than those on restrictive old work agreements that perpetuate the IR Club.
- 1.56 For clarity, on-demand workers are those employed 'as needed by a business', rather than on an ongoing basis. The GIG economy has existed for years, for example, services such as doctors, lawyers, architects and more, many are engaged using a similar model. The new element is the use of algorithms to manage the customer-provider relationship.

- 1.57 Innovation such as the GIG economy must give people a fair go. It should never be used to exploit people. Whether GIG workers are employees or independent contractors still requires consideration of people's needs to have a secure job/income. Again, business professionals and self-employed people are an example of how the GIG economy has successfully worked and profited them through reward for performance over many years.
- 1.58 As the GIG economy broadened, courtesy of the internet and 'algorithms' without borders, we have seen a change in how business and individuals inter-relate, work and do business. Change is not going to go away, nor should it be strangled by government red tape or money hungry union bosses.
- 1.59 At the same time, the government rightly has had to catch up to innovation, such as ensuring the multinational businesses are paying their share of taxation and that GIG workers are supported.
- 1.60 For those people suited to it, the GIG model may offer independence from many of the onerous rules and red tape and instead offer personal pride and reward for performance.
- 1.61 Change to the industrial relations system in response to the expansion of the GIG economy may have unintended consequences which could affect the Australian economy, our freedoms and our way of life. Consideration must be given to the impact on: lawyers, architects, accountants, doctors, IT workers, self-employed people (including entertainers and artists); and, tradespeople—electricians, plumbers, carpenters and more.
- 1.62 We are opposed to government wielding its tendering/purchasing power to exclude businesses and sole traders if they engage GIG or contracted resources. This is both anti-competitive and favours big business and the IR Club over everyday Australians. Businesses need to be flexible, to be dynamic and to scale up to meet market needs, government needs to understand this.

Recommendation 1

- 1.63 The use of the GIG business model in the National Disability Insurance Scheme or aged care requires a solution to first and foremost address the safety, risks and needs for care recipients. Included in this business model must be certification of current competency and insurances to protect aged and NDIS recipients, as well as the provider.**

Rather than focussing on the red tape, the IR Club and Australia's broken industrial relations system, GIG reforms should focus on supporting those who are independent contractors by offering business coaching and management advice and support on whether it is right for their wants and needs. They need to know how to negotiate a better agreement, to understand customer needs, business development and financial and risk

management, as we do for small businesses. This way people will not be on their own, this contributes to 'job security'.

Rather than relying first and foremost on the legal system to solve problems between parties in the GIG economy, consideration should be given to the establishment of a no-cost, independent arbitration system to resolve disputes.

The GIG economy and government failures—the USA's AB5 experience

- 1.64 As a warning don't do this. AB5 refers to a Californian law. It was designed as a way to force rideshare companies like Uber to classify all their contract drivers as employees and bring them under restrictive regulations and conditions.
- 1.65 To do this, via AB5 legislation, the state restricted contract work over a wide area, including restricting the rights of large numbers of people, including lawyers, architects, doctors, IT workers and tradespeople, to work as contractors. Instead, they had to be employees under a regime that stifled work flexibility, reward and innovation.
- 1.66 The result was reported as being catastrophic for business in California, with businesses and jobs drying up and the unemployment rate skyrocketing well above the US national rate.

Recommendation 2

- 1.67 **The government, Labor and some union bosses need to understand that business innovation and people's needs should never be stifled. It is a source of satisfaction, worker security and business sustainability.**

That no law or regulations similar in nature to AB5 be proposed or implemented in Australia or be incorporated under Australia's industrial relations system.

That the government, Labor and unions should listen to and be responsive to business and worker lifestyle change rather than trying to stop what they do not understand. They should focus on solutions that are for people, and not just profitable for some union bosses and the IR Club.

True industrial relations reform

- 1.68 The GIG economy growth is a result of a broken industrial relations system, as businesses solve the problems and gaps that government, Labor and the IR Club are unwilling to do.
- 1.69 We must reform our industrial relations system. We must create a system that meets the needs of workers and all tiers of business, not just big business, and restore the employee – employer relationship.

- 1.70 For Australia to continue to be a great place to live and work, we must commit to improving our productive capacity and to rebuilding the employee—employer relationship. We must get rid of the special access and privileges enjoyed by the so called 'IR Club', who are the people who profit from conflict between workers and employers and who have no interest in making the IR system better or simpler.
- 1.71 Job security is a joke to the IR Club because if we all had secure jobs they would be out of work.
- 1.72 The current IR system was built by big business and big union bosses to benefit big business and big union bosses. Why should workers and small to medium businesses continue to put up with this broken system and why should sole traders and contractors be told how to work?

Recommendation 3

- 1.73 One person businesses, contractors and small business should not be subjected to the same onerous IR systems, red tape and inflexible regulations that have been built for big business, union bosses and the IR Club.**

The IR system should de-prioritise the IR Club and prioritise employees and employers. It must provide more support for employees and employers and rebuild the primacy of the workplace relationship.

That Australia's industrial relations system is no longer fit for purpose, and it should be scrapped in favour of a simpler IR system that protects workers' entitlements and supports and enables business at each level, small, medium and large.

Australia's IR systems are focussed on mediocrity and do not enable workers to be recognised and rewarded for their abilities and achievements. More attention should be given to recognising and rewarding achievement in remuneration and on securing equal pay for an equal job.

Safety systems

- 1.74 As we saw the growth of the GIG economy and to casual work over the past ten to fifteen years, we saw how government and unions were slow to respond, ignoring calls for protection and job security from abused casuals. We need a new approach, so more workers do not suffer the same fate as abused casual coal miners. As people become their own bosses, many for the first time, they need to understand the risks, how to work and how to do business profitably and safely.
- 1.75 After all, nobody wants to be harmed, yet to date nobody has been there to help them.

- 1.76 Flexibility is a part of what makes being a sole trader attractive. They do not want to be strangled by a massive and complex set of onerous government regulations and audits. What they really need is help. Simple, focussed tools, messages, checklists and no red tape.
- 1.77 Safety first for every worker and business. People, systems and safe methods must be at the centre of a simple and understandable safety management program to support the GIG economy and workers. To achieve this government needs a paradigm shift, to think small business and not big business. If it is not tailored to GIG businesses, then government will have failed.
- 1.78 Safe Work Australia should support GIG economy participants and entrants as part of a 'toolkit' by providing simple information sheets (in appropriate languages) to explain how the Work Health and Safety Laws and regulations apply to this new industry sector and what entrants should consider when setting up their business. It is important to deliver support at a time and place when a person is considering/planning entry into this sector, and it should include support as to what risk and insurance coverage they may need. This message could be promoted by Safe Work to state level work health and safety authorities to ensure quality and consistency.
- 1.79 The safety 'toolkit' should be aimed at addressing and insuring against foreseeable risks as a business/sole trader, as well as ensuring compliance with safety rules and obligations to work safe.
- 1.80 Safety legislation should not be used to force a change in the relationship between on-demand companies and sole traders. For example, by inappropriately defining people as workers or employees or by defining parties as being a 'person conducting a business or undertaking' (PCBU). In this respect the definition in the legislation must be clarified to remove doubt. (Note discussion in the Job Security Inquiry's First Interim Report at page 9).

Recommendation 4

- 1.81 That the GIG economy needs to be recognised and supported through a toolkit incorporating a suite of simple guidelines and programs including health and safety tailored to sole trader businesses and risks.**

That safety is not used as a weapon to stifle innovation and one person enterprises, small businesses and contractors. Instead, genuine safety should be used to enhance productivity and worker engagement.

Where sole traders provide services into sectors such as aged care and NDIS, they must be made aware of care and safety standards and of their obligations to insure against all relevant risks and harms.

Australia's productive capacity

- 1.82 During COVID, Labor governments in Australia were some of the first to sideline their 'on-demand' workers, casual employees and self-employed contractors. These people were stood down or sacked. Why, because Labor and the union bosses do not care about them. The mismanagement of COVID-19 has destroyed jobs and lives and left Australia economically vulnerable. For example, small business has been battered.
- 1.83 Productive capacity is the maximum possible output of an economy. In turn, it can contribute to more jobs, job security, improved pay and conditions and improved lifestyle. For many years, Australia's productive capacity has drifted lower under the weight of complex and costly taxes, energy prices, industrial relations laws and red tape.
- 1.84 COVID mismanagement has compounded the destruction from successive Labor and Liberal- National governments where we have seen Australia's actual productive capacity drift lower and lower. Our reliance on the cash generated by selling our resources such as coal and iron ore, without value adding to them here through a sustainable manufacturing sector, has seen Australia drift towards economic mediocrity as other economies grow.
- 1.85 Any threat to innovation or to maintaining a flexible labour market drives Australia further towards risk of being made uncompetitive in the world economy. In turn, that destroys job security.

Recommendation 5

- 1.86 Australia must focus on rebuilding its productive capacity through better IR systems, cheaper energy and lower taxes, as well as innovation and programs focussed on industry, exports, more jobs of every kind and providing job security.**

The Australian government must focus on value adding to exports rather than just exporting raw minerals. We must reinvigorate competitive manufacturing industries and technology that bring income into Australia—stopping the haemorrhaging of capital to overseas tax havens.

Our approach

- 1.87 Since coming to Parliament, we have fought for the rights of everyday Australians, and we have stood up for casual coal miners even when the IR system and the very union bosses who were supposed to represent them cast them aside and helped exploit casuals. The union bosses were happy to take their membership fees but would not defend them.
- 1.88 Unless a worker is employed by a big business and is permanently employed, they are likely to be ignored by unions and Labor. We learned this when we

first heard about the abuses of injured casual coal miners in the Hunter Valley and the associated union bosses confirmed it to us.

- 1.89 When we looked at Queensland and its large casual labour hire workforce in mining, we found that casual workers were worried for their jobs and because the unions would not defend them. This came out clearly in evidence to the recent Grosvenor Mine Disaster Inquiry that we presented a submission to.
- 1.90 The IR system needs to provide better security and protection for the 'unrepresented', whatever class of work they do.
- 1.91 Our investigations found that thousands of casual coal miners were let down by their union bosses who for years signed agreements that allowed the employer to pay casuals up to 40 per cent less than permanent workers doing the same job and hours alongside them. Likewise, union run organisations, such as Coal LSL, profited from casual worker contributions, yet very few casual union members ever got the benefits.
- 1.92 The real question that Labor is avoiding is why does Labor allow casuals to be treated differently to permanent workers who do the same job and why did Labor not protect them and close the wage gap and provide protections long ago?
- 1.93 The ageing policies and fake 'green' election promises of both the Liberal-Nationals and Labor will lead Queensland and NSW to losing thousands of mining jobs and dislocate thousands of families, spelling the death knell for many regional cities and towns. High-cost energy from renewables does not generate long term jobs, it kills long term jobs and towns. The large parties are anti-change, anti-business and anti-innovation; they are anti-worker, anti-job security, and are just trying to preserve 'yesterday' and a one-size-fits-all set of complex industrial laws benefitting their mates in the IR Club.

Conclusion

- 1.94 At the time of drafting this document, Australians are witnessing disruption to our lives, jobs and the labour market due to poor planning and government mismanagement in response to COVID-19.
- 1.95 Our financial future is by no means certain given the lockdowns, job losses and workplace change we have seen since 2019. This is not a time for more draconian laws and red tape, it is a time for government to get out of the way and to enable small to medium business and workers lead Australia's economic recovery.
- 1.96 For many years, we have seen mediocrity rule the Australian industrial relations system and innovation stifled since innovation threatens the IR Club's control of the one-size-fits-all approach to pay and conditions.

- 1.97 Innovations such as the GIG economy may not be perfect, yet it offers some individuals the opportunity that the Liberal-Nationals, Labor and the union bosses do not offer—a job that rewards their input at a time and place suited to them. For some, it offers independence from the IR Club's controls, complexity and suppressions.
- 1.98 It is not for everybody, and we do not recommend that it become a significant part of Australia's workforce due to an outdated and complex IR system that meets the IR Club's needs and not the needs of workers and small to medium businesses.
- 1.99 Labor's GIG economy response is just another example of the Labor party and the union bosses failing to keep up with the wants and needs of everyday Australian workers. The best way to stop GIG growth is to deliver a better industrial relations system, to remove the IR Club and red tape and to enable small to medium businesses to recover and create jobs.
- 1.100 Labor and the union bosses are afraid of the GIG economy and any change that does not bring them members and cash. This Labor paradigm sees them falling behind the wants and needs of everyday Australians who are calling for jobs and opportunities tailored to their lifestyle and needs and who want their workplace entitlements and protections restored.
- 1.101 **Labor, the union bosses and the Liberal-Nationals do not have any solutions except supporting the old way and big business—this is why Australia has a big business focussed, one-size-fits-all industrial relations system that is hard to understand and causes problems for worker and employer alike.**
- 1.102 We have stood up for workers such as the casuals in the coal mining industry at a time when the unions took their membership fees for no service and exploited casual workers.
- 1.103 We continue to stand up for workers, for small to medium size business and for innovation that improves job security, productive capacity, profitability and our Australian way of life.
- 1.104 Australians deserve better. We deserve a fit-for-purpose industrial relations system. We need simple, understandable rules that cuts more red tape and that enables entrepreneurs and investors to create high-paying, secure jobs to make Australia strong and to restore workers' pay, protections and job security.
- 1.105 We will continue to advocate for positive change in industrial relations, for protections for workers and for a secure future for Australian small, medium and large business.

