



30 March 2021

SUBMISSION TO THE SENATE SELECT COMMITTEE ON JOB SECURITY

1 INTRODUCTION

- 1.1. The Migrant Workers Centre ('MWC') welcomes the opportunity to provide this submission to the Senate Select Committee on Job Security.
- 1.2. The MWC is a non-profit organisation located in Carlton, Victoria, that helps migrant workers understand their rights and get empowered to enforce them. By 'migrant workers' the MWC refers to persons who were born in a country other than Australia and work in Australia under instructions for income. Its goal is to end labour exploitation and fix our workplace system so that every worker, regardless of their migrant status, is treated with dignity and respect.
- 1.3. We understand job security as a condition of having a decent job with certainty of the continuation of the job. Many migrant workers on temporary visas cannot enjoy job security because the restrictive conditions and short expiries of the visas lower their chances of getting a decent job or the continued undertaking of the job. Migrant workers on temporary skilled visas may seem to enjoy job security, but in reality, many cannot freely access their entitlements because their employers threaten to cancel their visa sponsorship.
- 1.4. Furthermore, the growth of insecure work has a disproportionate impact on migrant workers. By insecure work, we refer to the ACTU's definition as poor-quality work that provides workers with little economic security and little control over their working lives. Indicators of insecure work include:
 - unpredictable, fluctuating pay;
 - inferior rights and entitlements, including limited or no access to paid leave;
 - irregular and unpredictable working hours, or working hours that, although regular, are too long or too few and/or non-social or fragmented;
 - lack of security and/or uncertainty over the length of the job; and
 - lack of voice at work on wages, conditions and work organisation.¹
- 1.5. This submission discusses how insecure work affects migrant workers with a focus on (a) sham contracting and (b) casualisation. At the same time, it discusses how insecure work exacerbates the vulnerability of migrant workers on temporary visas and those without documentation.

¹ ACTU, 2011, "The future of work in Australia: dealing with insecurity and risk", p.3.

1.6. Specifically, the submission makes recommendations regarding the following Terms of Reference:

- 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 effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies; and
- e) accident compensation schemes, payroll, federal and state and territory taxes.

2. SUMMARY OF RECOMMENDATIONS

Recommendation 1. Workers who receive instructions and clock on and off at work should be given the same workplace rights and entitlements as employees under the *Fair Work Act 2009*.

Recommendation 2. A national labour hire licensing scheme should be introduced that replicates and scales up the best-practice requirements of the Queensland and Victorian state schemes.

Recommendation 3. Gig economy workers should be protected from excessive control by platform-operator businesses through the establishment of Fair Conduct and Accountability Standards.

Recommendation 4. Business practices of keeping piece rates low to the effect of a majority of workers earning below a living wage should be regulated.

Recommendation 5. The national minimum wage should be increased to a living wage.

Recommendation 6. The federal government should provide information about workplace rights in community languages, upon issuing temporary visas with work rights, to those who are issued the visas offshore. It should also facilitate follow-up education upon arrival by funding trade unions and community legal centres to offer workplace rights workshops in community languages.

Recommendation 7. The state and federal governments should minimise the use of short-term contracts and casual employment and should not award public contracts to businesses with records of sham contracting or wage theft.

Recommendation 8. The use of casual employment should be limited to an absolute necessity. The *Fair Work Act 2009* should be revised to require an employer to justify variations to a casual employee's regular pattern of hours. Any discontinued engagement of a casual employee with the intention of avoiding offering the conversion and replacing them with another casual employee should be penalised for unfair dismissal.

Recommendation 9. Visa conditions that restrict one's right to work should be removed. By priority, all bridging visas granted to asylum seekers should have reasonably long expiries with work rights to facilitate their employment while they wait for protection outcomes.

Recommendation 10. Workers' access to and representation by unions should be improved by the removal of restrictions on unions' right of entry to workplaces.

