

Fair Work Amendment
(Supporting Australia's Jobs
and Economic Recovery)
Bill 2020

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1. Introduction

The Finance Sector Union (FSU) is a registered industrial organisation under the *Fair Work (Registered Organisations) Act 2009*. FSU represents members in the finance and insurance industry in Australia. This industry consists of approximately 459,000 employees nationwide (approximately 3.5% of the workforce)¹, with women making up approximately 54.7% of the total number of workers within the sector. Australia's post-COVID economic recovery depends on secure, well-paid work underpinned by a national economic reconstruction plan. The Australian Council of Trade Unions (ACTU) has outlined such a program in "Australia's Economic Reconstruction after COVID-19: A National Jobs Plan".²

Regressive industrial relations laws that enable cuts to workers' wages, increase the likelihood of insecure work, and remove protections for workers, will significantly impede economic recovery. The Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (FWA Bill) is such a law. It is the opposite of what Australia needs.

Implementation of the FWA Bill represents a betrayal of the workers who kept Australia running during the dark times of the pandemic lockdown. Essential workers, as they became known, risked their health, and sacrificed much to keep the economy going. Now, these very same workers are facing their pay and conditions being cut. Rushing to implement this bill is an unconscionable and cynical use of the COVID-19 pandemic to attack workers' rights. During the pandemic, organised labour by the ACTU came to the fore and set aside its grievances with employers and the Government for Australia's good.

As ACTU Secretary Sally McManus said:

"... the union movement has had its national role returned to where it should always have been – as a widely accepted part of Australia's civil society, and a trusted social partner for governments and businesses. This consultation and cooperation must not only belong to the pandemic – it **MUST** become business as usual again in Australia as it makes us better as a country. Governments and employers may not always like or agree with what we have to say, but decision making is improved when our capacity, as well as workers' experience and

1. <http://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/FinancialandInsuranceServices>

2. Australia's Economic Reconstruction after COVID-19: A National Jobs Plan, ACTU, Melbourne, 2020

perspective, are at the table. If we are good enough to be relied upon during a crisis, if we are trustworthy enough to have us in the room facing a pandemic, if unions were needed to get us through the toughest of times – surely the voice of working people has a place at the table in an ongoing way.”³

The FWA Bill contains provisions that limit the rights of workers in the following areas:

- Casuals
- Agreements and the Better Off Overall Test (BOOT)
- Awards

2. Casuals, Part-Time Workers, and Awards

The draft bill introduces a definition for casuals into the Fair Work Act for the first time, which will work in an employer’s favour. All an employer will have to demonstrate is that they have informed an employee that they were a casual at the point of engagement – this diverges from current case law whereby an employee’s history of employment, pattern of work and pay, etc. can be examined in a dispute about whether they were, in fact, a permanent employee rather than a casual. The definition will also apply retrospectively so that an employee is prevented from making any claims after the commencement of the provision because the ‘set-off’ provisions will apply to accrued entitlements and loadings that have been paid to a casual.

Economist Dr Jim Stanford has said that:

“The new bill clarifies the definition of casual work in the most expansive way possible: a casual job is any position deemed casual by the employer and accepted by the worker, for which there is no promise of regular continuing employment. In other words, any job can be casual, so long as workers are desperate enough to accept it. This will foster the further spread of insecure employment without paid leave entitlements.”⁴

3. McManus Sally, *Speech to National Press Club*, December 2, 2020

4. Stanford, J, *so much for consensus: Morrison government’s industrial relations bill is a business wish list*, The Conversation, December 2020.

Modern Awards

The bill extends the flexibility provisions implemented into 12 Awards during the COVID-19 pandemic, and although the Award that covers the banking and finance industry (the Banking and Finance Industry Award) is not one of these 12, a change to the regulations means that the BFI Award can be added to the list at any time. Currently, the Banking and Finance Industry Award (BFI) provides that additional hours worked by part-timers are paid at overtime rates. These rules will allow employers to alter hours for regular part-timers without incurring overtime penalties or other costs. The proposed clause diminishes the protection that part-timers covered by the BFI Award presently have against working beyond their contracted hours for only single rates of pay. This will allow employers to effectively use part-time workers as yet another form of casual, just-in-time labour.