Senator Malcolm Roberts
PHON Senator for Queensland

Appendix 1

Combined list of Job Security's Recommendations

Recommendations from: *First interim report: on-demand platform work in Australia, June 2021*

Recommendation 1

The committee recommends that the Australian Bureau of Statistics expands its Labour Force Survey to capture quarterly estimates in relation to the number of workers engaged in the on-demand platform sector. These estimates could include the industries and occupations in which they work, the hours they work, their visa status, the nature of their working arrangements relative to other workers, earnings and other demographic characteristics.

Recommendation 2

The committee recommends that the Australian Bureau of Statistics enhances its Work-Related Injuries Survey to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector.

Recommendation 3

The committee recommends that Safe Work Australia enhances its national data collection process to capture specific information on the number, and types, of injuries and fatalities for workers engaged in the on-demand platform sector. The committee further recommends that all road crashes involving on-demand workers be officially recognised as workplace incidents and are recorded and investigated as such.

Recommendation 4

The committee recommends that, as a matter of priority, Safe Work Australia develops meaningful, high-level guidelines on the application of the model Work Health and Safety Laws to the on-demand platform (or 'gig') sector. The guidance should be aimed at addressing practices that incentivise unsafe behaviour, as well as enforcing compliance with safety rules and obligations. The guidance should not seek to unreasonably circumvent the obligations of on-demand companies through novel interpretations of workers as being a 'person conducting a business or

undertaking' (PCBU), particularly when such workers in the on-demand sector are engaged in highly dependent or low-leverage work arrangements.

Recommendation 5 (replaced by Recommendation 13 in *The job insecurity report*)

The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms like Mable. The law should dictate that:

- a platform that engages individual workers to provide support work under the NDIS or similar schemes, and makes money from the arrangement, is a PCBU and owes a duty of care to that worker, regardless of that worker's work status (employee or contractor), or their visa status; and that
- individual care recipients, such as NDIS participants, are not a PCBU in relation to that worker.

Recommendation 6

The committee recommends that the Australian Government works with state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for these workers.

Recommendation 7 (replaced by Recommendation 10 in *The job insecurity report*)

The committee recommends that the Australian Government expands the definitions of 'employment' and 'employee' in the *Fair Work Act 2009* to capture new and evolving forms of work. In addition to an expanded definition of 'employment' and 'employee' under the Fair Work Act, there should be a mechanism by which the Fair Work Commission can extend coverage of those rights when necessary to workers falling outside the expanded definition of employment, including low-leveraged and highly dependent workers so they can be provided with standards and protections under the Act.

Recommendation 8

The Committee recommends that the Australian Government investigates options for a Federal regulator to be empowered to request data from platforms that employ and contract workers, including:

- pay rates;
- hours worked;
- other conditions governing that work; and

- other relevant information needed to appropriately monitor safety, competition and labour rights.

Recommendation 9 (replaced by Recommendation 11 in *The job insecurity report*)

The committee recommends that the Australian Government gives the Fair Work Commission (FWC) broad powers to resolve disputes and make orders for minimum standards and conditions in relation to all forms of work. The expanded remit of the FWC would include:

- adjudicating in cases where there is a dispute in relation to the appropriate status of workers;
- setting binding minimum standards and conditions in relation to non-standard forms of work, regardless of employment status; and
- the capacity to resolve disputes (including where necessary through binding decisions) in a low-cost and effective manner.

The FWC should be empowered to make determinations and orders for groups and categories of workers, not just individuals.

Recommendation 10

The committee recommends that the Australian Government empowers the Fair Work Commission (FWC) to provide pathways to permanency via arbitrations for casual conversion. Any disputes with regards to work status, contractual arrangements, or casual conversion should be able to be arbitrated via a low-cost, accessible process, whether via the FWC or another body, to ensure workers are able to practically enforce their rights, and both workers and employers can have matters adjudicated quickly.

Recommendation 11 (replaced by Recommendation 11 in *The job insecurity report*)

The committee recommends that the Australian Government provide greater protections for independent contractors who are sole traders by establishing an accessible low-cost national tribunal to advise on, oversee, and make rulings relating to employment relationships involving low-leveraged independent contractors, such as those in the rideshare and other platform sectors.

Recommendation 12

The committee recommends that the Joint Standing Committee on the National Disability Insurance Scheme give specific consideration to the following matters related to platform-based work in the disability sector as part of its current inquiry into the NDIS Workforce and its ongoing examination of the operation and performance of the NDIS:

- the prevalence of platform-based work in the sector, and the growing and evolving nature of this business model;
- the prevalence of independent contracting through platforms;
- the characteristics of independent contractors providing support work through platforms like Mable;
- the extent to which workers rely on this income, or have other sources of income;
- the typical earnings, insurance coverage, superannuation and access to leave and other entitlements available to these workers;
- the adequacy of training and support provided to workers;
- issues associated with safety, risk, and liability under Work Health and Safety laws; and
- issues relating to the potential for NDIS recipients to be classified as persons conducting a business or undertaking (PCBUs) under existing Work Health and Safety laws.

Recommendation 13

Taking into account the findings of any relevant inquiries, the committee recommends that the Australian Government considers regulatory options that would ensure support workers engaged to provide services funded through the National Disability Insurance Scheme are provided with fair pay and conditions, including those engaged through on-demand platforms.

Recommendation 14

The committee recommends that the Australian Government considers working with states and territories to design a national scheme that connects and extends the current state and territory schemes to provide portable long service leave, sick leave and other leave entitlements, and portable training entitlements, to all workers delivering services under the National Disability Insurance Scheme.

Recommendation 15

The committee recommends that the Australian Government works through the Council on Federal Financial Relations to achieve an intergovernmental agreement that government procurements must require companies engaged by the Federal and state and territory governments to provide minimum standards of pay, safety and insurance, workers' compensation and basic protections for workers.

Recommendation 1

The committee recommends that the Senate adopt the following resolution:
That the time for the presentation of the final report of the Select Committee on Job Security be extended to the last sitting day in February 2022.

Recommendation 2

The committee recommends that the Australian Government undertakes an audit of the job security of all workers engaged directly by the Australian Government, or who are working in jobs funded by the Australian Government. This audit should collect data on the type of employment arrangements, and on perceptions of job security held by people engaged in these roles.

Recommendation 3

The committee recommends that the Australian Government introduces a policy stating that an objective of all public funding for employment, or the provision of goods and services, is to protect and promote secure employment.

The policy should require that all such recipients of Australian Government funding preference the direct, permanent employment of staff, rather than indirect arrangements including outsourced service providers or labour hire firms or temporary arrangements including casual or fixed-term employment, wherever practical.

The policy should recognise there is a legitimate role for contracting and subcontracting arrangements in the Australian Government's supply chain, but that workers engaged under these arrangements are entitled to pay and conditions no less than an employee would receive for the same job.

The policy should apply to funding provided to the Australian Public Service, Government Business Enterprises, and private organisations including but not limited to aged and disability care providers, universities, construction firms and service providers engaged to deliver public infrastructure projects such as the National Broadband Network.

The policy should require the Australian Government's procurement framework to prioritise firms that favour a permanent, directly-engaged workforce, and to consider the economic and social benefits of tenders.

The policy should also require the Australian Government to ensure that the funding for projects, goods and services is sufficient to enable the organisation to hire its workforce in permanent, secure employment on rates at least compliant with the relevant Award and a living wage.

Recommendation 4

The committee recommends that the Australian Government conducts the Aged Care Workforce Census in 2021/2022, to ensure that this critical data is available for

policy development. The survey should be distributed to labour hire, agency, on-demand platform and self-employed aged care workers, as well as directly-employed workers.

Along with the data collected in previous surveys, the survey should include:

- questions on contracted hours;
- questions on actual hours worked;
- questions on salary and/or wages earned;
- questions on multiple job holding, and working across multiple sites, and individuals' motivations for these; and
- diversity of the aged care workforce, including with respect to gender, cultural diversity, and visa status.

Recommendation 5

The committee recommends that the Australian Government includes labour hire, on-demand platforms and staffing agencies that provide workers to the aged care sector in future Aged Care Workforce Censuses, and distribute a specific census survey to these companies in 2021/2022 to capture this data.

Recommendation 6

The committee recommends that the Australian Government redesigns the single-site policy and Commonwealth grant to aged care providers so that they incentivise providers to offer ongoing full-time, and higher-hour part-time, positions to aged care workers—rather than the current temporary support.

Recommendation 7

The committee recommends that the Australian Government commits to fully funding two weeks of paid pandemic leave, and up to three days of vaccination-related leave, for all workers in the aged care sector, regardless of their role or employment contract.

Recommendation 8

The committee recommends that the Australian Government arranges in-reach vaccination for all aged care workers who remain unvaccinated, as a priority, and ensure future vaccination programs (such as for booster shots) are conducted via in-reach programs.

Recommendation 9

The committee recommends the Australian Government urgently responds to and supports the Aged Care Industry work value case lodged in the Fair Work

Commission by the Health Services Union and the Australian Nursing and Midwifery Federation, to ensure that wages fairly reflect the work value provided by aged care workers.

Recommendation 10

The committee recommends that, as part of the Star Rating system, and any other relevant assessment or grading system, the Australian Government requires aged care providers to report on, not just their staffing levels, but also:

- the proportion of staff in direct, permanent employment arrangements;
- the staffing classification mix;
- hours of paid training provided to staff; and
- retention rates.

Recommendation 11

The committee recommends that the Australian Government requires, as an ongoing condition of holding an approval to provide aged care services, that aged care providers report on:

- the proportion of staff that are full-time, part-time, casual, on-demand platform and agency/labour hire workers;
- the number of contracted staff hours and rostered staff hours;
- the staffing classification mix;
- the proportion of spending on frontline staffing and employment costs, other operational expenses, profits and surpluses, and other key indices; and
- non-minimisation and non-avoidance of Australian tax laws.

Recommendation 12

The committee recommends the Australian Government develops an aged care provider procurement policy that actively promotes job security in the sector, recognises the benefits of secure, on-going permanent employment to the delivery of safe, high-quality aged care, and specifies that the establishment of secure, direct, and fair-paid jobs is a key criterion of aged care investment.

Recommendation 13

The committee recommends that the Australian Government adopts and extends Recommendation 87 of the Aged Care Royal Commission, requiring as a condition of holding an approval to provide aged care services that aged care providers have policies and procedures that preference the direct employment of all aged care workers. Aged care providers should be required to ensure all work, including through indirect work arrangements such as on-demand platforms, is paid in

accordance with the relevant award, and this should also be enforced by the Aged Care Quality and Safety Commission and relevant unions.

Recommendation 14

The committee recommends that, in accordance with Recommendation 85 of the Aged Care Royal Commission, the Australian Government ensures that increasing remuneration to support attraction and retention of employees is an explicit objective of all pricing authorities in the care sector.

Recommendation 15

The committee recommends that the Australian Government implements a minimum staff time standard for residential aged care adequate to ensure high quality and support maximised hours rostering of staff.

Recommendation 16

The committee recommends the Australian Government requires that all aged care providers in receipt of public funding are domiciled in Australia for tax purposes, and do not engage in tax minimisation or avoidance.

Recommendation 17

The committee recommends the Australian Government considers a sector wide facilitated agreement making scheme to support fair wages and secure employment conditions, recognising the unique dynamics of the care sectors. The Fair Work Commission should be provided with the power to require the participation of relevant government/s as the economic employer/s in the sector.

Recommendation 18

The committee recommends the Australian Government works with unions, service providers and employers to amend relevant Awards to ensure the widespread practice of low minimum-hours part-time contracts is restricted, including consideration of:

- specifying a minimum number of part-time hours that can be included in standard contracts;
- requiring employers to pay over-time rates for hours worked over and above contracted hours;
- including automatic mechanisms for review—for instance, if after six months an employee is consistently working above contracted hours, they should be offered the opportunity for the contract to be amended to reflect the actual hours worked; and

- employees consistently working over 35 hours per week for 12 months or longer—regardless of the pattern of hours—should be offered full-time employment.

The committee also recommends that these provisions should be easily enforceable and include anti-avoidance mechanisms.

Recommendation 19

The committee recommends the Australian Government directs pricing authorities in the care sectors to consider all genuine costs required to provide high quality care when determining pricing, including wages and conditions that will attract and retain a skilled workforce, best practice skill mix, and paid training hours.

Recommendation 20

The committee recommends the Australian Government strengthen the powers of the Fair Work Commission so that it may order pay increases for workers to rectify gender-based undervaluation; including establishing a statutory Equal Remuneration Principle. For example, guiding principles making it clear that a male comparator is not required to assess whether workers in an industry are receiving equal pay for work of equal or comparable value.

Recommendation 21

The committee recommends that the Australian Government urgently develops a new National Higher Education Funding Strategy for the period 2021–2025. The new strategy should recognise and address:

- the real cost of delivering high quality tertiary education including administration, marking, and ensuring staff and student wellbeing;
- the role of research as a core university function;
- increasing casualisation in university workforces;
- revenue stabilisation and diversification, particularly with regard to the shift in international student enrolments;
- the role for government in mandating and enforcing secure and fair employment practices in tertiary education; and
- the need for an increase in government funding to the sector.