3. SHAM CONTRACTING

- 3.1. Contracts with service providers are meant to facilitate business operations where a business has insufficient skills or expertise to operate effectively. Regrettably, some big businesses abuse independent contracts to avoid paying workers award rates or the national minimum wage. By replacing employment contracts with independent contracts, such businesses damage Australia's job security and distort the structure of labour market.
- 3.2. These businesses assign the same duties to their employees and independent contractors and impose regular working hours under instructions and supervision to both of them. The only difference between an independent contractor and an employee may be that the former has an ABN while the latter has an employee lanyard. This small difference, however, may have significant implications on workplace rights and entitlements. Independent contractors may get paid less because award rates and the national minimum wage do not apply to them. They are not entitled to annual leave, personal/carer's leave, or redundancy pay, either.
- 3.3. The state and federal governments should set an example to the private sector by minimising the use of short-term contracts and casual employment. They should not award public contracts to businesses with records of sham contracting or wage theft to deter businesses from creating insecure work conditions.
- 3.4. Many temporary migrant workers are not familiar with Australian industrial relations and get easily taken advantage of dodgy bosses who force them to apply for an ABN. In extreme cases, the *de facto* employers use migrant workers' details and apply for ABNs without their knowledge. They would abuse the ABNs to dump their tax responsibilities on to the workers.
- 3.5. It is important for the federal government to more actively seek ways to provide information about workplace rights to migrant workers. Upon issuing temporary visas with work rights, the DHA should deliver workplace rights information to those who are issued the visas offshore in community languages. It should also facilitate follow-up education upon migrant workers' arrival by funding trade unions and community legal centres to offer workplace rights workshops in community languages.
- 3.6. Migrant workers report to the MWC the following three types of exploitative independent contracts that fall under the name "sham contracts": (a) direct employment relationships in disguise of independent contracts, (b) labour hire arrangements based on service agreements, and (c) work assignments via "gig economy" platforms with unchecked power over workers.
- 3.7. The first type of sham contract jobs is often advertised in community languages to target migrant workers. Table 1 below lists a few of such advertisements online

translated in English. What they share in common is that they look for workers who can commit regular working hours for an extended period of time and yet ask for them to provide an ABN.

Table 1. Job advertisements looking for migrant workers on ABNs

Air conditioning duct installer assistant

A highly paying job for those with no experience! **Hourly pay** of \$33 including GST. You need an **ABN** and to be able to work with Aussie workers in English. **Minimum 40-hour work per week, starting 7am and finishing at 3pm.**

Aged care laundry attendant needed

We're looking for an experienced laundry attendant. You need competent English as it's a **permanent part-time position** at an aged care facility. Also needed are an **ABN** and a car.

Recruiting express delivery drivers

Are you looking for a job for a long term and holding a valid visa? Work with us. Hours are **from 6:00 to 16:30, Monday to Friday. We will help you apply for an ABN.**

Hiring: Fire technician

We're looking for someone who can start right away and will **stay with us for a long term**. No experience needed, but electricians or **ABN holders** are preferred. Much opportunity to earn **overtime pay!** Open to any visa holder.

Painters needed!

We are looking for two male painters with excellent skills and experience. Work **starts every morning at 7am and finishes at 3:30pm. Wage is paid weekly.** You need a car, an **ABN**, and a white card. Any visa is okay.

Sources: online community-language websites including hojunara.com; nguoiviettaiuc.com; nichigopress.jp; and yeeyi.com.

- 3.8. The fact that these advertisements promise to offer jobs for a long term does not guarantee that workers can enjoy job security. As independent contractors, without any written commitment of continued engagement, workers may be let go at any time without a proper reason.
- 3.9. Workers on this type of sham contracts come to the MWC when their bosses fail to pay them or when they get injured at work. Only after talking to the MWC they learn that they are not considered to be employees. They are misled to believe they are employees by their bosses who always use terminologies describing employment relationships when giving instructions or making payments. The workers' day-to-day interactions with the bosses are more often than not no different from those of a typical employment relationship.

