



# Responding to the COVID-19 crisis

Australian Council of Trade Unions submission to the Select Committee on COVID-19 inquiry into the Australian Government's response to the COVID-19 pandemic.

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## Introduction

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.8 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector and who have been at the forefront of Australia's public health, economic and policy response to the COVID-19 crisis.

The Coronavirus crisis has exposed fault-lines in Australia's economy, labour market and OHS system that must be addressed. The crisis has plunged millions of workers into unemployment or job insecurity and has hit some of the most disadvantaged workers, young people, women and temporary visa workers, the hardest. Australia needed a response to the crisis that not only addressed the direct impacts of the virus on our economy and community, but which also acknowledged and addressed the pre-existing weaknesses in our economy.

Unfortunately, this is not, in many cases, the response we received. In a number of instances, the Government's response to the COVID-19 crisis has either failed to address pre-existing issues or has actually exacerbated them due to loopholes or gaps in support programs which have left workers exposed to losing their employment, going to work sick, becoming sick at work or to having their rights whittled away. It is a depressing reality that those workers who were being left behind in the pre-COVID-19 economy have been largely abandoned to the vicissitudes of the market by the Government's poorly considered responses to Coronavirus.

This is particularly disappointing because much as occurred after World War 2, the COVID-19 crisis represents an opportunity to rebuild the Australian economy on fairer lines, to create job security and prosperity for millions of Australian workers. Australians have, over the course of this crisis, seen the power and efficacy of the government when mobilised for the good of Australians – this cannot be allowed to end when the crisis does.

## Gaps in JobKeeper

The JobKeeper wage subsidy program was an attempt by Government to stave off the significant increases in unemployment predicted, to come out of the COVID-19 crisis. Implemented after campaigning by the union movement, the program has had some success in limiting the harshest economic effects of the crisis. The most recent figures put unemployment at 6.2% in Australia, although there have been significant drops in labour force participation and increases in underutilisation that must be taken into account when considering this figure. Despite this, it is undeniable that the JobKeeper program has been effective in keeping some workers connected to their employer and in maintaining a portion of their income. Unfortunately, the government also made the decision to exclude some workers from the program, targeting those who were experiencing job and financial insecurity long before the COVID-19 crisis began.

## Casuals

Casual employees, while not uniquely Australian, are utilised in the Australian economy to a far greater extent than in any other western economy. The number of workers in casual employment increased by over half a million between 2005 and 2016, to reach 2.5 million workers. The proportion of Australian employees engaged in casual work has fluctuated significantly over the past decades: it increased from 15.8% of total employment in 1984 to 27.7% in 2004, before declining slightly to its current ratio which is around 25%.

Casual employees continue to be heavily concentrated in a few industries. Around 20% of all casual workers in Australia are engaged in the retail sector and a further 20% are in the accommodation and food services sector. Casual density is highest in accommodation and food sector where 64% of all employees in the sector are casual. This is followed by the agriculture, forestry and fishing sector where just under half the workforce is casual, and the retail sector as well as the arts and recreation services sector where about 40% of all workers are casual. Casual work is concentrated in the low paying sectors of the economy. However, it is important to note that casual work is not confined to these sectors. Virtually all parts of the economy have witnessed significant growth in casual density over the past few decades.

Casual employees are also more likely to be at risk of financial instability than workers with permanent positions. They are more likely to be young (although not as young as many think), more likely to be women and are more likely to be receiving award minimum pay than their permanent co-workers.<sup>1</sup> Casual workers, with their already reduced job security and workplace rights and their

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<sup>1</sup> Australian Parliamentary Librabry, *Characteristics and use of casual employees in Australia*, 19 January 2018. [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1718/CasualEmployeesAustralia#\\_Toc504135069](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia#_Toc504135069)

relative ease of dismissal were poised to be among the first and most comprehensive casualties of the COVID-19 economic downturn. The fact that they are most common in the industries which have been hardest hit by the crisis, Retail, hospitality and Arts & Entertainment, made them all the more vulnerable.

The Government's decision to restrict JobKeeper to casuals who had more than 12 months tenure with their employer at March 1 was a devastating one. Leaving aside the complete lack of rationale for the arbitrary 12-month period, this decision ensured that some of the most vulnerable workers in the economy were denied government support and, by and large, doomed to dismissal or indefinite stand-down.