Recommendation 22

The committee recommends that the Australian Government provides temporary additional annual funding universities to restore jobs and rectify the damage inflicted upon the sector as a result of the COVID-19 pandemic and funding cuts, until the new Higher Education Strategy has been developed and implemented.

Recommendation 23

The committee recommends that the Australian Government Department of Education, Skills and Employment works closely with universities, workers, experts, the National Tertiary Education Union, and relevant sector bodies, to design a system of casual and fixed-term conversion that would be appropriate for the higher education sector.

This system should include sector-appropriate definitions of casual and fixed-term work, and limit the use of casual and fixed-term employment to genuinely non-ongoing work.

Recommendation 24

The committee recommends that the Australian Government requires all universities to provide a more detailed report of their staffing composition to the Department of Education, Skills and Employment, including:

- annualised data on permanent, fixed-term and casual staff in terms of both headcounts and full-time equivalents;
- annualised data on the use of labour hire and other external contractors; and
- annualised detailed data around gender, cultural diversity, age, earnings, length of service and retention rates for casual staff, and compared with permanent staff.

Recommendation 25

The committee recommends that the Australian Government requires, as a condition of receiving public funding, universities to set publicly-available targets for increasing permanent employment, and reducing casualisation, and report their progress against these targets on an annual basis. The targets should be established in consultation with industry experts, workers and the National Tertiary Education Union (NTEU).

The Department of Education, Skills and Employment should review the impact of this measure after three years, and—if it has not been effective in reducing the level of casualisation—the Australian Government should then work with universities and the NTEU to impose meaningful but achievable funding-linked targets.

Recommendation 26

The committee recommends, in light of the widespread wage theft in the Australian Government-funded higher education sector, that the government legislates improved rights of entry for all registered trade unions. These rights should include a right to inspect the records of both current and former employees, a right to enter a site without providing 24 hours' notice, and the removal of restrictions on trade unions accessing non-member records directly.

Recommendation 27

The committee recommends that the Australian Government offers permanent employment opportunities to all long-term casual employees currently performing roles which relate to ongoing stable work.

Recommendation 28

The committee recommends that the Australian Government eliminates the utilisation of long-term casual employment across the Australian Public Service for roles which are not irregular or intermittent in nature, unless genuinely preferred by the employee.

Recommendation 29

The committee recommends that the Australian Government:

- removes the average staffing level cap;
- identifies skill gaps that have led to the regular engagement of external workers, and develops plans to eliminate these gaps and build in-house capabilities;
- internalises work of an ongoing and regular nature which is currently undertaken by contractors and consultants, including labour hire;
- encourages the transfer of skills and knowledge from external workers to internal Australian Public Service employees; and
- places an upper limit on the expenditure on consultants and contractors, and utilises savings to increase the capability and capacity of the Australian Public Service.

Recommendation 30

The committee recommends that the Australian Government introduces an APS-wide policy requiring all departments, agencies and Government Business Enterprises (GBEs) to directly employ staff in all circumstances other than where the work is genuinely short-term and not ongoing in nature. Where this exception is used, the department, agency or GBE should be required to identify the duration of the engagement, and the approximate additional cost that will be incurred by engaging a third party provider.

Recommendation 31

The committee recommends that the Australian Government requires:

- the Australian Public Service Commission to collect and publish agency and service-wide data on the Government's utilisation of contractors, consultants, and labour hire workers;

- the Department of Finance to regularly collect and publish service-wide expenditure data on contractors, consultants, and labour hire workers, including the cost differential between direct employment and external employment; and
- labour-hire firms to disclose disaggregated pay rates and employee conditions.

Recommendation 32

The committee recommends that the Australian Government finalises the regulatory and funding model for the national system for domestic commercial vessel safety. This will allow the Australian Maritime Safety Authority to determine its staffing model and offer enhanced job security to its workers.

Recommendation 33

The committee recommends that the Australian Maritime Safety Authority immediately offers permanent employment opportunities to all long-term labour-hire workers within the AMSA Connect call centre.

Recommendation 34

The committee recommends that the Australian Government enhances the Commonwealth Procurement Rules by introducing a social procurement framework. Such a framework would aim to leverage the significant procurement activities of the Government to achieve positive social, economic, and environmental outcomes for the benefit the Australian community.

Recommendation 35

The committee recommends that the Australian Government introduces a supplier code of conduct which would, amongst other things, provide minimum expectations around:

- integrity and ethics;
- conflicts of interest;
- corporate governance;
- labour and human rights;
- job security and the utilisation of local workforces;
- occupational health and safety;
- environmental management;
- gender equality; and
- transparency, non-minimisation and non-avoidance of tax obligations.

Recommendation 36

The committee recommends that the Australian Government requires that entities engaged to deliver goods and services provide a demonstrable, and independently verified, track record of compliance with workplace laws, including *Workplace Gender Equality Act* reporting obligations. Such disclosures would also incorporate relevant subcontractors that these providers may utilise.

Recommendation 37

The committee recommends that the Australian Government eliminates the technical capability gap resulting from an over-reliance on the use of external contractors and ensures that the Australian Public Service (APS) becomes a digital leader. In doing so, the committee suggests the Government:

- commits to ongoing investment in information and communication technology (ICT) systems, staff, and skills;
- improves the standard of ICT systems to that of leading private sector companies;
- builds the expertise and knowledge of the APS to develop and deliver ICT solutions; and
- makes the APS an employer of choice for ICT and digital professionals by developing career pathways, learning and development programs, appropriate classifications, and competitive remuneration packages.

Recommendation 38

The committee recommends that the Australian Government amends the *NBN Co Ministerial Statement of Expectations* to explicitly state that NBN Co is responsible for conditions of work, exploitation and corruption that occurs in its supply chain, including for subcontractors engaged by Delivery Partners or Prime Contractors. NBN Co should be directed to prepare and publish a plan for how NBN Co will safeguard, monitor and enforce sustainable rates of pay and fair working conditions for NBN technicians.

The committee also recommends that the number of vertical subcontracting arrangements be limited to enhance transparency and accountability, to reduce the inefficient outlay of taxpayer funds and wage suppression that result when too many layers of subcontracting are in the delivery chain, and to promote secure ongoing direct employment by Delivery Partners as the preferred model of workforce engagement.

Recommendations from: *Third interim report: labour hire and contracting*

Recommendation 1

The committee recommends that the Australian Government amends the *Fair Work Act 2009* to ensure that the wages and conditions of labour hire workers are at least equivalent to those that would apply had these workers been directly employed by their host entities.

Recommendation 2

The committee recommends that the Australian Government immediately introduces a comprehensive national labour hire licensing scheme covering all business sectors, and requiring mandatory registration and continuous compliance with all legal obligations. It is recommended that significant penalties apply for those entities which continue to operate without being registered, and for those organisations which engage the workers of such unregistered operators.

Recommendation 3

The committee recommends that the Australian Bureau of Statistics enhances its labour hire data collection techniques for labour hire operators, labour hire workers, and host entities which engage their services, with the aim of better determining the prevalence, and scope, of this form of workforce arrangement in Australia.

Recommendation 4

The committee recommends that the Australian Government enhances its monitoring and compliance activities of labour hire operators to ensure that they are compliant with all their legal obligations. It is envisaged that such an approach would promote collaboration with unions, data-sharing amongst government entities, and utilise joint investigations, as required.

Recommendation 5

The committee recommends that the Australian Government investigates whether labour hire workers are more reluctant to raise safety concerns due to fears of reprisal from their employer and/or host and, if this is found to be the case:

- develop effective methods for the Fair Work Ombudsman to safeguard these workers from such reprisals, and to promote their capacity to promptly raise workplace health and safety concerns with both their host organisations and their labour hire operators; and

- improve the general protections provisions of the *Fair Work Act 2009* to ensure labour hire workers are effectively protected when speaking out.

Recommendation 6

The committee recommends that the Australian Government requires mining operators to conduct local labour market testing prior to engaging fly-in-fly-out and drive-in-drive out workforces.

Recommendation 7

The committee recommends that the Australian Government requires mining operators to meet best-practice in managing the physical and mental health and safety of their fly-in-fly-out and drive-in-drive-out workforces.

Recommendation 8

The committee recommends that the Australian Government commissions comprehensive contemporary research into the economic and health impacts resulting from mining operators utilising fly-in-fly-out and drive-in-drive-out workforces. Amongst other things, such research would assess the impacts on:

- demand for services delivered by local governments;
- the ability of local governments to raise revenues through taxation;
- small and medium businesses located in towns located close to mine sites; and
- the physical and mental health of workers and their families.

Recommendation 9

The committee recommends that the Australian Government commissions comprehensive research to determine the specific impacts of insecure employment on workers in the mining industry, with a focus on determining its effects on their ability to secure home loans; and on decisions such as place of residence, schooling, and major purchases; and their mental health.

Recommendation 10

The committee recommends that the Australian Government works with unions and experts to build upon the minor improvements to worker protections introduced through the Pacific Labour Scheme and Seasonal Worker Program, to introduce superior protections for these workers, and for workers arriving through the Australian Agricultural Visa.

Recommendation 11

The committee recommends that the Australian Government consults with unions to identify how right of entry laws can be improved to deliver better protections for workers, particularly in industries identified as high-risk for exploitation and wage theft by the Fair Work Ombudsman, such as in horticulture, higher education, and meat processing.

Recommendation 12

The committee recommends that the Australian Government works closely with, and provides additional funding for, the Fair Work Ombudsman to:

- enhance the provision of translating and interpreting services for migrant workers seeking information or lodging a complaint;
- expedite the investigation of complaints and enforcement of industry awards in the horticultural and meat processing industries; and
- work collaboratively with unions to ensure migrant workers are made aware of their legal entitlements, and have access to a union. Relevant unions should also be provided with a greater proactive auditing role.

Recommendation 13

The committee recommends that the Australian Government implements protections which ensure that migrant workers' personal information is not disclosed by the Fair Work Ombudsman to immigration authorities (including the Department of Home Affairs).

Recommendation 14

The committee recommends that the Australian Government imposes significant penalties for employers who demonstrate a pattern of non-compliance with their statutory employment obligations, including criminalising wage theft.

Recommendation 15

The committee recommends that the Australian Government implements an efficient, accessible, and inexpensive mechanism for workers to promptly recover all unpaid wages and superannuation to which they are entitled.

Recommendation 16

The committee recognises the merit of an independent body with the power to make and enforce binding standards on aviation supply chain participants, including airports and their central role. Those standards include 'same job, same pay' for outsourced and labour hire workers performing functions directly connected to

aviation operations, job security protections, and fair procurement standards. The committee recommends the Australian Government consults with industry participants, including unions, employers, and other stakeholders on the development of this body.

Recommendation 17

The committee recommends the Australian Government imposes obligations upon companies in receipt of future public bailouts, which prioritise job security and guarantee that companies cannot follow Qantas' lead, and exploit emergencies to engage in illegal workforce restructuring.

Recommendation 18

The committee recommends the Australian Government works with the Transport Workers' Union, the transport industry, and relevant stakeholders to establish an independent body, such as a National Transport Tribunal, which would:

- review and set minimum standards for safety, pay and conditions for all operators and workers including contractors in the transport sector;
- ensure minimum standards are enforceable on all supply chain and contracting parties, including by providing an effective enforcement regime and penalties for infringements;
- adjudicate transport contract network disputes, including in relation to the unfair termination of engagements; and
- defend the rights of all workers, including contractors, to join and be represented by their union and facilitate collective bargaining.

Recommendations from: The job insecurity report

Recommendation 1

The committee recommends that the Senate adopt the following resolution: That the time for the presentation of the final report of the Select Committee on Job Security be extended to 30 March 2022, so that the committee may inquire into possible privilege matters, including to:

- investigate allegations raised in relation to the treatment of seasonal workers who gave evidence at the committee's public hearing on 2 February 2022;
- ascertain the facts in the matter; and
- report any findings to the Senate.

Recommendation 2

The committee recommends that the Australian Government provides funding and support to the Australian Bureau of Statistics (ABS) to enable the ABS to reconcile information from the Characteristics of Employment, Labour Account, and Jobs in Australia releases in order to provide clearer and more coherent information on labour hire employment in Australia.

The revised labour hire information should be published on the ABS website and include:

- data reconciling the number of people who are registered with a labour hire firm or employment agency with industry level estimates of people employed directly by those businesses; and
- data and graphs/tables showing changes in labour hire employment over time.

Recommendation 3

The committee recommends that the Australian Government reviews the Model WHS Laws and associated Regulations to provide a greater emphasis on supporting workers' psychological safety in the workplace, and include 'job insecurity' as a workplace hazard in the appropriate laws and regulations.

Recommendation 4

The committee recommends that the Australian Government provides ongoing support and funding to MATES in Construction, and similar evidence-based, industry-focused suicide prevention and mental health and well-being programs—especially in industries where non-standard work arrangements are common, and those heavily-impacted by the pandemic, such as health, aged and disability care, hospitality, retail, the arts and tourism.