- 3.10. It is not easy for ABN workers to recover stolen wages or get compensated for workplace injuries. Businesses engaging workers through this type of direct employment relationships in disguise of independent contracts have neither insurances nor a good practice of record keeping because they use this type of engagement in order to avoid paying their workers correctly. As independent contractors, workers are on their own to insure themselves against workplace injuries, pay super, and collect debt from their bosses.
- 3.11. These sham contracts have the potential of not only stealing wages from workers but also taxes from state and federal governments. First, businesses can avoid the employee payroll tax and reduce the income tax. Second, migrant workers are wrongly advised that they are exempt from paying the income tax. Box 1 below shows an English translation of an online post that incorrectly states that workers earning less than \$75,000 a year do not need to pay any tax and advises migrant workers on student visas to make cash-in-hand arrangements and not report any income to the ATO.

Box 1. Online post in community language on tax and student visa

Title: Working with an ABN while staying on a student visa

Date: 20 Sep 2020

Author: Anonymous

It doesn't matter if you are on a student visa or a working holiday visa. You can have an ABN, not just one but many. [...]

The difference between a TFN and an ABN is your wage and tax. Whereas wage is determined by the number of hours you work when you have a TFN, it depends on your boss how much you get paid if you have an ABN. [...] Having an ABN also means that you get taxed on the entire amount you earn. People prefer an ABN because the ATO cannot figure out how many hours worked. Some criticise bosses for hiring ABN workers, but it's actually a "win-win". If you earn less than \$75,000 per year on an ABN, you get freed from paying any tax.

Now suppose the amount your boss reported having paid you didn't match what you reported having earned with your ABN. The ATO might or might not start an investigation, and they cannot tell how many hours you worked after all. [...] If you have a student visa and want to work on two jobs, breaching the 40-hour fortnight restriction, don't bother putting one on a TFN and another on an ABN. The ATO would suspect you earn too much as a student. Just do cash-in-hand.

Source: <https://hojutree.com/ko/bamboo-forest/bamboo-forest-view/?page=1&mode=BB134&strsearch=2&cate=13&cate1=13&idx=781&work=view&c=13>

- 3.12. The second type of sham contract jobs is more complex than the first type because it involves labour hire arrangements. A Senate inquiry on corporate avoidance in 2017 and the Migrant Workers' Taskforce in 2019 have pointed out that the complex structure of labour hire arrangements facilitates the exploitation of migrant workers.²
- 3.13. Labour hire companies, or temporary staff service providers, establish an indirect employment relationship between a business and a worker. There are contract relationships between a user business and a labour hire company and between the labour hire company and a worker, but there is none between the worker and the user business despite the fact the worker receives instructions from the user business.
- 3.14. Labour hire arrangements can harm job security because most labour hire workers are engaged on a casual basis and can be dismissed anytime by either the labour hire company or the user business. As businesses pursue labour flexibility and fill permanent positions with casual labour hire workers, some labour hire workers find themselves working for the same user business for years and still not knowing if they can continue working the next day. In addition, labour hire arrangements are often made to avoid paying workers award rates and infringe employment entitlements.
- 3.15. Some labour hire workers are not even considered casual employees but independent contractors when there is a "service agreement" instead of an employment contract between a worker and a labour hire company. For example, a recent judgment by the Federal Court confirmed that a working holiday maker from the UK had no claim of underpayment against his labour hire company or the user business because his relationship with them was based on a "service agreement" with the labour hire company. The judgment lays bare that our workplace laws fall short of protecting workers who clock on and off, receive instructions, and are paid with no reference to an invoice.³
- 3.16. The "service agreement" mentioned above is used widely when labour hire companies recruit working holiday makers from overseas. Workers come to Australia, believing the service agreement they signed in their home countries is an employment contract, and later get dumbfounded to find out they are on their own in Australia. Box 2 below illustrates how a service agreement is made and exploited to take advantage of migrant workers.