According to the latest available ABS figures, this decision locked some 1 million casuals- about 40% of all the casuals in the economy- out of the JobKeeper program. These casuals, like casuals in general, were concentrated in some of the industries hit hardest by the COVID-19 crisis. For example:

- 230,000 in Accommodation and Food Services
- 155,000 in Retail Trade
- 118,000 in Health Care and Social Assistance,
- 72,000 in Manufacturing; and
- 67,000 in Education and Training.

While there is currently no data available that would allow us to estimate the impact on these workers of being denied access to JobKeeper, there already exists a significant body of anecdotal evidence among union members that workers not eligible for JobKeeper are experiencing higher rates of dismissal and stand-down.

The decision to exclude these workers from JobKeeper was utterly without justification. The 12 months employment requirement was arbitrary and excluded one million workers from a program which would have saved their jobs and their livelihoods. The Government must reverse this mistake and ensure that all workers who had a reasonable expectation of ongoing employment as at March 1, have access to JobKeeper.

### **Visa workers**

The temporary skilled visa system is currently driven by the interests of business rather than the interests of the Australian people. Australian Unions have a long-standing view that the migration system should preference permanent, rather than temporary migration in Australia. The reality was that even prior the crisis, some employers were using the temporary skilled migration programme as an instrument of wage suppression and exploiting vulnerable temporary overseas workers who are unaware of their rights or not in a position where they feel able to exercise those rights. This meant that when the crisis came, Australia had a vast underclass of temporary workers who were

easy to dismiss, had little access to information about their rights or their employer's obligations to them and were not eligible for any form of government support.

In 2019 there were more than 2 million temporary entrants in Australia, including New Zealanders, and up to 1.3 million of these visa holders have some form of work rights. This equates to around 10%-11% of the total Australian labour force of over 12.4 million. Latest stock data indicate that international students form the largest group, accounting for 535 811 persons at the end of March 2018 (with graduates on the 485 visa adding a further 65, 246). Working holiday makers and temporary skilled workers are also substantial groups, accounting for 148,124 and 151,596 persons respectively. Holders of bridging visas, most of whom have work rights, have expanded to 194, 875 persons.

Since 1996, migrant workers' power and agency has been incrementally curtailed, to the extent that Australia's labour immigration policy resembles a guestworker regime where migrants' rights are restricted, their capacity to bargain for decent working conditions with their employers is truncated, and their agency to pursue opportunities available to citizens and permanent residents is diminished.<sup>2</sup> Even before the crisis, temporary workers in Australia were some of the most vulnerable workers in the economy, facing significant rates of wage theft, poor working conditions and exploitation. The ACTU has previously produced a number of documents outlining the broader issues with the temporary migration system which we will not duplicate here, but many of these issues have been greatly exacerbated by the COVID-19 crisis.

Having granted work rights to these workers and knowing that their capacity to work would be severely hampered by the impact of COVID-19, the government's decision to exclude these workers from JobKeeper, when many have no other source or support or ability to seek new jobs or additional hours, was to say the least, ill-considered. Even when we exclude the New Zealand citizens, who were included in JobKeeper, this decision has left another three-quarters of a million workers in Australia without access to meaningful support. As with casual workers, especially taking to account the programs current under-subscription, access to JobKeeper must be expanded to these workers.

### **Workers excluded from JobKeeper due to the nature of their employer**

In addition to casuals and temporary visa workers, hundreds of thousands of workers in Australia have been excluded from the JobKeeper program due to the nature of their employer, specifically

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<sup>2</sup> 'A guest-worker state? The declining power and agency of migrant labour in Australia' by Chris F Wright and Stephen Clibborn

prevented from accessing the program due to the rules drafted by the Treasurer. These workers include:

- 194,000 workers employed in local government.
- Tens of thousands of university workers;
- Thousands of workers, like those employed at Dnata, employed by companies owned by sovereign entities.

These workers are largely performing roles that, if duplicated in the private sector or with a different employer, would qualify for the JobKeeper program and many are employed in regional areas. Supporting these workers would not only have significant benefits to the economy and the community, but they have a right to the same level of support as workers in other sectors or with different employers. The government's decision to exclude these workers from the program is without justification and must be reversed.