Recommendation 5

The committee recommends that the Australian Government commits to providing an adequate financial and social safety net for all, including by:

- ensuring that the JobSeeker payment is sufficient to help unemployed Australians focus on upskilling or obtaining employment;
- ensuring that the industries and cohorts most impacted by COVID-19 receive financial and other supports to rebuild and recover; and
- by focussing government funding and policy efforts towards initiatives that address the impacts of the pandemic on mental health and well being.

Recommendation 6

The committee recommends that the Australian Government urgently assesses the performance of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021. As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.

Recommendation 7

The committee recommends that the Australian Government undertakes a review of the current portable leave schemes operating in Australia, and examines where such schemes could be extended to workers in other industries. This should be done in consultation with employer and employee groups, and state and territory governments.

Recommendation 8

The committee recommends that the Australian Government provides encouragement and incentives for businesses to hire permanent staff instead of casuals through investigating the use of:

- education campaigns around the benefits of ongoing employment for businesses and employers;
- training and employment subsidies with secure, ongoing employment requirements attached to the funding;
- increasing reporting requirements for publicly-listed companies in relation to work status, pay and conditions; and
- introducing a procurement framework to prioritise firms that favour a permanent, directly engaged workforce.

Recommendation 9

The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman, unions and employer associations to provide tripartite support and education to small businesses about their regulatory obligations—and their employees about their industrial rights—in order to increase the proportion of permanent employment in the small business sector.

Recommendation 10

The committee recommends that the Australian Government amends the *Fair Work Act 2009*, expanding the scope of the Act to encompass all forms of work, and empowering the Fair Work Commission to:

- determine fair rates and conditions for all categories of workers, including contractors;
- arbitrate on contracts with independent contractors that are unfair or harsh; and
- make orders and determinations for groups or classes of workers.

Recommendation 11

The committee recommends that the Australian Government support independent contractors who are sole traders by establishing and promoting accessible low-cost pathways for dispute resolution.

Recommendation 12

The committee recommends that the Australian Bureau of Statistics consults with relevant migrant and international student community groups, community leaders, unions, employer associations and experts to ensure that its methods for data collection in relation to the on-demand platform workforce include effective and appropriate approaches to collecting data from key worker cohorts.

Recommendation 13

The committee recommends that the Australian Government urgently clarifies, by way of regulation, which persons or entities owe a duty of care as a person conducting a business or undertaking (PCBU) under the Model Work Health and Safety laws in relation to individual support workers engaged through on-demand platforms like Mable. The law should make it clear that:

- any platform that engages workers to provide support work under the NDIS, or similar schemes, is a PCBU and owes a duty of care to those workers, regardless of workers' work status (employee or contractor), or their visa status; and
- platform companies cannot transfer their obligations as a PCBU onto other parties.

Recommendation 14

The committee recommends that the Australian Government amend the *National Disability Insurance Scheme Act 2013* to provide that all workers engaged to provide support as part of the National Disability Insurance Scheme must be covered by the

Social, Community, Home Care and Disability Services Industry Award, or receive pay and conditions at least equivalent to that Award.

Recommendation 15

The committee recommends that the Senate give consideration to the referral of an inquiry to the Community Affairs References Committee, examining:

The extent and impact of on demand platform employment, increasing casualisation, use of labour hire/agency work, and contract labour in aged care, disability care, social services and health care more broadly, with specific regard to:

- impacts of on-demand platform employment models on care workers' experiences of work and sense of job satisfaction;
- pay and conditions for workers engaged through platforms, labour hire and agency roles, and casual staff, compared with permanent staff;
- training and career progression for on-demand platform workers and labour hire/agency workers;
- impacts of work status and worker experiences on retention and motivation to stay in the sector;
- the interactions of gender and migration/visa status with work status in the care sectors;
- any evidence regarding the impacts of different employment models on pay rates and conditions across the sectors more broadly; and
- any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Recommendation 16

The committee recommends that the Australian Government amends the *Fair Work Act 2009* by inserting the words 'job security' and 'gender equity' into the principal Object of the Act (section 3), and adding 'job security' and 'gender equity' into the list of matters that need to be taken into account as part of 'The modern awards objective' (section 134) in the *Fair Work Act 2009*.

Recommendation 17

The committee recommends that the Australian Government considers developing a tool for evaluating and rating policy proposals in respect of their potential impacts (positive and/or negative) on job security, and makes assessment against the tool mandatory for all relevant new policy proposals. Policy initiatives that are likely to lead to the creation of insecure jobs should be redesigned.

Recommendation 18

The committee recommends that the Australian Government provides increased resources for the Fair Work Ombudsman to investigate and penalise employers and companies for contraventions of workplace laws and obligations, drawing on the Ombudsman's enhanced powers provided under the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

Recommendation 19

The committee recommends that the Australian Government accept Recommendation 23 of the National Agricultural Labour Advisory Committee, which read:

'The Committee recommends that the Australian Government require all 417 and 462 visa holders, prior to arrival in Australia, to apply for an Australian tax file number. Information should be provided to 417 and 462 visa holders in their own language, on their rights and entitlements as migrant workers in Australian workplaces, and on how to take action if they are not being treated ethically and lawfully.'

Recommendation 20

The committee recommends that the Senate give consideration to the referral of an inquiry to the Education and Employment References Committee, examining:

The extent, growth and impact of insecure work in Australia, with specific regard to:

- definitions and measures of insecure and precarious work, and the need to develop national measures, and a national data set, to understand changes over time;
- the growth in insecure work since the 1970s and the impacts of government policies on this growth;
- the impacts of the pandemic on the growth of insecure and precarious jobs, including those in the on-demand platform sector;
- job insecurity among vulnerable workers, including migrants and temporary residents;
- the experiences of workers in insecure jobs, their pay and conditions, and the impacts on their health, wellbeing, social connection and prosperity;
- perspectives of employers on the use of casual, fixed-term contract, labour hire and platform workforce arrangements;
- impacts on the level of casual and insecure work of the reforms made in 2021 to the *Fair Work Act 2009* through the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*, particularly those concerning casual conversion;
- the adequacy of existing legislative and regulatory regimes to address the challenges of insecure and precarious work; and
- any related matters.

If such an inquiry were referred, that the committee or any subcommittee have power to consider and make use of the evidence and records of the former Select Committee on Job Security appointed during the 46th Parliament.

Appendix 2

Submissions and additional information

- 1 La Trobe Casuals Network
- 2 Professor Michael Quinlan & Dr Elsa Underhill
- 3 Professor Joellen Riley & Dr Michael Rawlings
- 4 EveryAGE Counts
- 5 ARC Gig Cities Research Team
- 6 Australian Institute of Employment Rights
- 7 Law Society of New South Wales
- 8 Australian Association of Social Workers
- 9 Restaurant and Catering Australia
- 10 Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan & Dr Alex Veen
- 11 National Foundation for Australian Women
- 12 WEstjustice
- 13 Victorian Council of Social Service (VCOSS)
- 14 Treating Families Fairly
- 15 Queensland Nurses and Midwives' Union (QNMU)
- 16 Victorian Government
- 17 Maurice Blackburn Lawyers
- 18 Professor Rae Cooper
- 19 Uber
- 20 Deliveroo
- 21 Department of Social Services
- 22 Safe Work Australia
- 23 Hireup
- 24 Mable
- 25 Australian Retailers Association
- 26 Migrant Workers Centre
- 27 Australian Nursing and Midwifery Federation
- 28 Fair Work Ombudsman
- 29 National Retail Association
- 30 Per Capita
- 31 Victorian Trades Hall Council (VTHC)
- 32 National Youth Commission Australia
- 33 Australian Services Union
- 34 Housing Industry Association Ltd
- 35 Associate Professor Angela Knox & Associate Professor Susan Ainsworth
- 36 Australian Medical Association
- 37 Mr George Stribling, Lauren Kavanagh, Shirisha Nampalli, Quyen Nguyen, Joshua Paveley and Maddy Yates

- 38 Associate Professor Alysia Blackham
- 39 Transport Workers' Union of Australia
- 40 St Vincent de Paul Society National Council
- 41 Australia Institute, Centre for Future Work
- 42 Carers Australia
- 43 Dr Troy Henderson
- 44 DoorDash Inc
- 45 The Salvation Army
- 46 Australasian Centre for Corporate Responsibility
- 47 National Tertiary Education Union (NTEU)
- 48 The Australian Council of Learned Academies (ACOLA)
- 49 ACT Government
- 50 Youth Action NSW
- 51 Carers NSW
- 52 TEACHO Limited
- 53 Direct Selling Australia
- 54 United Workers Union (UWU)
- 55 Dr Veronica Sheen
- 56 Springvale Monash Legal Service
- 57 Green Institute
- 58 Franklin Women
- 59 The University of Sydney Casuals Network
- 60 Minerals Council of Australia
- 61 Science & Technology Australia
- 62 National Association for the Visual Arts Ltd
- 63 The National and State Youth Peaks
- 64 Council of Australian Postgraduate Association (CAPA)
- 65 Australian Small Business and Family Enterprise Ombudsman
- 66 Multicultural Youth Advocacy Network (MYAN)
- 67 Centre for Multicultural Youth
- 68 Children and Young People with Disability Australia
- 69 NSW Labor Lawyers
- 70 Queensland Law Society
- 71 Australian Chamber of Commerce and Industry (ACCI)
- 72 Liberty Victoria
- 73 Recruitment, Consulting and Staffing Association (RCSA)
- 74 Rideshare Drivers Association of Australia
- 75 Attorney-General's Department, Department of Education, Skills and
Employment and Department of Industry, Science, Energy and Resources
- 76 Victorian Multicultural Commission
- 77 The Australian Industry Group
- 78 Unions NSW

- 79 Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)
- 80 MATES in Construction
- 81 Professor Tony LaMontagne, Dr Tania King and Ms Yamna Taouk
- 82 South Coast Labour Council
- 83 National Farmers' Federation (NFF)
- 84 Health Services Union (HSU)
- 85 Young Workers Centre
- 86 McKell Institute Victoria
- 87 *Confidential*
- 88 Emeritus Professor David Peetz FASSA
- 89 Distinguished Professor Sara Charlesworth
- 90 Retail and Fast Food Workers Union
- 91 Jesuit Social Services
- 92 Kingsford Legal Centre and Redfern Legal Centre
- 93 Centre for International Corporate Tax Accountability and Research (CICTAR)
- 94 Anglicare Australia
- 95 Job Watch Inc.
- 96 Unions ACT
- 97 COTA Australia
- 98 Australian Council of Trade Unions (ACTU)
- 99 Young Workers Centre, Unions ACT
- 100 Western Australian Government
- 101 Queensland Teachers' Union
- 102 Community and Public Sector Union (CPSU)
- 103 Airtasker Limited
- 104 Queensland Government
- 105 *Name Withheld*
- 106 *Confidential*
- 107 *Name Withheld*
- 108 *Confidential*
- 109 *Name Withheld*
- 110 *Name Withheld*
- 111 *Name Withheld*
- 112 Dr Paula McDonald, Professor Greg Marston, Acting Professor Tess Hardy, Professor Sara Charleston, Acting Professor Robyn Mayes and Dr Penny Williams
- 113 Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)
- 114 Amazon Australia
- 115 Academy of the Social Sciences in Australia Inc
- 116 Rail, Tram and Bus Union
- 117 Queensland Council of Unions
- 118 Western Australian Council of Social Service Inc.

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- 119 UnionsWA
 - 120 *Name Withheld*
 - 121 *Name Withheld*
 - 122 Australian Manufacturing Workers' Union
 - 123 Dr Adam Heaton
 - 124 HR Nicholls Society
 - 125 The WorkPac Group
 - 126 Dr Fiona Macdonald
 - 127 Dr Mitchell Sarkies
 - 128 Mr Saul Eslake
 - 129 *Name Withheld*
 - 130 Angus
 - 131 Simon
 - 132 *Name Withheld*
 - 133 Pirthpall
 - 134 Mark
 - 135 Marie
 - 136 Robert
 - 137 Terri
 - 138 Hao
 - 139 Terry
 - 140 Dave
 - 141 Chris
 - 142 Rebecca
 - 143 Kristie
 - 144 John
 - 145 Alison
 - 146 Alam
 - 147 Cathy
 - 148 Chris
 - 149 Brett
 - 150 Mounir
 - 151 Roger
 - 152 Tim
 - 153 Genevieve
 - 154 Abdul
 - 155 Russell
 - 156 Peter
 - 157 Keith
 - 158 Drew
 - 159 Petar
 - 160 Mathew
 - 161 Ronald

- 162 Peter
- 163 Rebecca
- 164 Gary
- 165 Gary
- 166 Neil
- 167 Lachlan
- 168 Andrew
- 169 Jason
- 170 Melek
- 171 Chris
- 172 Elizabeth
- 173 Beverley
- 174 Elizabeth
- 175 Rigzin
- 176 Passang
- 177 *Name Withheld*
- 178 Jamie
- 179 National Union of Students
- 180 NSW Aboriginal Land Council
- 181 Suicide Prevention Australia
- 182 Harmony Alliance
- 183 Queensland Tourism Industry Council
- 184 Isaac Regional Council
- 185 Advocacy for Inclusion
- 186 Hunter Workers
- 187 Sabrina
- 188 Kathleen
- 189 Narelle
- 190 Sarah
- 191 *Name Withheld*
- 192 Nabin
- 193 BSA
- 194 CEPU
- 195 Downer Group
- 196 Ventia
- 197 National Council of Single Mothers & their Children Inc
- 199 Australian Workers' Union
- 200 Health Services Union NSW/ACT/Qld
- 201 Australian Education Union Federal Office
- 202 Ms Kate Jenkins, Sex Discrimination Commissioner
- 203 Ms Jane Scott
- 204 Finance Sector Union of Australia
- 205 Australian Hotels Association