² Senate Education and Employment References Committee, 2017, Corporate Avoidance of the Fair Work Act; Migrant Workers' Taskforce of the Department of Jobs and Small Business, 2019, Report of the Migrant Workers' Taskforce.

³ Federal Court of Australia, 2020, Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2020] FCAFC 122, https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/122.html?context=1;query=personnel%20contracting;mask_path=au/cases/cth/FCAFC.

Box 2. Labour hire service agreement made overseas

Sam (pseudonym) had a job waiting for him in Australia even before he left his home country. An education agency in his hometown had something called a Working Holiday package and took care of everything including his visa application, international return flights, and employment arrangement. The agency gave Sam a document titled “Employment Contract” and told he would be compensated for any industrial accident while working in Australia.

Arriving in Australia, Sam was sent to a meat processing factory where he worked as a boner. The factory supplied Sam with knives and protective gears. Having no prior experience, Sam got injured on the thigh. He had not known that the mesh apron provided was too short for him.

Sam asked his labour hire “manager” for compensation for his medical expenses and sick leave. He was presented a document to sign written in English. Sam complied and waited home for compensation, which never arrived.

When the MWC reviewed Sam’s document, the terms of his “Employment Contract” turned out to be those of a “Service Agreement”, referring Sam as “the applicant” and the labour hire company as “the service provider”. The other document Sam signed after his workplace injury was a “Termination Agreement”. It stated nothing about Sam’s injury but that his misconduct brought the agreement to a closure.

Sam was not able to recover any of his medical expenses nor paid for sick leave. He worked at another meat processing factory through yet another labour hire company until he left Australia at his visa expiry.

3.17. In 2019, the MWC hosted a national conference on labour hire reform and developed a set of 21 principles for the reform based on the recommendations provided by workers and experts.⁴ Box 3 above lists the priority principles.

Box 3. Priorities identified from the MWC’s National Conference on Labour Hire Reform

1. Make it mandatory for labour hire providers in every industry to be licensed by the federal government;
 2. Make it unlawful to engage with unlicensed providers and penalize both unlicensed providers and hosts that engage with them;
 3. Delicense and penalise providers that exploit or abuse labour hire workers;
 4. Penalise hosts that exploit, abuse, or discriminate against labour hire workers;
 5. Impose on hosts the responsibility to spell out a clear pathway, with a timeframe, to convert labour hire workers to direct employees or the lack thereof when engaging with labour hire workers;
 6. Protect any worker who reports the possible existence of an activity by hosts or providers that constitutes a violation of workplace relations, taxation, superannuation and migration laws from retaliatory personnel action or threats of such action;
 7. Establish a statutory, independent authority that is responsible for licensing providers and overseeing compliance with federal and state workplace and OHS laws;
 8. Institutionalise tripartite consultations on protecting labour hire workers and regulating providers and hosts to advise the authority;
 9. Share with state government authorities information on license applications, reports from licensed providers, and complaints against providers and hosts for periodic audits and investigations; and
 10. Give state government authorities discretionary power to audit and investigate providers and hosts and propose to the Federal Government rejections to applications, cancelation of licenses, and penalties.
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3.18. The last type of sham contracts is utilised in the industry called the “gig economy”. In the gig economy, individuals use technology to promote their skills and find work opportunities. Under good and fair regulations, the industry can grow the economy by facilitating the effective use of under-utilised skills. In the absence of regulations, however, the gig economy industry dices up full-time jobs into projects and tasks and contracts them out to independent contractors. Businesses that own digital platforms for the job-skill matching can monopolise the market to the disadvantage of consumers and workers.