Casuals, temporary visa workers and workers employed by excluded employers have been unreasonably, and largely without justification, left out of the JobKeeper program and exposed to the significant economic downturn which has accompanied the Coronavirus in Australia. This is not a decision that was forced upon Government, but an active decision to abandon these workers to their fate. It is a decision which must be reversed to ensure that those who were most disadvantaged in our labour market prior to the crisis are left without support during the crisis.

## Ignoring the gendered nature of the impact of COVID-19

While the COVID-19 crisis has had a devastating impact across the economy, women have been amongst the most severely impacted groups. The reality of this impact has manifested across the spectrum of women's lives, both in paid work and at home.

In terms of workplace impact, the impact has been felt as a higher rate of job and hours loss than men. For example, ABS statistics show that 325,000 women became unemployed in April 2020, representing 55% of all jobs lost over that period. Women's hours worked also reduced 11.5 per cent compared to just a 7.5 per cent drop for male workers. The reality is that this has come about because even before the crisis women were overrepresented in insecure and low-paid work. 61% of all award reliant workers are women, 56.9% of all casuals are women and 58.9% of the underemployed are women. These are groups which, due to the nature of the crisis and the gaps in the Government's response already identified, were the first to experience losses during the crisis. The fact that women are also overrepresented in many of the hardest hit industries, retail and hospitality for example, meant that women were even more severely affected by COVID-19.

Women have also experienced significant issues at home due to COVID-19. Women already carry out more than 75% of the world's unpaid domestic and care work; on average 3.2 times more than

men. There is no country where women and men share of unpaid domestic and care work equally.<sup>3</sup> Australia is one of the most unequal countries in the OECD in this regard.<sup>4</sup> A 2017 study by PWC found that Australian women undertake 76% of childcare, 67% of domestic work, 69% of care for adults, and 57% of volunteering.<sup>5</sup> The reality is that the COVID-19 crisis has only exacerbated this situation. The care of school-aged children following school closures and for ill and vulnerable family members affected by COVID-19 has largely fallen on women, with a growing body of evidence indicating that caring responsibilities and domestic work has become even more lopsided during the COVID-19 crisis. This has the concrete impact of reducing women's ability to participate in paid work and is likely to (until greater support for working parents and carers is provided, including access to secure, quality family friendly working arrangements), result in a lower participation rate for women both during and after this crisis.

The COVID-19 pandemic has increased the risks of gendered violence, both at work and at home. The pandemic is exponentially increasing the financial, health and domestic pressures on households, and at the same time increasing women's isolation and reducing their financial and job security. The pandemic has highlighted the crucial importance of access to paid family and domestic violence leave, quality, secure flexible working arrangements, and access to early education and care to allow workers to attend to their health and safety needs without losing income.

Frontline workers in care and service industries are facing increased risks of violence and harassment from anxious and stressed customers, patients and clients as financial and other pressures take their toll on the mental health of the public.<sup>6</sup> For people experiencing domestic or family violence, attending work provides a safe-haven and a means of accessing vital support. Large numbers of workers are now being required to work from home, regardless of whether or not it is a safe and healthy work environment for them. Women who are still required to attend work will no longer be able to seek the support of friends and family due to social distancing and lockdown measures. As schools close, women may be forced to leave their work or reduce their hours in order to care for and educate children. Emergency measures announced in NSW have seen prisoners being granted bail early, including family and domestic violence offenders.<sup>7</sup> Prior to the pandemic, there were a number of serious funding gaps in the family and domestic violence sector.

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<sup>3</sup> [https://www.ilo.org/wcmsp5/groups/public/--dgreports/--gender/documents/publication/wcms\\_732791.pdf](https://www.ilo.org/wcmsp5/groups/public/--dgreports/--gender/documents/publication/wcms_732791.pdf)

<sup>4</sup> R Cooper, M Foley and M Baird, *Women at Work: Australia and the United States*, The United States Studies Centre at the University of Sydney, 15

<sup>5</sup> PwC, *Understanding the unpaid economy*, 2017

<sup>6</sup> See for example <https://www.shoppingcentrenews.com.au/shopping-centre-news/industry-news/sda-nra-scca-urge-the-community-to-respect-our-retail-workers/>