- 206 Unions Tasmania
- 207 Australian Fresh Produce Alliance
- 208 Miss Dakota Woods
- 209 Working Women's Centre SA
- 210 Mr Sinopoli, Associate Professor Marmo and Dr Guo – Flinders University
- 211 United Services Union
- 212 *Name Withheld*
- 213 Mick
- 214 Simon
- 215 Fatima
- 216 Mr Adam Nelson
- 217 *Name Withheld*
- 218 Mr Benjamin Cronshaw
- 219 Australian Community Industry Alliance
- 220 Hunter Jobs Alliance
- 221 Australian Association of Gerontology
- 222 Australasian Meat Industry Employees' Union
- 223 The Australasian Institute of Mining and Metallurgy (AusIMM)
- 224 Federation of Ethnic Communities' Councils of Australia (FECCA)
- 225 Worker X
- 226 *Confidential*
- 227 Richard
- 228 Shine Lawyers
- 229 International Transport Workers Federation
- 230 The University of Melbourne

Additional Information

- 1 Additional information received from Ryan Batchelor, Executive Director, McKell Institute Victoria – Blue Harvest report hearing 19 April 2021 (received 26 April 2021)
- 2 International Transport Workers' Federation, Submission to the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales - Revised 10 June 2021 (received 11 June 2021)
- 3 International Lawyers Assisting Workers network, Taken for a ride: Litigating the Digital Platform Model 2021 (received from International Transport Workers' Federation 11 June 2021)
- 4 Additional information – Correction to evidence from Sarah Costello of Safe Work Australia at public hearing 10 June 2021 (received 16 June 2021)
- 5 Transport Workers Union Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2020 (received 17 June 2021)

- 6 Richard Johnstone, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 7 Michael Quinlan, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 8 Transport Workers Union, Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2021 (received 17 June 2021)
- 9 Transport Workers Union Submission to the Consultation – Personal injury insurance arrangements for food delivery riders 2021 (received 17 June 2021)
- 10 An article titled 'Can a Driver Uprising Make Food Apps Deliver?' published on 3 June 2021 by Luis Deliz Leon, provided to the Committee by Bernard Corden (received 20 June 2021)
- 11 Minerals Council of Australia – Question on notice from the Senate Education and Employment Legislation Committee's public hearing into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions] on 8 July 2021 (received 14 July 2021)
- 12 Chandler Macleod – Response to adverse comment made by the Australian Workers Union at a public hearing in Canberra on 14 July 2021 (received 2 August 2021)
- 13 Menulog – Response to use of evidence in the committee's *First interim report: on-demand platform work in Australia* (received 16 August 2021)
- 14 European Agency for Safety and Health at Work, Digital platform work and occupational safety and health, 2021 (received from Professor Quinlan 21 October 2021)
- 15 European Trade Union Institute, Social protection of non-standard workers and the self-employed during the pandemic, 2021 (received from Professor Quinlan 21 October 2021)
- 16 A plea for the need to investigate the health effects of gig-economy, 2021 (received from Professor Quinlan 24 September 2021)
- 17 Australasian Meat Industry Employees Union QLD Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021)
- 18 Dr Antonia Aitken – Casual conversion rejection email (received 24 November 2021)
- 19 Australian Bureau of Statistics, Jobs in Australia data on Labour supply services (labour hire) jobs 2011-12 to 2018-19 (received 17 November 2021)
- 20 Woolworths – Clarification of evidence, public hearing, 11 October 2021 (received 23 November 2021)
- 21 StarTrack – Clarification of evidence provided at public hearing on 13 October 2021 (received 15 November 2021)

- 22 OzGroup – Statements from James Kellaway and Kylie Hoschke in relation to evidence given at public hearing 4 November 2021 (received 23 November 2021)
- 23 Additional information from the CFMEU regarding employment statistics following their appearance at a public hearing in Newcastle on 6 December 2021 (received 8 December 2021)
- 24 University of Newcastle – Opening Statement from public hearing on 7 December in Newcastle (received 13 December 2021)
- 25 Finance Sector Union – Remuneration Review Letters from major banks provided following a public hearing in Canberra on 8 December 2021 (received 16 December 2021)
- 26 Sunny Ridge Strawberry Farms – Response to adverse comment at public hearing, 2 February 2022 (received 4 February 2022)
- 27 Attorney-General's Department – Letter clarifying evidence given at the public hearing on 2 February 2022 (received 7 February 2022)
- 28 MADEC – Response to adverse comment at public hearing, 2 February 2022 (received 9 February 2022)

Answers to Questions on Notice

- 1 Fair Work Ombudsman – Answer to question taken on notice, Uber Australia investigation finalised, Melbourne 21 April 2021 (received 22 April 2021)
- 2 Mable – Answer to question taken on notice Media release, Sydney 12 April 2021 (received 27 April 2021)
- 3 Menulog Australia – Answer to question taken on notice Europe Employment Market, Sydney 12 April 2021 (received 27 April 2021)
- 4 Ola – Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)
- 5 Hireup – Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)
- 6 Aged and Community Services Australia – Answers to questions taken on notice, Melbourne 19 April 2021 (received 4 May 2021)
- 7 Uber – Answer to question taken on notice, public hearing, Sydney 12 April 2021 (received 7 May 2021)
- 8 Fair Work Ombudsman – Answers to questions taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
- 9 Ai Group – Answer to question taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
- 10 Ola – Answers to additional written questions taken on notice from Senator Sheldon, sent 29 April 2021 (received 22 June 2021)
- 11 Hireup – Answers to additional written questions taken on notice, Senator Sheldon 29 April 2021 (received 13 May 2021)
- 12 Ai Group – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)

- 13 Aged and Community Services Australia – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)
- 14 Australian Unemployed Workers' Union – Answers to questions taken on notice, Melbourne 20 April 2021 (received 7 May 2021)
- 15 Menulog Australia – Answers to written questions taken on notice, 29 April 2021 (received 20 May 2021)
- 16 Uber – Answers to written questions taken on notice, 29 April 2021 (received 16 May 2021)
- 17 Australian Higher Education Industrial Association – Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 17 May 2021)
- 18 National Indigenous Australians Agency – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 19 Department of Agriculture, Water and the Environment – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 20 Department of Defence – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 21 CSIRO – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 22 Defence Housing Australia – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 23 Department of Home Affairs – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 24 Department of Industry, Science, Energy and Resources – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 25 Department of Veterans' Affairs – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 26 Department of Social Services, Services Australia, National Disability Insurance Agency and National Disability Insurance Scheme Quality and Safeguards Commission – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 27 Department of Health – Answers to written questions taken on notice, 31 March 2021 (received 7 May 2021)
- 28 Department of Education, Skills and Employment – Answers to written questions taken on notice, 31 March 2021 (received 11 May 2021)
- 29 NBN Co Limited – Answers to written questions taken on notice, 31 March 2021 (received 14 May 2021)
- 30 Attorney General's Department – Answers to written questions taken on notice, 31 March 2021 (received 20 May 2021)
- 31 Department of Finance – Answers to written questions taken on notice, 31 March 2021 (received 13 May 2021)
- 32 Aged Care Industry Association – Answers to written questions taken on notice, Senator Sheldon 3 May 2021 (received 28 May 2021)

- 33 Department of Foreign Affairs and Trade – Answers to written questions taken on notice, 31 March 2021 (received 17 September 2021)
- 34 Deliveroo – Answers to written questions taken on notice, 29 April 2021 (received 28 May 2021)
- 35 Australia Post – Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 36 Department of Infrastructure, Transport, Regional Development and Communications – Answers to written questions taken on notice, 31 March 2021 (received 4 June 2021)
- 37 Mable – Answers to written questions taken on notice, 29 April 2021 (received 10 June 2021)
- 38 Mr Lawrence Ben from Retail, Wholesale and Department Store Union – Answers to written questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 39 Safe Work Australia – Answers to questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 40 Amazon Australia – Answers to written questions taken on notice, Senator Sheldon (questions numbered 43–65 and 76–83), 10 June 2021 (received 18 June 2021)
- 41 The Treasury – Answers to written questions on notice from Senator Sheldon, sent 31 March 2021 (received 17 June 2021)
- 42 Amazon Australia – Answers to written questions from Senator Sheldon and Senator Faruqi, 10 June 2021, and answers to questions taken on notice, public hearing, Canberra, 10 June 2021 (received 9 July 2021)
- 43 One Key Resources – Answers to questions taken on notice, public hearing, Canberra, 13 July 2021 (received 27 July 2021)
- 44 Department of the Prime Minister and Cabinet – Answers to written questions taken on notice, 31 March 2021 (received 30 July 2021)
- 45 Fair Work Commission – Answers to questions taken on notice and answers to written questions from Senator Sheldon, Canberra, 15 June 2021 (received 30 July 2021)
- 46 Chamber of Commerce & Industry Queensland – Answers to Questions on notice, public hearing, Canberra, 14 July 2021 (received 2 August 2021)
- 47 Heritage Care – Answers to Questions on notice, public hearing, Canberra 28 July 2021 (received 3 August 2021)
- 48 Hays Recruitment – Answers to Questions on notice, public hearing, Canberra, 13 July 2021 (received 3 August 2021)
- 49 Minerals Council of Australia and member company representatives – Answers to Questions on notice, public hearing, Canberra, 14 July 2021 (received 3 August 2021)
- 50 UnionsWA – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 3 August 2021)

- 51 Retail, Wholesale and Department Store Union – Answer to questions taken on notice, public hearing, Canberra, 10 June 2021 (received 5 August 2021)
- 52 Dr Caleb Goods and Dr Tom Barratt – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 5 August 2021)
- 53 AMMA – Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 (received 5 August 2021)
- 54 Programmed – Answers to questions taken on notice, public hearing, Canberra, 27 July 2021 (received 5 August 2021)
- 55 Western Australian Council of Social Service – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 6 August 2021)
- 56 Construction, Forestry, Maritime, Mining and Energy Union, Construction & General Division – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 8 August 2021)
- 57 Circle Green Community Legal – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 8 August 2021)
- 58 Australian Chamber of Commerce and Industry – Answers to written questions taken on notice, Senator Sheldon, 3 May 2021 (received 11 August 2021)
- 59 Recruitment, Consulting and Staffing Association – Answers to questions taken on notice, public hearing, Canberra 27 July 2021 (received 16 August 2021)
- 60 Rio Tinto – Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 17 August 2021)
- 61 Heritage Care – Answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 17 August 2021)
- 62 Hays Recruitment – Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 17 August 2021)
- 63 Chandler Macleod – Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 18 August 2021)
- 64 Bolton Clarke – Answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 18 August 2021)
- 65 Dr Fiona Macdonald – Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 (received 18 August 2021)
- 66 TriCare – Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 and answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 18 August 2021)
- 67 TriCare – Answers to written questions taken on notice, Senator Sheldon, 9 August 2021 (received 23 August 2021)
- 68 Heritage Care – Answers to written questions taken on notice, Senator Sheldon, 9 August 2021 (received 23 August 2021)
- 69 BHP – Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 26 August 2021)

- 70 Anglo American – Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 27 August 2021)
- 71 Australian Retailers Association – Answers to written questions taken on notice, Senator Sheldon, 29 April 2021 (received 6 September 2021)
- 72 ManpowerGroup Australia – Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
- 73 Australian Public Service Commission (APSC) – Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
- 74 Australian Maritime Safety Authority (AMSA) – Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
- 75 One Key Resources – Answers to written questions on notice, Senator Sheldon, 3 August 2021 (received 10 September 2021)
- 76 Services Australia – Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 16 September 2021)
- 77 Hays Recruitment – Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 17 September 2021)
- 78 Programmed – Answers to written questions taken on notice, Senator Sheldon, 9 August 2021 (received 20 August 2021)
- 79 Downer – Answers to questions taken on notice, Canberra, 15 September 2021 (received 27 September 2021)
- 80 Fulton Hogan – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 23 September 2021)
- 81 Service Stream – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 28 September 2021)
- 82 Hays – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 30 September 2021)
- 83 BSA – Answers to questions taken on notice, public hearing, Canberra, 14 September 2021 (received 28 September 2021)
- 84 Australian Public Service Commission (APSC) – Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)
- 85 ManpowerGroup – Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)
- 86 Department of Finance – Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 1 October 2021)
- 87 AMSA – Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)
- 88 Australian Tax Office (ATO) – Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 6 October 2021)
- 89 ACCC – Answers to written questions, Senator Sheldon, 14 September 2021 (received 11 October 2021)
- 90 Service Stream – Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 6 October 2021 (received 12 October 2021)