3.19. According to the FWO, individuals working in the gig economy are independent contractors when they have the freedom to decide when and how often they work and to balance work with personal commitments such as study, family responsibilities or

⁴ Migrant Workers Centre, 2019, Report of the National Conference on Labour Hire Reform, p.15.

hobbies. The FWO also notes that a gig economy worker might be an employee of a platform operating business when they have an obligation to accept work, wear a platform uniform, and have fixed shifts.⁵

- 3.20. In reality, most gig economy workers have to wear a platform uniform and cannot be selective about when to work in order to keep their task acceptance rate high enough and remain active on the platform. And yet, in many cases the workers' relationship with the company that hosts the digital platform or the consumers who receive their services has been found by courts to be a commercial one than an employment. For example, the FWO's investigation into Uber Australia concluded that Uber drivers are not employees on the basis that they are "not required to perform work at particular times" by the company.⁶
- 3.21. It is important to recognise that some platforms are very specific in the type of work they organise and the way they dictate what workers can and cannot do. Platforms can enable or disable a worker to get allocated a task, set prices, fees, and standards of performance. Most gig economy workers in ride sharing, delivery, and personal services confess that they have no control over how much they are paid and consequently how many hours they work. It is more than clear that these workers are not running their own businesses but are supplying services to platforms and hence should enjoy the same benefits as an employee should.
- 3.22. A recent judgment by the UK Supreme Court suggests that there are alternatives to the dichotomous understanding of gig economy workers. Rejecting both the independent contractor and employee categories, the UK Supreme Court confirmed that Uber drivers are "workers" under UK workplace laws.⁷
- 3.23. The definition of a "worker" in the UK includes individuals paid to perform services under a contract for another who is not a client/customer. While "workers" are not protected from unfair dismissal or entitled to notice or redundancy pay, they are provided a right to the national minimum wage, paid leave and breaks, and protection against unlawful discrimination.
- 3.24. The UK Supreme Court also found it wrong to use written contracts as a starting point for deciding their employment type. Although the drivers had independent contracts

⁵ Fair Work Ombudsman, n.d., "Gig Economy", available at <https://www.fairwork.gov.au/find-help-for/independent-contractors/gig-economy>.

⁶ Fair Work Ombudsman, 2019, "Uber Australia investigation finalised", available at <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/june-2019/20190607-uber-media-release>.

⁷ Supreme Court of the United Kingdom, 19 February 2021, Uber BV and others (Appellants) v Aslam and others (Respondents) [2021] UKSC 5 On appeal from: [2018] EWCA Civ 2748.

with Uber, the company had significant control over how they performed services and imposed contractual terms without their input.

- 3.25. The *Fair Work Act 2009* needs to be updated to provide better protections to new types of workers including gig economy workers. In 2018, the Victorian Government commissioned the Inquiry into the Victorian On-Demand Workforce to the former Fair Work Ombudsman Natalie James. The Report of the Inquiry made 20 recommendations aimed at better protecting gig economy workers. Box 4 below lists the priority recommendations of the Inquiry.

Box 4. Victorian Government's recommendations on job security in the gig economy⁸**1. Clarify and codify work status**

to reduce doubt about work status and, therefore, the application of entitlements, protections and obligations for workers and business, and align legislative definitions across the statute books.

2. Streamline advice and support

for workers whose work status is borderline.

3. Provide fast-track resolution

of work status so workers and business do not operate with prolonged doubt about the rules.

4. Provide for fair conduct for platform workers

who are not employees through establishing Fair Conduct and Accountability Standards that are principles based and developed through a consultative process with relevant stakeholders.

5. Improve remedies for non-employee workers

to address deficiencies and anomalies in the existing approach.

6. Enhance enforcement

to ensure compliance, including where sham contracting has occurred.

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⁸ Victorian Government, 2020, Report of the Inquiry into the Victorian On-Demand Workforce, p.191.

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Recommendation 7. The state and federal governments should minimise the use of short-term contracts and casual employment and should not award public contracts to businesses with records of sham contracting or wage theft.