<sup>7</sup> See for example <https://www.abc.net.au/news/2020-03-28/domestic-violence-offender-released-prison-coronavirus/12098082>



Support organisations are now being required to close or limit services to meet social distancing requirements, while at the same time the demand for their services is rapidly increasing. As noted by the government, Google is seeing the highest magnitude of searches for domestic violence help that they have seen in the past five years with an increase of 75 per cent, and services are already reporting an increase in demand.<sup>8</sup>

Government needs to acknowledge the gendered nature of the impact of the COVID-19 crisis and implement responses that reflect that reality. Gaps in programs like JobKeeper that leave workers who are predominantly women without support must be closed. Family-friendly working arrangements must be expanded both in terms of their availability to both women and men, as well as their quality and security.. Funding for services that address family and domestic violence needs to be increased beyond what has already been announced. Prior to the COVID-19 crisis, the Workplace Gender Equality Agency estimated that it will take 50 years for the gender pay gap to be closed at the levels of progress being achieved at the time.<sup>9</sup> We cannot allow this crisis to expand that already unacceptable timeframe.

## Leave and Safety in the Workplace

### Paid sick leave

The advent of a global pandemic and the attendant shut-down of large parts of our economy in order to achieve social distance has exposed a previously underappreciated reality – paid sick leave is necessary not only for the health of the individual, but for the health of society.

In order for workplaces to be able to eventually reopen, the most important thing for public health is to ensure everyone knows that they will be supported financially if they must self-isolate. Currently 1 in 3 workers in Australia have no access to paid sick leave. If working people are forced to choose between going to work sick or being able to pay their bills and feed their families, then we are creating a disaster scenario for public health.

The World Health Organisation reports that in 2009, when the economic crisis and the H1N1 pandemic occurred simultaneously, an alarming number of employees without the possibility of taking paid sick leave days attended work while being sick. This allowed H1N1 to spread into the workplace causing infections of some 7 million co-workers in the USA alone.<sup>10</sup> In another study, those without paid sick leave were 3 times more likely to forgo medical care for themselves and

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<sup>8</sup> <https://www.pm.gov.au/media/11-billion-support-more-mental-health-medicare-and-domestic-violence-services-0>

<sup>9</sup> <https://www.smh.com.au/business/workplace/australias-gender-pay-gap-to-last-another-for-50-years-20170727-gximay.html>

<sup>10</sup> Scheil-Adlung, X. and Sandner, L., The Case for Paid Sick Leave, World Health Report (2010) Background Paper, No 9

1.6 times more likely to forgo medical care for their family compared to working adults with paid sick leave benefits. Moreover, the lowest-income group of workers without paid sick leave were at the highest risk of delaying and forgoing medical care for themselves and their family members.<sup>11</sup> This means that workers without paid sick leave are both a significant source of infection within the community and also more likely to require drastic (and resource-intensive) interventions through the health system when they do present.

While the National Employment Standards provide 10 days paid sick leave for permanent employees, there are too many workers who have no entitlements to support them to take time off to take a COVID-19 test or spend two weeks in self-isolation. In Australia, this is made up of more than 3 million workers, including casuals and so-called contractors. As the economy re-opens and social distancing rules are relaxed, the risk of community transmission grows and access to paid sick leave will be an important tool to reduce that risk.

Employers, workers and the community all need the confidence that as the risk of community transmission grows, there is no financial punishment for those who need to be tested or who need to self-isolate. If each jurisdiction provided for universal paid leave for testing, and if necessary, to allow workers who are positive to self-isolate and recover, we will more safely, and equitably, re-open the economy and minimise the risk of a second wave of infections, paving the way to economic recovery.

The prevalence of casual and insecure work in Australia means that access to paid sick leave is a risk that needs to be managed. Costs to business or Government related to the provision of such leave pale into insignificance when compared with the costs of a forced shut-down due of increased community transmission or an outbreak in their workplace. By requiring businesses to provide paid leave we are significantly more likely to see workers who may have COVID19 isolate, get tested, and when positive, remain isolated until recovered and therefore reduce the number of secondary exposures and infections.