Case Studies

Additional hours for part-time employees and unpaid work

Unpaid work is rife in the banking and finance sector especially in the Big 4 Banks. Lending staff across the banking sector frequently work back after hours performing administrative duties that they simply do not have time for during regular working hours. Customer service staff are also working after their finishing times because of the preference for traditional in-branch customer service over digital. Working unpaid hours has become institutionalised in our major financial organisations and this constitutes wage theft. The proposed legislation will formalise wage theft at the very same time the Government is seeking to stamp out what it calls 'underpayments'.

ANZ Member Cases

1. Customer Service Officer:

"Continuing staff reductions means I can often work as the only service person on & I sometimes feel unsafe working by myself should a situation occur with a difficult customer. Our Branch is large, and the sales consultants are quite a distance from service area which makes it difficult should I need assistance. Continually working over our finish time by 15 to 30 minutes each shift which has become expected or normal of us to do this. Continual staff shortages & we are expected to just cope with reduced staff which is not good for proper

customer service standards & from time to time causes us to make errors & bring down staff morale when we are so busy.”⁵

2. Home Loan Officer:

“We have worked long hours; we have used our own time and funds to set up suitable working environments. We work late nights to cover urgent requests. We have the ability to juggle home and work with no change in our environment, not giving us head space or down time. We love our work and we have more time, but its more time for us to work and meet or targets.”⁶

3. Customer Service Officer:

“Because over the last 7 months I have averaged 3 to 4 hours unpaid overtime... and was happy to do that to help as I felt it was a crisis and realised the bigger picture however now I see that ANZ is just using the pandemic as an excuse to close branches and cut staff. Those who remain are being overworked and not appreciated! It is affecting our mental health.”⁷

NAB

As a result of FSU members raising concerns about underpayments with NAB in mid-2020, an end-to-end audit of the pay system was conducted, uncovering a \$128M underpayment. FSU welcomed this as we believe there are many issues to be uncovered and investigated to ensure all staff are being paid correctly. These underpayments went back to 2012.⁸

WBC

Again, in mid-2020 the FSU wrote to Westpac outlining our concerns and requesting an urgent review of payroll systems to ensure staff are receiving their correct pay and entitlements. Following our correspondence and meeting with Westpac – they confirmed a full analysis of the payroll systems has uncovered underpayment issues relating to long service leave calculations and payments affecting eight thousand current and former employees. Westpac estimate the total cost of underpayments is about \$8M.⁹

5. Finance Sector Union Research Paper, *ANZ Pay Announcement: Members Respond*, Melbourne, 2020

6. Op Cit

7. Op Cit

8. <https://www.fsunion.org.au/nab-underpayments-win/> October 2020

9. <https://www.fsunion.org.au/westpac-underpayments-eight-thousand-employees/> July 2020

3. Agreements and BOOT

The Better Off Overall Test (BOOT) means that enterprise agreements cannot undercut minimum standards in industry awards. The bill suspends the BOOT test for two years, and even when, if, restored after agreements approved during that window would remain in effect (enterprise agreements typically last three to four years). Even after they expire, under Australian law they remain in effect until replaced by a new agreement or terminated by the FWC – neither of which is likely in a non-unionised workplace. There is simply no way that this cannot result with workers having their wages and conditions cut.

The draft proposals introduce significant reductions in the obligations and responsibilities currently placed on employers that protect wages and conditions of workers. For example, the legislation:

- Removes the role of the Commission in ensuring that agreements do not exclude or undermine the safety net.
- Requires the approval process to be completed within 21 days (with some exceptions). This will limit affected workers' ability to learn about and resist their loss of benefits and conditions.
- The bill restricts unions from intervening in agreements they were not directly involved in negotiating (including intervening against agreements that had no union involvement at all).