- 91 NBN Co – Answers to questions taken on notice, public hearing, Canberra, 14 September 2021 (received 12 October 2021)
- 92 BSA – Answers to additional questions on notice, Senator Sheldon, 14 September, public hearing, Canberra (received 13 October 2021)
- 93 Lendlease – Answers to additional questions taken on notice, Senator Sheldon, 15 September 2021, public hearing, Canberra (received 13 October 2021)
- 94 Department of Finance – Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra 27 August 2021 (received 21 October 2021)
- 95 Ventia – Answers to additional written questions, Senator Sheldon, 6 October 2021 (received 13 October 2021)
- 96 Department of Agriculture, Water and the Environment – Answers to questions taken on notice, Senator Ciccone and Senator Sheldon, public hearing, Canberra, 11 October (received 26 October 2021)
- 97 NBN Co – Answers to written questions taken on notice, Senator Sheldon, 6 October 2021 (received 26 October 2021)
- 98 Prof LaMontagne – Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 16 September 2021 (received 24 September 2021)
- 99 Teys Australia – Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 11 October 2021 (received 26 October 2021)
- 100 Unions NSW – Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 11 October 2021 (received 2 November 2021)
- 101 Department of Home Affairs – Answers to questions taken on notice, Senator Sheldon and Senator Canavan, public hearing, Canberra, 11 October 2021 (received 2 November 2021)
- 102 Woolworths Group – Answers to questions taken on notice, Senator Sheldon and Senator Canavan, Public hearing, Canberra, 11 October 2021 (received 2 November)
- 103 BHP – Answers to written follow up questions taken on notice, Senator Sheldon, 11 October 2021 (received 20 October 2021)
- 104 Qantas – Answers to questions taken on notice, Senator Sheldon, Public hearing, Canberra, 13 October 2021 (received 2 November 2021)
- 105 Toll Group – Answers to questions taken on notice, Senator Sheldon, Public Hearing, Canberra, 13 October 2021 (received 2 November)
- 106 Coles Group – Answers to questions taken on notice, Senator Sheldon, Public hearing, Canberra, 13 October 2021 (received 3 November 2021)
- 107 Amazon Australia – Answer to question taken on notice, public hearing, Canberra, 4 November 2021 (received 4 November 2021)
- 108 Woolworths – Answers to written questions taken on notice, Senator Sheldon, 11 November 2021 (received 24 November 2021)
- 109 StarTrack – Answers to questions taken on notice, public hearing, Canberra, 13 October 2021 (received 15 November 2021)

- 110 NBN Co – Answer to written question on notice, Senator Sheldon, 6 October 2021 (received 16 November 2021)
- 111 OzGroup – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 23 November 2021)
- 112 Services Australia – Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 8 October 2021)
- 113 Australian Education Union – Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 24 November 2021)
- 114 Uber – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 115 Dr Antonia Aitken – Answer to question taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 116 Amazon Australia – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 117 Australian Manufacturing Workers Union – Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 24 November 2021)
- 118 Mondelez – Answers to questions on notice, public hearing, Canberra, 3 November 2021 (received 26 November 2021)
- 119 Star Track – Answers to written questions taken on notice, Senator Sheldon, 11 November 2021 (received 28 November 2021)
- 120 Amazon Australia – Answers to additional written questions on notice from Senator Sheldon, related to public hearing on 4 November 2021 (received 3 December 2021)
- 121 Uber – Answers to additional written questions on notice from Senator Sheldon, related to public hearing, Canberra 4 November 2021 (received 3 December 2021)
- 122 Australian Workers' Union – Answer to question taken on notice, public hearing, Canberra, 13 October 2021 (received 8 December 2021)
- 123 Centre for International Corporate Tax Accountability and Research (CICTAR) – Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 8 December 2021)
- 124 Finance Sector Union of Australia – Answer to question taken on notice, public hearing, Canberra, 8 December 2021 (received 8 December 2021)
- 125 University of Newcastle – Answer to question taken on notice, public hearing, Newcastle, 7 December 2021 (received 20 December 2021)
- 126 Australian Bureau of Statistics – Answers to questions taken on notice, public hearing 4 November 2021, Canberra (received 16 December 2021)
- 127 Progress Rail – Answers to questions taken on notice, public hearing, 7 December 2021, Newcastle (received 13 December 2021)
- 128 Restaurant and Catering Industry Association – Answers to questions taken on notice, public hearing, 3 November 2021, Canberra (received 11 December 2021)

- 129 Downer Rail – Answers to questions on notice, public hearing, 7 December 2021, Newcastle (received 22 December 2021)
- 130 CFMMEU, Mining and Energy Division – Answers to questions on notice, public hearing, 6 December 2021, Newcastle (received 23 December 2021)
- 131 Spotless – Answers to questions on notice, public hearing, 8 December 2021, Canberra (received 23 December 2021)
- 132 CBA – Answers to questions on notice, public hearing, 8 December 2021, Canberra (received 23 December 2021)
- 133 Swissport – Answers to questions on notice, public hearing, 8 December 2021, Canberra (received 24 December 2021)
- 134 University of Newcastle – Answers to written questions from Senator Sheldon (received 11 January 2022)
- 135 ABS – Answers to written questions on notice from Senator Sheldon, 22 November 2021 (received 12 January 2022)
- 136 Spotless – Answers to questions taken on notice, Senator Sheldon, public hearing 8 December 2021, Canberra (received 14 January 2021)
- 137 Glencore – Answers to questions taken on notice, public hearing, 6 December 2021, Newcastle (received 23 December 2021)
- 138 Assetlink – Answers to questions taken on notice, public hearing, 4 November 2021 (received 24 November 2021)
- 139 United Workers Union ACT – Answers to questions on notice, Public Hearing, 4 November 2021, Canberra (received 18 January 2022)
- 140 PwC – Answers to questions on notice, public hearing, 8 December 2021, Canberra and Answers to written questions on notice from Senator Sheldon (received 20 January 2022)
- 141 Transport Workers Union (TWU) – Answers to questions on notice, public hearing, 8 December 2021, Canberra and Answers to written questions on notice from Senator Small (received 29 January 2022)
- 142 University of Melbourne – Answers to questions taken on notice, public hearing, 3 February 2022, Canberra (received 7 February 2022)
- 143 Attorney-General's Department – Answers to questions taken on notice, public hearing, 3 February 2022, Canberra (received 7 February 2022)
- 144 Unions NSW – Answers to questions taken on notice, public hearing, 3 February 2022, Canberra (received 7 February 2022)
- 145 Department of Home Affairs – Answers to questions taken on notice, public hearing, 2 and 3 February 2022, Canberra (received 7 February 2022)
- 146 Australian Forest Products Association – Answers to questions taken on notice, public hearing, 3 February 2022, Canberra (received 7 February 2022)

Media Releases

- 1 Senate Select Committee on Job Security – Media release 21 December 2020

Tabled Documents

- 1 Transport Workers Union – Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021)
- 2 Transport Workers Union – Food Delivery Survey (tabled at public hearing in Sydney on 12 April 2021)
- 3 Transport Workers Union – Rideshare Survey (tabled at public hearing in Sydney on 12 April 2021)
- 4 Professor Catherine Bennett, Chair in Epidemiology, Deakin University, COVID-19 and the Casual Workforce (tabled at the public hearing held in Melbourne on 19 April 2021)
- 5 Australian Unemployed Workers Union, Member statement (tabled at public hearing in Melbourne on 20 April 2021)
- 6 Excerpt from the Senate Education and Employment Legislation Committee's public hearing (8 February 2021) Hansard transcript for the inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, pp. 56–61 (tabled by Senator Tony Sheldon at public hearing in Canberra on 14 July 2021)
- 7 Rae Wilson, 'Miner tells Senators casual employees now outnumber full-time employees two to one', *The Courier Mail*, 13 July 2021 (tabled by Senator Sheldon at public hearing in Canberra on 14 July 2021)
- 8 Workplace Gender Equality Agency, Public report submitted by Programmed Maintenance Service Limited, 2016–17 (tabled by Senator Sheldon at public hearing on 27 July 2021)
- 9 Senate Rural and Regional and Transport Legislation Committee, Budget estimates 2020–21, response to question on notice SQ21–000383 (tabled by Senator Tony Sheldon at public hearing on 27 August 2021)
- 10 Australian Government, Statement of Expectations for NBN Co Limited, 26 August 2021 (tabled by Senator Sheldon at public hearing on 14 September 2021)
- 11 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (291), Budget Estimates 2021–2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021)
- 12 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (290), Budget Estimates 2021–2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021)
- 13 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (287), Budget Estimates 2021–2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021)
- 14 University of Newcastle, example of correspondence sent to casual employees regarding casual conversion (tabled by Senator Sheldon at public hearing on 7 December 2021)

- 15 Financial Review article from November 2021, 'PwC used unqualified staff in secret "hub" to audit ASX 200 firms' (tabled by Senator Sheldon at public hearing on 8 December 2021)
- 16 An employment flyer from Spotless, advertising for cleaners in Victoria (tabled by Senator Sheldon at public hearing on 8 December 2021)
- 17 Screenshots of Spotless fixed term contract emails (tabled by Senator Sheldon at public hearing on 8 December 2021)
- 18 Extract from House of Representatives Hansard, Thursday, 23 September 2021 (relating to the Commonwealth Bank of Australia and the Financial Sector Union of Australia) (tabled by Senator Sheldon at public hearing on 8 December 2021)
- 19 Correspondence from Commonwealth Bank of Australia to the Finance Sector Union of Australia, dated 11 November 2021 (tabled by Senator Sheldon at public hearing on 8 December 2021)
- 20 Correspondence from McCrystal Agricultural Services Pty Ltd to a Seasonal Worker Program participant (tabled by Senator Sheldon at a public hearing on 2 February 2022)
- 21 Payslips, a record of working times and an image of accommodation from a Seasonal Worker Program participant (tabled by Senator Sheldon at a public hearing on 2 February 2022)
- 22 A series of documents concerning temporary visa holders in the horticulture industry (tabled by Senator Sheldon at a public hearing on 2 February 2022)

Appendix 3

Public Hearings

Monday, 12 April 2021

The Wilarra room, Level 1
The Grace Hotel
77 York Street
Sydney

Transport Workers Union

- Mr Michael Kaine, National Secretary
- Mr Jack Boutros, Strategic Campaigner

Australian Services Union

- Ms Natalie Lang, Branch Secretary, Australian Services Union

Ola Australia

- Ms Ann Tan, Director and Head of Business Excellence and Legal

Uber

- Mr Dominic Taylor, General Manager

Uber Eats

- Mr Matthew Denman, General Manager

Deliveroo

- Mr Ed McManus, Chief Executive Officer
- Ms Julia Duck, Head of Operations, Strategy and Performance

HireUp

- Mr Jordan O'Reilly, Chief Executive Officer and Co-Founder
- Ms Jessica Timmins, Senior Director of Service

Mable

- Mr Peter Scutt, Chief Executive Officer

Professor Joellen Riley Munton, Professor of Law, University of Technology Sydney (Private capacity)

Dr Sandra Peter, Director of Sydney Business Insights, Business School, University of Sydney (Private capacity)

Menulog

- Mr Morten Belling, Managing Director

- Mr Steven Teoh, Director of Delivery

Statements by delivery driver/rider workers

- Mr Assad Manzoor, Private capacity
- Mr Ashley Moorland, Private capacity
- Mr Esteban Salazar, Private capacity

The Vue Room, The Nineteenth
Wollongong Golf Club
151-161 Corrimal Street
Wollongong

Tuesday, 13 April 2021

The Wilarra room, Level 1

The Grace Hotel

77 York Street

Sydney

Shop, Distributive and Allied Employees' Association

- Mr Gerard Dwyer, National Secretary-Treasurer

Health Services Union

- Mr Lloyd Williams, National Secretary

Australian Retailers Association

- Mr Paul Zahra, Chief Executive Officer

Migrant Workers Centre

- Mr Matt Kunkel, Director
- Dr Hyeseon Jeong, Research and Policy Officer

National Tertiary Education Union (NTEU)

- Dr Alison Barnes, National President
- Dr Terri MacDonald, Director, Policy and Research
- Dr Elizabeth Adamczyk, Member
- Mr Paul Morris, Member

Casualised, Unemployed, and Precarious University Workers (CUPUW)

- Dr Yaegan Doran, Member, CUPUW
- Mx Morgan Jones, Member, CUPUW
- Mx Dani Cotton, Member, University of Sydney Casuals Network

Ms Donna Tolhurst (Private capacity)

Wednesday, 14 April 2021

The Vue Room, The Nineteenth
Wollongong Golf Club
151-161 Corrimal Street
Wollongong

Shoalhaven City Council

- Councillor Amanda Findley, Mayor

South Coast Labour Council

- Mr Arthur Rorris, Secretary

Business Illawarra

- Mr Evan Marginson, Policy Manager
- Mr Adam Zarth, Executive Director

United Workers Union

- Ms Jo Briskey, Official
- Ms Tracy Cartan, Member
- Mr Ken Brown, Member
- Ms Kathy Dryden, Member

Statements by workers

- Mr Rob Long, Tafe Organiser – New South Wales Teachers Federation
- Mr Jim Scardanas, Private capacity
- Mr Brad Cowie, Delegate – Public Service Association
- Mr Mark Rogers, Member – National Tertiary Education Union

Statements by small business owners

- Mr Gary McCarthy, Private capacity

Monday, 19 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Australian Nursing and Midwifery Federation

- Ms Annie Butler, Federal Secretary
- Ms Lori-Anne Sharp, Assistant Federal Secretary

Health Services Union (HSU)

- Mr Raymond Collins, Industrial Organiser

United Workers Union – Aged Care

- Ms Ffion Evans, Coordinator – Member Power
- Ms Anu Singh, Member
- Ms Tracy Colbert, Member