4. CASUALISATION

4.1. According to a recent amendment of the *Fair Work Act 2009*, a person is considered a casual employee if:

- a. an offer of employment is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work; and
- b. the person accepts the offer on that basis; and
- c. the person is an employee as a result of that acceptance.⁹

This definition needs a revision because it gives businesses an excuse to harm working people's job security irrespective of their true pattern of work.

4.2. Although the amendment makes the first time casual employment is defined in Australia's industrial laws, the labour market has already gone through substantive casualisation in the last couple of decades.¹⁰ As a matter of fact, Australia is leading the world in terms of the casualisation of workforce: 24.4 per cent of all employees, or over 2.6 million workers, were engaged on a casual basis before COVID-19.¹¹

4.3. Casual employment is one of the most widespread forms of insecure work. Casual employees can work only when their employers give them rostered hours. Irregular work patterns, uncertainty, discontinuity, intermittency of work and unpredictability are the usual features of casual employment.

4.4. The MWC is mindful of the fact that casualisation has grown in the last decades together with Australia's temporary migration programs. As the federal government issues an unlimited number of temporary visas, migrant workers on temporary visas make up around 8 per cent of Australia's workforce today.¹²

4.5. Indeed, one of the characteristics of casualised workforce is a higher proportion of migrant workers. Lacking the social capital needed for finding decent jobs, migrant workers are disproportionately engaged in precarious and insecure work. Whereas 68 per cent of workers born in Australia are full-time employed, only 48 per cent of workers on temporary visas are full-time employees.¹³ The remaining 52 per cent are employed on a casual basis or part-time with constant fears of job insecurity.

⁹ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021, Schedule 1 — Casual employees.

¹⁰ Iain Campbell. 2004. "Casual Work and Casualisation: How Does Australia Compare?" *Labour & Industry: a journal of the social and economic relations of work* 15(2): 85–111.

¹¹ ABS, 2019, "Characteristics of Employment, Australia".

¹² Migrant Workers Centre, 2020, Submission to the Senate Select Committee on Temporary Migration, p.8.

¹³ ABS, 2019, "Characteristics of recent migrants".

- 4.6. It is important to recognise that the disproportionate representation of migrant workers in casual employment is attributed to the immigration system that keeps migrant workers on temporary visas for years. The restrictive conditions and short expiries of temporary visas often prevent migrant workers from getting a decent job. Many businesses are reluctant to offer jobs to migrant workers or only engage migrant workers on a casual basis with the excuse of their temporary migrant status.
- 4.7. For example, Condition 8547 of the Working Holiday visa prohibits visa holders from staying at work beyond the probation period and discourages employers from hiring working holiday makers in an on-going position. This condition gives employers a good rationale to engage working holiday makers on a casual basis, which many employers already prefer because casual employees are not entitled to sick leave and redundancy pay.¹⁴
- 4.8. On the other hand, Condition 8104 of the student visa allows international students to work only up to 40 hours in a fortnight. As a result, most international students work on a casual basis. Considering that student visa holders make up the largest subgroup of migrant workers, excluding New Zealand citizens, the visa restriction leads to significantly lower the level job security in Australia.
- 4.9. As migrant workers on temporary visas are pushed toward casual positions, gig economy jobs, and off-the-book employment, they are exposed to exploitation, discrimination, and harassment by employers who falsely claim to have the power to have their temporary visas cancelled or arrange for permanent residency.
- 4.10. The negative impact of temporary migration, however, is not limited to harming migrant workers' job security. Temporary migration inadvertently normalises the culture of taking workers as disposable labour and lowers the job security of all workers in Australia, regardless of their visa status.
- 4.11. It is also worth noting that a sizeable portion of insecure work is not represented in official reports. This is because such work is taken up by people without work rights such as asylum seekers on bridging visas who have no chance of find decent work. In the absence of accurate statistics on workers without documentation, we assess that they account for 0.5 per cent of Australia's workforce based on the DHA's estimation. Considering that the DHA's estimate of 60,000 undocumented workers has been criticised for its conservative calculation,¹⁵ we believe that workers without documentation present a clear window for investigating Australia's insecure work.