Some businesses and governments are already committing to policies offering paid special leave during the pandemic, but this urgently needs to be made universal. By creating a paid pandemic leave provision in the NES and state based industrial instruments, governments will ensure that workers, their families and communities are given adequate protection and support. If we do not provide this financial certainty to people as they return to work, we are likely to see secondary infections rise and spread. For the Government to fail to undertake this step would be a betrayal of the collective efforts of all Australians to suppress COVID-19.

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<sup>11</sup> HEALTH AFFAIRS 35, NO. 3 (2016): 520–527 ©2016 Project HOPE— The People-to-People Health Foundation, Inc.

## Safety at work in a pandemic

Health authorities have been largely successful in applying infection control measures to prevent or limit the spread of COVID-19 in the public and in specific settings where there are either vulnerable people or large groups of people coming together. Whilst these physical distancing measures have no doubt protected those people who have been unable to work from home, by reducing their exposure to the public, there remains a significant proportion of the workforce that are not practicing physical distancing at work, even where such measures could be practicably applied.<sup>12</sup> With the relaxation of social distancing rules these protections will be diminished and poor controls will leave workers and workplaces more vulnerable.

The recent experiences in Singapore and Japan which have both experienced second waves of COVID19 after re-opening parts of the economy provides very clear warning of the need to take steps to prevent a resurgence of community transmissions when economic activity picks up. Additionally, the small outbreak of COVID 19 at a Victorian abattoir and another, larger outbreak in a Korean call centre are reminders of the high-risk circumstances existing in many different workplaces.<sup>13</sup>

In Australia the opening up of the economy also coincides with the winter months, a known risk factor for viral infections such as seasonal flu which has also been suppressed due to social distancing measures. This underscores the challenge we face in increasing economic activity in the weeks and months ahead and the importance of making workplaces as safe as practicable.

Currently we do not have a vaccine for COVID-19. Further, there is strong evidence that asymptomatic people can infect others and that we cannot keep COVID-19 from entering workplaces. Therefore, in the context of COVID-19, elimination is not immediately achievable and our controls must move to minimise exposure to COVID-19. Unfortunately, current legislative arrangements leave a significant gap in that they do not require employers to take the most effective steps to control infection among their workers.

As clarified in Safe Work Australia's guidance on the meaning of general duty of employers, and other duty holders (such as building owners) to protect health and safety so far as reasonably practicable, there exists a 'hierarchy' of controls, which requires priority to be placed on the elimination of hazards, or isolation of people from exposure to harm where possible, with lower order administrative controls, which focus on individual worker behaviours or the application of

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<sup>12</sup> A recent report by the Centre for Future Work estimates only 30% of people are able to work from home [https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/3288/attachments/original/1586714739/Working\\_From\\_Home\\_Opportunitites\\_and\\_Risks\\_April2020.pdf?1586714739](https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/3288/attachments/original/1586714739/Working_From_Home_Opportunitites_and_Risks_April2020.pdf?1586714739)

<sup>13</sup> [https://wwwnc.cdc.gov/eid/article/26/8/20-1274\\_article](https://wwwnc.cdc.gov/eid/article/26/8/20-1274_article)

PPE, only applied where higher order controls are not possible. The AHPPC has also highlighted the importance of a hierarchy of control to determine the most effective measures to manage risk.

Whilst this general duty applies to all risks, due to a shortcoming in the legislation identified by the recent review of our WHS laws, the duty to manage risks by identifying hazards and applying a hierarchy of control measures is only technically mandated for hazards listed in the WHS Regulations.<sup>14</sup> This means that employer are not required by law to apply the most effective controls, so far as is reasonably practicable and are, as has been reported by unions and others to already be occurring, able to meet their legal duties by applying lower order (and lower short-term cost) controls. This will place workers in many workplaces at unacceptable risk of infection.

Whilst the most effective way to remedy this deficiency would be to amend the model laws in accordance with Recommendation 27 from the aforementioned review, it is likely that, given the jurisdictional challenges with achieving uniform amendments that this would take considerable time to agree and implement, therefore, instead jurisdictions should consider the development and adoption of a pandemic regulation to legally require businesses to apply the most effective controls, so far as is reasonably practicable.

This new regulation would provide the same clarity for workplaces as that which has been applied to the public with the declaration of a pandemic and its associated regulatory responses. It would also give jurisdictions the flexibility to legally enforce these measures in the same way they have approached the public health measures so far introduced.