Per Capita

- Ms Emma Dawson, Executive Director
- Mr Matthew Lloyd-Cape, Research Economist

Distinguished Professor Sara Charlesworth, Work, Gender and Regulation, School of Management, and Director, Centre for people, Organisation and Work, College of Business – RMIT University(Private capacity)

Aged and Community Services Australia

- Ms Patricia Sparrow, Chief Executive Officer
- Mr Malcolm Larsen, Executive Director - Government and Public Affairs

Australian Health Services Research Institute

- Professor Kathy M Eagar, Director

Professor Catherine Bennett, Chair in Epidemiology - Deakin University (Private capacity)

McKell Institute Victoria

- Mr Ryan Batchelor, Executive Director

Tuesday, 20 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Dr Michael Reich (Private capacity)

Mr Rodney Stiles, Former Assistant Commissioner at NYC Taxi and Limousine Commission/Freelance Mobility and Labour Consultant (Private capacity)

Victorian Council of Social Services

- Ms Emma King, Chief Executive Officer
- Ms Deborah Fewster, Manager - Advocacy
- Ms Charlotte Newbold, Policy Advisor

Hospo Voice

- Mr Tim Petterson, Organiser
- Mr Darcy Moran, Member

Young Workers Centre

- Ms Mairead Lesman, Acting Director
- Ms Jorja Hickey

Brotherhood of St Laurence

- Ms Emma Cull, Senior Manager Service Development and Strategy
- Dr Joseph Borlagdan, Principal Research Fellow

Australian Unemployed Workers Union

- Mr Peter Littlejohn, National Operations Co-Coordinator
- Ms Kristin O'Connell, Communications Coordinator

Victorian Trades Hall Council (VTHC)

- Dr Carina Garland, Assistant Secretary

Australia Institute, Centre for Future Work

- Dr James Stanford, Economics and Director
- Mr Dan Nahum, Economist

United Workers Union

- Mr Ben Redford, Director

Australian Services Union

- Ms Lisa Darmanin, Branch Secretary - Victorian and Tasmanian Branch
- Mr Leon Wiegard, Assistant Branch Secretary - Victorian and Tasmanian Branch

- Mr Andy Sinclair, Member - Victorian and Tasmanian Branch

Maurice Blackburn Lawyers

- Mr Kamal Farouque, Principal Lawyer

Australian Higher Education Industrial Association

- Mr Stuart Andrews, Executive Director

Wednesday, 21 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Fair Work Ombudsman

- Mr Jeremy O'Sullivan, Chief Counsel
- Mr Steven Ronson, Executive Director – Enforcement

Aged Care Industry Association

- Mr Luke Westenberg, Chief Executive Officer

Australian Chamber of Commerce and Industry

- Mr Scott Barklamb, Director - Workplace Relations
- Ms Tamsin Lawrence, Deputy Director - Workplace Relations

Australian Industry Group

- Mr Stephen Smith, Head of National Workplace Relations Policy
- Ms Julie Toth, Chief Economist

Thursday, 10 June 2021

Committee room 2S3

Parliament House

Canberra

Retail, Wholesale and Department Store Union

- Mr Lawrence Ben, Political Coordinator

Professor Paula McDonald, Professor of Work and Organisation – Queensland University of Technology Business School (Private capacity)

Amazon Commercial Services Pty Ltd (Amazon Australia)

- Mr Michael Cooley, Director - Public Policy Australia and New Zealand
- Mr Ryan Smith, Manager - Public Policy

Transport Workers' Union of Australia

- Mr Micheal Kaine, National Secretary

International Transport Federation

- Mr Scott McDine, Head - Sydney ITF Office

Shop, Distributive and Allied Employees Association

- Mr Bernie Smith, Branch Secretary-Treasurer

Safe Work Australia

- Ms Rebecca Newton, Branch Manager - Chemicals, Occupational Hygiene Policy and High Risk Work Policy
- Ms Meredith Bryant, Branch Manager
- Ms Sarah Costelloe, Branch Manager

Tuesday, 13 July 2021
Senate Committee Room 2S1
Parliament House
Canberra

Dr Stephan Whelan, Private capacity

Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)

- Mr Stephen Smyth, District President, CFMMEU Mining & Energy Division Queensland District
- Mr Chad Stokes, mine worker
- Mr Wayne Goulevitch, mine worker

Queensland Council of Unions

- Mr Michael Clifford, General Secretary

One Key Resources

- Mr Ben Lewis, Managing Director

Chandler Macleod

- Mr Peter Acheson, Chief Executive Officer
- Mr Alan Hayes, Regional Manager, Mining
- Mr Mark Graham, Chief People Officer & Head of Industrial Relations

Hays Recruitment

- Mr Nick Deligiannis, Managing Director, Australia and New Zealand

Mackay Regional Council

- Councillor Greg Williamson, Mayor
- Councillor Karen May, Deputy Mayor

Resource Industry Network (RIN)

- Mr Tim Magoffin, Deputy Chairperson
- Mr Dean Kirkwood, General Manager

Wednesday, 14 July 2021
Senate Committee Room 2S1
Parliament House
Canberra

Minerals Council of Australia

- Mr Sid Marris, Deputy Chief Executive Officer – Strategy, State & Territory Relationships
- Dr Matthew Steen, General Manager – Economic Policy
- Mr Warwick Jones, Chair, MCA Workplace Relations Reform Taskforce

Anglo American Australia

- Mr Warwick Jones, Head of Human Resources

BHP

- Mr Matthew Furrer, Vice President – Operations Services

Rio Tinto

- Mr Ben Mansour, General Manager Employee Relations and Human Resources

Australian Workers Union

- Mr Daniel Walton, National Secretary

Health Services Union – NSW/ACT/QLD

- Mr Gerard Hayes, Secretary
- Ms Lauren Hutchins, Aged Care Division Secretary

Queensland Nurses and Midwives' Union

- Ms Ashleigh Pawsey, Research and Policy Officer
- Mr Kevin Crank, Industrial Officer
- Ms Sherree Clarke, Growth and Campaigns Officer
- Ms Virginia Mashford, Member

Chamber of Commerce and Industry Queensland

- Ms Luisa Baucia, Policy Advisor
- Mr Corey Dyer, HR Services Operations Manager

Ms Cherie Miller, Principal Consultant and Master Trainer, Suicide Prevention Programs, Patria Consulting; and Chairperson, Moranbah Community Health Partnership

Isaac Regional Council

- Councillor Anne Baker, Mayor
- Councillor Kelly Veve, Deputy Mayor, Councillor Division 5

Monday, 26 July 2021

Main Committee Room

Parliament House

Canberra

Master Builders Australia

- Mr Shaun Schmitke, Chief Executive Officer

Circle Green Community Legal

- Mr Rowan Kelly, Legal Practice Manager

Dr Caleb Goods, Private capacity

Dr Tom Barratt, Private capacity

Western Australian Council of Social Service Inc.

- Mr Chris Twomey, Leader Policy & Research
- Ms Eva Perroni, Social Policy Officer

UnionsWA

- Mr Owen Whittle, Secretary
- Mr Tim Dymond, Organising and Strategic Research Officer
- Ms Jill Hugo, Assistant Branch Secretary
- Mr Peter O'Keeffe, General Secretary

Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)

- Mr Dave Noonan, National Secretary
- Mr Mick Buchan, State Secretary, Western Australia
- Mr Stephen Catania, Co-ordinator, Political and Industrial
- Ms Lucinda Weber, Senior National Legal Officer

Australian Manufacturing Workers' Union

- Mr Steve McCartney, State Secretary, Western Australia
- Mr Chris Kirkby, Member

Electrical Trades Union of Australia

- Mr Peter Carter, Secretary, Western Australia

Tuesday, 27 July 2021

Main Committee Room

Parliament House

Canberra

Recruitment, Consulting and Staffing Association (RCSA)

- Mr Charles Cameron, Chief Executive Officer
- Ms Brooke Lord, Head of Advocacy and Policy

The WorkPac Group

- Mr Cameron Hockaday, Chief Commercial and Risk Officer

Mr Duncan Fletcher, Private capacity

Programmed Skilled Workforce

- Mr Nic Fairbank, Chief Executive Officer
- Mr Kevin Cameron, Head of People

HR Nicholls Society

- Mr Kyle Kutasi, President

Transport Workers' Union of Australia

- Mr Tim Dawson, Branch Secretary, Western Australia

The National and State Youth Peaks

- Mr Stefaan Bruce-Truglio, Senior Policy & Advocacy Officer, Youth Affairs Council of Western Australia
- Mr Luke Rycken, Executive Officer, Australian Youth Affairs Coalition

Self Employed Australia

- Mr Ken Phillips, Executive Director

Wednesday, 28 July 2021
Senate Committee Room 1S3
Parliament House
Canberra

Dr Fiona MacDonald, Private capacity

Dr Katherine Ravenswood, Private capacity

United Workers Union

- Ms Carolyn Smith, Aged Care Director
- Ms Melinda Vaz, Aged Care Member

Bolton Clarke

- Ms Melissa Leahy, Chief People Officer

TriCare

- Ms Kerin McMahon, Chief Executive Officer

Heritage Care

- Mr Gregory Reeve, Chief Executive Officer

Australian Resources and Energy Group AMMA

- Mr Tom Reid, Head of Policy & Public Affairs

Friday, 27 August 2021

Senate Committee Room 2S3

Parliament House

Canberra

Australian Public Service Commission

- Mr Patrick Hetherington Acting Deputy Commissioner
- Mr Grant Lovelock, First Assistant Commissioner and Head of APS Academy
- Mr Marco Spaccavento, Assistant Commissioner, Workplace Relations

Department of Finance

- Mr Matt Yannopoulos, Deputy Secretary, Budget and Financial Reporting
- Ms Amanda Lee, First Assistant Secretary, Budget Policy and Coordination Division, Budget and Financial Reporting
- Ms Stacie Hall, Acting Deputy Secretary, Commercial and Government Services
- Mr Gareth Sebar, Assistant Secretary, Significant Matters Taskforce, Procurement and Insurance Division, Commercial and Government Services
- Mr Iain Scott, First Assistant Secretary, Corporate Services Division, Business Enabling Services
- Mr Grant Stevens, Chief Financial Officer, Corporate Services Division, Business Enabling Services

Community and Public Sector Union (CPSU)

- Ms Melissa Donnelly, National Secretary
- Mr Alistair Waters, National President
- Ms Beth Vincent-Pietsch, Deputy Secretary
- Mr Nicholas Thackray, Workplace Delegate

ManpowerGroup Australia

- Mr David Bruch, Chief Financial Officer/Acting Managing Director
- Ms Ellen Nelson, Head of Legal

Australian Maritime Safety Authority (AMSA)

- Ms Sachi Wimmer, Deputy Chief Executive Officer
- Ms Cherie Enders, Chief Operating Officer

Services Australia

- Ms Annette Musolino, Chief Operating Officer
- Mr Michael Nelson, General Manager People

Hays Recruitment

- Mr Nick Deligiannis, Managing Director

Australian Taxation Office

- Ms Michelle Allen, Assistant Commissioner, Risk and Strategy - Employer Obligations
- Ms Emma Rosenzweig, Deputy Commissioner, Strategy and Support

Tuesday, 14 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Communications, Electrical and Plumbing Union of Australia (CEPU)

- Mr Shane Murphy, National Divisional President
- Mr Peter O'Connell, NSW Branch Vice President
- Mr Amir Aghamohammadkhan, Member and NBN field technician sub-contractor
- Mr Burak Sagol, Member and NBN field technician sub-contractor
- Mr Mohammed Yehia, Member and NBN field technician sub-contractor
- Mr Steve Nedelkovski, Member and NBN field technician sub-contractor

BSA

- Mr Tim Harris, Managing Director and Chief Executive Officer
- Mr Richard Bartley, Executive General Manager

NBN Co.