Again, the sum effect of these changes will be to allow employers to pay their workers less, cut their conditions, and weaken the ability of unions to represent their members.

'Zombie Agreements'

The FSU is supportive of the move to bring down the curtain on pre-Fair Work Act Australian Workplace Agreements (AWA's). Transitional arrangements will need to be put in place to ensure that workers are no worse off and that we have appropriate safety provisions in place. Thousands of finance sector workers have spent more than 20 years on AWA's and transferring these workers to an enterprise agreement can only be a good thing, as long as they are transitioned at no loss of salary and conditions.

The FSU is presently negotiating with the Commonwealth Bank of Australia (CBA) to stop using AWAs, as well as proxy AWAs such as ITEAs (Individual Transitional Employment Agreement) and now IFAs (Individual Flexibility Arrangement). These arrangements gave rise to millions of dollars in wage theft and they leave workers worse off. It is time for them to go.

4. Essential Workers

Without the dedication of frontline workers in banks, health and aged care, retail and supermarkets, and delivery workers among many more, Australia's economy would be in a worse state than it is presently. The FSU is presently running a campaign for the banks to recognise their frontline customer service staff with an Essential Workers allowance, as other industries have already done (retail, for example).

Case Studies

Essential Workers on the Frontline

WBC Customer Service Officer:

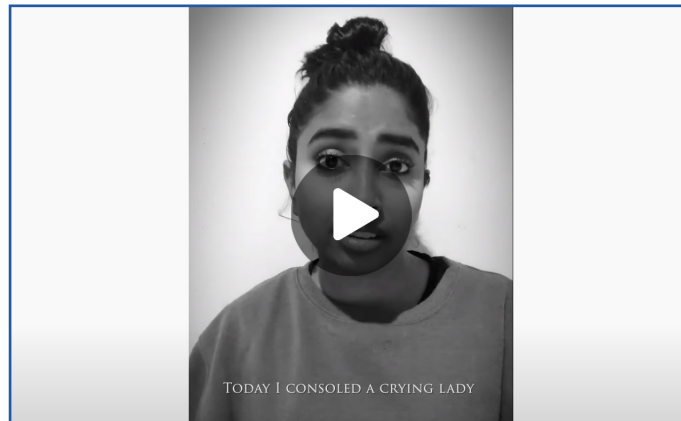
"Not only is our health being put at risk but we are dealing with a number of different issues due to Corona. Vulnerable customers, desperate for assistance and suffering mental health issues and complex problems. We aren't trained and do our best but it is taking a toll on my physically and emotionally. All the while trying to meet our performance so we can keep our jobs. That is what I am being told on a weekly basis. targets, not to meet bonuses but to say relevant"

ANZ Loan Officer:

"Not only have we worked in face to face roles during a pandemic, we have had a 90% increase in foot traffic, work loads have increased and we don't have a choice to work from home like majority of the other staff members inside of ANZ. This has created extra stress having to send children to school with so much uncertainty. Frontline staff still remain locked in battles with when leave is wanting to be taken. Pressure on sales still is forefront".

The COVID-19 experience for frontline bank staff is captured in this video made by the FSU:

Today I Was Scared - What Was Your COVID Workday Like?



5. Conclusion

The FSU does not support the introduction of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020. The impact on FSU members and all workers is broad. The bill contains proposals that will significantly reduce and diminish the checks and balances that currently protect workers and further enhance and entrenches employers' power. Removal of the BOOT test will result in loss of pay and conditions, and there will be less job security.

Increased consumer demand is a key plank in the Governments' post-COVID economic recovery plan. Cutting and suppressing wages puts the recovery at risk. Income is also being progressively withdrawn from the economy as the Government winds back the JobKeeper program and cuts benefits back to pre-COVID levels. Small businesses need customers with secure jobs and steady incomes and we need a strong local economy where workers can spend with confidence, secure in the knowledge that their jobs are safe.

The FWA bill requires substantial amendment, and if this does not happen, it should be rejected in its entirety.