### **The need for notification**

In addition to the above, another gap in the current Work Health and Safety (WHS) regime which has not been addressed by the Government is that there is currently no requirement for employers to report new cases of Coronavirus to Workplace safety regulators. Under current settings, Work Health and Safety Acts require employers to notify regulators if a worker:

- is admitted to hospital, or
- there is a work-related death, or
- a prescribed dangerous occurrence.

There are no general requirements to report accidents or illnesses unless the prescribed criteria are fulfilled. Whilst it is a requirement to notify health authorities of COVID-19, it is equally

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<sup>14</sup> Review of Model Laws: Final Report 2018, p138-141  
[https://www.safeworkaustralia.gov.au/system/files/documents/1902/review\\_of\\_the\\_model\\_whs\\_laws\\_final\\_report\\_0.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_whs_laws_final_report_0.pdf)

important that WHS Regulators are also notified. WHS Regulators are the appropriate body to determine if health and safety controls are being developed and implemented effectively. The lack of a requirement to notify WHS Regulators leaves workplaces exposed where there are cases of COVID-19 that may have arisen from work.

Currently NSW is the only Health and Safety jurisdiction requiring notification if there is a 'confirmed infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work that involves providing treatment or care to a person, or that involves contact with human blood or body substances.'<sup>15</sup>

All other jurisdictions only require notification if the confirmed case requires treatment in hospital or there has been a death. In Queensland the notification of confirmed or suspected COVID 19 cases is dealt with administratively between the Health Department and the Workplace Health and Safety Queensland.

To control this pandemic, health and safety regulators need to know about all confirmed and suspected cases. Regulators should then review and be satisfied that the appropriate risk control measures are taken to prevent a recurrence or spread at the workplace. Action must be taken, federally and in each state and territory, to ensure that this is the case. Employers should be required to provide notification to safety regulators of any confirmed COVID-19 infection caused by or arising from work in all jurisdictions, whether or not the infection has resulted in hospitalisation or death. There are also no obligations in Australia that require notification of a hazardous exposure, which does not result in an illness [except asbestos]. Introduction of a requirement to notify of an exposure to coronavirus would improve the robustness of workplace requirements.

### **Health and Safety Representatives (HSRs)**

HSRs are at the coalface representing their peer's health and safety issues every day. HSRs have a range of functions including representing their workgroup members, monitoring the compliance of the person conducting the relevant business or undertaking or that person's representative in compliance with safety laws, investigating complaints and inquiring into anything that appears to be a risk to the health or safety of workers.

To support these functions HSRs are provided with powers which enable them to direct cessation of unsafe work and/or issue provisional improvement notices, where needed. These powers are vital to enable the delivery of timely and necessary responses to health and safety matters where

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<sup>15</sup> [https://www.safeworkaustralia.gov.au/sites/default/files/2020-05/Incident\\_notification\\_fact-sheet\\_COVID19.pdf](https://www.safeworkaustralia.gov.au/sites/default/files/2020-05/Incident_notification_fact-sheet_COVID19.pdf)

attempts to resolve concerns within the business or undertaking have failed or are so urgent immediate action is required, without having to wait or rely on regulatory intervention.

Current WHS laws (except Victoria), lock HSRs away from these important powers until they have completed initial 5 days training. Access to training as a result of the coronavirus pandemic is at best problematic and compromised, with many HSRs not been able to access this training. Legislators recognised the importance of these powers and the role they play in creating safe and healthy workplaces when enacting WHS laws but did not account for circumstances where they could not be accessed by HSRs when needed.

These shortcomings in the legislation need to be dealt with by amendments to the respective sections of the WHS laws removing the requirement for completion of initial training putting the health and safety interests of workers first.

## Changes to Enterprise Agreements

Most of the changes made by Government, or needing to be made, to various elements of the Australian economy or systems represent direct and transparent responses to clear needs created by the COVID-19 crisis. Unfortunately there has been one case where the change itself was unnecessary and there was no clear need which was being responded to with its implementation – the decision to reduce the access period for enterprise agreement variations from seven days to one day.