- Mr Stephen Rue, Chief Executive Officer
- Ms Katherine Dyer, Chief Operating Officer
- Ms Sally Kincaid, Chief People and Culture Officer

Australian Competition and Consumer Commission (ACCC)

- Mr Scott Gregson, Chief Operating Officer
- Mr Rami Greiss, Executive General Manager Consumer and Fair Trading
- Ms Sarah Proudfoot, Executive General Manager Infrastructure Regulation

Wednesday, 15 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Ventia

- Mr Neil Barnes, General Manager
- Mr David Black, General Manager People and Capability – Telecommunications Sector
- Mr Tim Harwood, Group Executive, Telecommunications

Service Stream

- Mr Leigh Mackender, Managing Director

Downer Group

- Mr Damien North, Group Manager Industrial Relations
- Mr Steve Schofield, Group Head of Human Resources and Industrial Relations

Fulton Hogan Utilities

- Mr Lee Revell, Chief Executive Officer, Utilities
- Mr Peter Andreopoulos, General Manager Communications

Lendlease

- Mr Toby Matthews, Managing Director, Services

Thursday, 16 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Mr Tony LaMontagne, Private capacity

Australian Women Against Violence Alliance

- Ms Terese Edwards, Chief Executive Officer, National Council of Single Mothers & their Children

COTA Australia

- Mr Ian Yates, Chief Executive

MATES in Construction

- Mr Chris Lockwood, National Chief Executive Officer

Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, Private capacity

National Foundation for Australian Women

- Professor Helen Hodgson, Chair, Social Policy Committee
- Dr Kathleen MacDermott, Member

Suicide Prevention Australia

- Ms Nieves Murray, Chief Executive Officer
- Mr Matthew McLean, Director of Policy and Government Relations

Australian Medical Association

- Dr Antonio Di Dio, AMA Public Health Committee Member

Monday, 11 October 2021

Senate Committee Room 2S1

Parliament House

Canberra

National Farmers' Federation (NFF)

- Mr Tony Mahar, Chief Executive Officer
- Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs

Unions NSW

- Mr Mark Morey, Secretary
- Mr Thomas Costa, Assistant Secretary
- Ms Sophia Nasser, Legal and Industrial Officer
- Ms Kate Hsu
- Mr Decheng Sun

Australasian Centre for Corporate Responsibility

- Dr Katie Hepworth, Director of Workers' Rights

Shop, Distributive and Allied Employees Association

- Mr Gerard Dwyer, National Secretary-Treasurer
- Mr Bernie Smith, NSW Branch Secretary

Dr Joanna Howe, Private capacity

Australian Meat Industry Employees Union

- Mr Matt Journeaux, Queensland Branch Secretary and, Acting Federal Secretary

Teys Australia

- Mr John Langbridge, General Manager Industry and Corporate Affairs

Woolworths Group

- Carmel Pelunsky, Director, Talent and Future of Work
- Tom Windeyer, General Manager, Last Mile with WooliesX
- Craig Adams, General Manager, National Operations, Primary Connect
- Jessica Digby, Workplace Relations Partner;
- Laura McManus, Human Rights Manager
- Maggie Lloyd, Senior Manager, Government Relations and Industry Affairs

Department of Home Affairs

- Mr Pablo Carpay, First Assistant Secretary, People and Culture
- Ms Lee-anne Monterosso, First Assistant Secretary, Procurement, Property and Contracts, Chief Procurement Officer
- Mr Radi Kovacevic, Deputy Group Manager, Chief Information Officer, ICT
- Mr Michael Willard, First Assistant Secretary, Immigration Programs

- Ms Tara Cavanagh, First Assistant Secretary, Immigration Integrity, Assurance and Policy
- Mr Robert Ewing, Economic and Deregulation Chief Economist
- Ms Sharon Huey, Assistant Commissioner, ABF Workforce Command

Department of Foreign Affairs and Trade

- Ms Danielle Heinecke, First Assistant Secretary, Land and Connectivity Division, Office of the Pacific

Department of Agriculture, Water and the Environment

- Rosemary Deininger, Deputy Secretary, Agriculture Policy, Research and Portfolio Strategy

Wednesday, 13 October 2021

Main Committee Room

Parliament House

Canberra

Professor Michael Quinlan & Professor Elsa Underhill, Private capacity

Australian Workers' Union

- Mr Stephen Crawford, Assistant National Secretary
- Mr Shane Roulstone, National Organiser
- Mr Ron Cowdrey, AWU NSW Vice President and Organiser
- Mr Decheng Sun, NSW Assistant Industrial Officer
- Mr Xuelaing Wang, Member
- Mr Feng Wang, Member

Transport Workers' Union of Australia

- Mr Michael Kaine, National Secretary
- Mr Matthew Spring, Vice President, SA/NT Branch
- Mr Theo Seremetidis
- Mr Donald Dixon

Qantas

- Mr Andrew McGinnes, Group Executive Corporate Affairs
- Mr Andrew Finch, General Counsel and Group Executive, Office of the CEO

StarTrack

- Ms Michelle Skehan, Spokesperson
- Mr Nick Macdonald, General Counsel & Corporate Secretary
- Mr Wayne Josh, Operations General Manager

Toll Group

- Ms Elizabeth Ferrier, Group Head, Employee and Industrial Relations
- Mr Peter Stokes, President, Global Logistics

Australian Road Transport Industrial Organisation

- Mr Peter Anderson, Federal Secretary/Treasurer and, Chief Executive Officer - Victoria Transportation Association
- Mr Paul Ryan, National Industrial Officer

Coles

- Ms Vittoria Bon, Government and Industry Relations Manager

FedEx Express Australia Pty Limited

- Mr Peter Gutsche, Managing Director, Operations

Wednesday, 3 November 2021

Senate Committee Room 2S3

Parliament House

Canberra

Australian Education Union Federal Office

- Ms Susan Hopgood, Federal Secretary

NSW Teachers Federation

- Mr Angelo Gavrielatos, President

Independent Education Union of Australia

- Mr Anthony Odgers, Assistant Federal Secretary

Australian Manufacturing Workers' Union

- Mr Steve Murphy, National Secretary
- Mr Aaron Malone, Organiser
- Mr Chris Cleave, Union Delegate

Mondelez International

- Mr Darren O'Brien, President Australia, New Zealand, and Japan

Young Workers Centre, Unions ACT

- Ms Arian McVeigh, Manager
- Ms Sabrina Clarke, Young worker, Volunteer
- Mr Lorenzo McMiken, Young worker, Volunteer

Australian Hotels Association

- Mr Stephen Ferguson, National Chief Executive Officer
- Mr Sean D'Almada-Remedios, Senior Lawyer

Restaurant & Catering Industry Association of Australia

- Mr Wes Lambert, Chief Executive Officer

Centre for International Corporate Tax Accountability and Research (CICTAR)

- Mr Jason Ward, Principal Analyst

Unions Tasmania

- Mrs Jessica Munday, Secretary
- Ms Thirza White, General Secretary – Community and Public Sector Union
- Mr John Short, Tasmanian State Secretary – Australian Manufacturing Workers Union
- Mr Michael Wickham, State Organiser – Australian Manufacturing Workers Union
- Mr Kerry Goodwin
- Ms Natalie Barkoczy

Thursday, 4 November 2021

Senate Committee Room 2S3

Parliament House

Canberra

Ms Lorna Berry, Private capacity

Uber Driver X, Private capacity

Australian Council of Trade Unions (ACTU)

- Ms Michele O'Neil, President
- Ms Antonia Aitken, private capacity

Uber

- Mr Dominic Taylor, General Manager Mobility
- Mr Matthew Denman, General Manager Delivery

Amazon Australia

- Mr Craig Fuller, Director, Amazon Australia Operations
- Mr Michael Cooley, Director, Public Policy, Amazon Australia and New Zealand

Emeritus Professor David Peetz, Private capacity

United Workers Union (UWU)

- Ms Lyndal Ryan, Director Property Services
- Ms Christine Wagland, private capacity
- Mr Leonardo Barajas, private capacity
- Ms Karma Dema, private capacity

Oz Group

- Mr James Kellaway, Chief Executive Officer
- Ms Kylie Hoschke, Seasonal Worker Project Manager

Australian Bureau of Statistics

- Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch
- Ms Gemma Van Halderen, General Manager, Population, Labour and Location Statistics Division

Assetlink

- Mr Ron Heinrich, Chairman – Assetlink Group
- Ms Allison Freeman, National Human Resources Manager

Monday, 6 December 2021

The King Street Room

NEX

309 King Street

Newcastle West

CFMEU Mining & Energy

- Mr Alex Bukarica, Director, Legal and Industrial

Glencore

- Ms Cassandra McCarthy, Corporate Affairs, Australia
- Mr Clint Milner, Group Manager, Human Resources Queensland Metals

Hunter Workers

- Ms Annette Bennett, TAFE Organiser, NSW Teachers Federation
- Ms Zoe Moxon
- Mr Leigh Shears, Secretary, Hunter Workers
- Mr Andrew Tran, Organiser, Health Services Union

Tuesday, 7 December 2021

The King Street Room

NEX

309 King Street

Newcastle West

National Tertiary Education Union (NTEU)

- Dr Damien Cahill, Secretary
- Dr Sharon Cooper, Member
- Dr Chloe Killen, Casual Academic

University of Newcastle

- Professor Kent Anderson, Deputy Vice-Chancellor, Global
- Mr Martin Sainsbury, Chief People and Culture Officer

Australian Manufacturing Workers' Union

- Mr Shaun Goss, Delegate
- Mr Daniel Patterson, Member
- Mr Bradley Pidgeon, Organiser

Progress Rail

- Mr Brett McLennan, Director, Business Development

Downer Group

- Mrs Sarah Hale, Group Manager HR Processes and Systems,
- Ms Melissa Hogan, Industrial Relations Manager, Rail and Transit Systems

Hunter Jobs Alliance

- Mr Warrick Jordan, Coordinator

Wednesday, 8 December 2021

Main Committee Room
Parliament House
Canberra

Finance Sector Union of Australia

- Ms Angela Budai, National Policy Officer
- CBA Worker 1, Member
- Ms Emily Holm, Campaign Manager

PwC

- Ms Catherine Walsh, Head of People and Culture

Downer EDI Ltd

- Mr Anthony Jukes, General Manager, People and Culture, Facilities and Asset Services
- Mr Grant Robinson, Head of Human Resources, Government

Transport Workers' Union of Australia

- Mr Michael Kaine, National Secretary
- Mr Troy Rogers, National Aviation Campaign Coordinator

Swissport

- Mr Brad Moore, Managing Director, Australasia

Commonwealth Bank of Australia

- Mr Andrew Culleton, Executive General Manager, Group People Services
- Mr Euan Robertson, General Manager, Government, Industry and Sustainability

Worker X, Private capacity

Wednesday, 2 February 2022

Senate Committee Room 2S1
Parliament House
Canberra

Mr Geoff Smith and Mrs Jane Smith, Private capacity

Ms Dana Levitt, Private capacity

Mankon, Private capacity

Aleki, Private capacity

Moses, Private capacity

Sergio, Private capacity

Talipope, Private capacity

Australian Workers' Union

- Ms Kate Hsu, Member
- Mr Decheng Sun, NSW Assistant Industrial Officer
- Mr Daniel Walton, National Secretary

Australian Border Force

- Mr Phil Brezzo, Assistant Commissioner, South and Enforcement Division

Department of Home Affairs

- Ms Tara Cavanagh, First Assistant Secretary, Immigration Integrity, Assurance and Policy Division
- Ms Cheryl-anne Moy, Deputy Secretary, Immigration and Settlement Services Group

Department of Foreign Affairs and Trade

- Ms Danielle Heinecke, First Assistant Secretary, Labour and Connectivity Division, Office of the Pacific
- Ms Helen McCormack, Assistant Secretary, Pacific Labour Operations Branch
- Ms Carly Partridge, Assistant Secretary, Agriculture Visa Branch
- Ms Carli Shillito, Assistant Secretary, Pacific Labour Policy and Engagement Branch, Office of the Pacific

Department of Education, Skills and Employment

- Ms Irina Kalachov, Director, Harvest Trail Management and Reporting Team
- Ms Margaret Kidd, First Assistant Secretary, Workforce Division

Fair Work Ombudsman

- Ms Louise Peters, Executive Director, Engagement Branch

Australian Council of Trade Unions (ACTU)

- Ms Michele O'Neil, President, Australian Council of Trade Unions
- Mr Matt Journeaux, Queensland Branch Secretary and Acting Federal Secretary, Australasian Meat Industry Employees Union

*Mr John Azarias, Private capacity**Queensland Farmers Federation*

- Mr Rod Morris, Industry Skills Adviser for Primary Industries, Rural Jobs and Skills Alliance
- Dr Diana Saunders, Project Manager, Rural Jobs and Skills Alliance

Thursday, 3 February 2022

Senate Committee Room 2S1
Parliament House
Canberra

Mr Nicholas Robinson, Casuals Representative, University of Melbourne Branch, National Tertiary Education Union

Dr Melissa Slee, State Secretary, Victorian Division, National Tertiary Education Union

Dr James Stratford, Private capacity

University of Melbourne

- Professor Nicola Phillips, Provost
- Dr Julie Wells, Vice-President, Strategy and Culture

Attorney-General's Department

- Ms Jody Anderson, First Assistant Secretary, Safety and Industry Policy Division
- Mr Gregory Manning, First Assistant Secretary, Employee Entitlement Safeguards and Policy Division
- Ms Alexandra Mathews, First Assistant Secretary, Employment Conditions Division
- Mr Kevin Quek, Director, Economic and Workplace Agreement Analysis
- Ms Anne Sheehan, First Assistant Secretary, Industrial Relations Legal Division
- Ms Lace Wang, Assistant Secretary, Safety Net Branch, Employment Conditions Division
- Ms Jennifer Wettinger, Assistant Secretary, Economics and International Labour Branch, Employment Conditions Division

CFMMEU – Manufacturing Division

- Mr Michael O'Connor, National Secretary
- Mr Travis Wacey, National Policy Research Officer

Australian Border Force

- Mr Phil Brezzo, Assistant Commissioner, South and Enforcement Division

Department of Home Affairs

- Ms Tara Cavanagh, First Assistant Secretary, Immigration Integrity, Assurance and Policy Division
- Ms Cheryl-anne Moy, Deputy Secretary, Immigration and Settlement Services Group

Australian Forest Products Association

- Mr Ross Hampton, Chief Executive Officer
- Mr Victor Violante, Chief Executive Officer, Australian Forest Products Association New South Wales

Mr Daniel Wild, Private capacity

Mr Tony Wood, Private capacity