¹⁴ Migrant Workers Centre, 2020, Submission to the Joint Standing Committee on Migration regarding the Inquiry into the Working Holiday Maker Program.

¹⁵ ABC News, 16 May 2019, "Visa overstayers fly under the radar during federal election campaign".

- 4.12. Workplaces that engage workers without documentation have no incentive to comply with workplace laws and provide adequate working conditions and arrangements. When the workers cannot resist exploitation and cannot report wage theft, workplace injuries, or environmental hazards, these workplaces not only cost the national economy unpaid wages and taxes but also pose health and safety threats to the society.
- 4.13. A couple of years ago, for example, an undocumented worker was found dead from a natural cause without getting any medical treatment in time.¹⁶ If he had been infected with a deadly virus like COVID-19 and come to work sick because he had had no sick leave, his workplace could have claimed many lives from our communities and incurred tremendous cost to the government.
- 4.14. Workers without documentation include asylum seekers who are not given the right to work in Australia. As a society, we should never allow a situation in which someone seeking asylum gets exploited or suffer from lack of social support. It is of utmost urgency that visa conditions restricting one's right to work be removed. By priority, all bridging visas granted to asylum seekers should have reasonably long expiries with work rights to facilitate their employment while they wait for protection outcomes.¹⁷
- 4.15. Much insecure work is created when employers place flexibility and profitability before safety, security, and stability of workers and the society. Some argue that the concurrent pursuit of economic flexibility and job security—or flexicurity—is possible when the market is strong enough to offer employment to everyone. However, as discussed in the Introduction, we should not misunderstand job security as a status of being employed. Job security should give workers assurance for continued engagement in decent work.
- 4.16. In this sense, the conversion regulation of the Fair Work Act demands a revision to facilitate workers' casual to permanent conversion.
- 4.17. The Act stipulates that an employer must offer a casual employee conversion to a full-/part-time role if they have been employed for a 12-month period and in the last 6 months of that employment they have worked a regular pattern of hours on an ongoing basis.
- 4.18. The regulation cannot stop employers from making deliberate variations to the pattern of engagement to avoid the conversion. It should be revised to stipulate that an employer must justify variations to a casual employee's regular pattern of hours.

¹⁶ SBS News, 2 Nov 2015, "Fruitpicker's death prompts calls for better protection of migrant workers".

¹⁷ Migrant Workers Centre, 2020, Building a safe and secure society for all—Report of the Migrant Workers Conference 2020: The Pandemic, the Recession, and Social Safety Nets.

When an employer stops engaging a casual employee and replaces them with another with the intention of avoiding offering the conversion, the employer should be penalised for unfair dismissal and ordered to reinstate the original casual employee.

- 4.19. At the same time, the *Fair Work Act 2009* should be further revised to improve workers' access to and representation by unions by removing restrictions on unions' right of entry to workplaces. Studies show that a union presence increases job security, resulting in a pronounced reduction in job loss at times of crisis such as the pandemic in 2020.¹⁸

Recommendation 8. The use of casual employment should be limited to an absolute necessity. The *Fair Work Act 2009* should be revised to require an employer to justify variations to a casual employee's regular pattern of hours. Any discontinued engagement of a casual employee with the intention of avoiding offering the conversion and replacing them with another casual employee should be penalised for unfair dismissal.

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¹⁸ Alex Bryson and Michael White, 2006, "Unions, Job Reductions and Job Security Guarantees: The Experience of British Employees", CEP Discussion Papers dp0745, Centre for Economic Performance, LSE; Celine McNicholas, Heidi Shierholz, and Margaret Poydock, 2021, "Union workers had more job security during the pandemic, but unionization remains historically low", Economic Policy Institute.