On 16 April 2020 the Attorney General made a new Regulation under s 211(6) of the *Fair Work Act 2009* to reduce the access period for enterprise agreement variations from seven days to one day. The new Regulation came into effect on 17<sup>th</sup> April and operates for six months or for any longer period prescribed by regulation. It applies to any access period that commences before the repeal of the new Regulation. This occurred after unions and employers had cooperated to vary a number of awards, covering millions of workers, in the Fair Work Commission and without a single example of an employer being unable to adapt to COVID-19 due to the existing seven-day access period.

There was simply no justification for this change, a change which we fear employers will use to push through variations that disadvantage workers without a proper opportunity for them to consider the effect of the proposed variation and to obtain representation from their union. The COVID-19 crisis must not be used as a smokescreen to whittle away workers' rights and to leave Australian workers worse off. This change must be, at its 2-month review point, reversed and Government must commit to no additional changes to the industrial relations system without significant and meaningful consultation with unions.

## Damage to Workers' Superannuation

Since the onset of the Coronavirus crisis, workers' retirement savings have suffered significant shocks. The first was due to the initial market shock of Coronavirus, which was followed by the Government's sudden and unprecedented decision to force workers suffering from the economic impacts of Coronavirus to rely upon their own savings to get by. The Government's decision to allow and rely upon early access to superannuation to mitigate the impacts of the Coronavirus crisis forces workers who are already suffering the most to do the heaviest lifting to support themselves.

Those who are unemployed, receiving other Government benefits, or since 1 January 2020 are facing a 20 per cent reduction in working hours are eligible to withdraw from their superannuation fund. Withdrawals of up to \$10,000 each are permitted before 1 July and from 1 July. Since 20 April, more than 1.41 million workers have withdrawn an average of \$7,510 from their retirement savings.<sup>16</sup> Despite initially forecasting 1.6 million workers withdrawing their superannuation, high demand for the scheme forced Treasury to increase its estimates to more than 2.3 million workers and nearly \$30 billion in lost retirement savings.<sup>17</sup> Young people and women are disproportionately impacted by the economic shocks of Coronavirus.

Industries like hospitality, retail, and tourism which are bearing the brunt of the downturn mainly employ women. These industries also feature higher proportions of casual workers, many of whom will have not been employed for more than a year to be eligible for JobKeeper. Similarly, these industries employ more migrant workers than others who have been barred from any assistance. Of the more than 1.3 million workers who have access their superannuation more than a third are under the age of 30.<sup>18</sup> According to modelling by Industry Super Australia, young workers stand to lose the most by retirement as a result.

"ISA analysis shows a 25-year-old who accesses the full \$20,000 available under the scheme could lose more than \$95,000\* from their retirement balance. A 30-year-old who accesses the full amount loses almost \$80,000 and a 40-year-old would have \$54,000 drained from their eventual retirement savings."<sup>19</sup>

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<sup>16</sup> Australian Prudential Regulation Authority, "COVID-19 Early Release Scheme - Issue 4 | APRA" (Canberra: Commonwealth of Australia, May 25, 2020), <https://www.apra.gov.au/covid-19-early-release-scheme-issue-4>.

<sup>17</sup> Michael Roddan and Matthew Cranston, "Younger Savers Clean out Their Super," Australian Financial Review, April 27, 2020, <https://www.afr.com/companies/financial-services/younger-savers-clean-out-their-super-20200427-p54nmf>.

<sup>18</sup> Borys, "Coronavirus Financial Concerns Have Young People Accessing Their Superannuation," May 25, 2020, <https://www.abc.net.au/news/2020-05-25/coronavirus-early-access-superannuation-young-people/12282546>.

<sup>19</sup> Industry Super Australia, "Accessing Super Should Be a Last Resort," Industry Super, May 5, 2020, <https://www.industrysuper.com/media/accessing-super-should-be-a-last-resort/>.

Early access to superannuation undermines a key pillar of our retirement income system. The preservation of benefits in superannuation is the only way to ensure that superannuation fulfils its purpose of being a vehicle for a better retirement. The Government has previously articulated in the Superannuation (Objective) Bill 2016 that the objective of superannuation is “to provide an income in retirement to substitute or supplement the Age Pension.” The objective of superannuation is to ensure that a worker’s standard of living is maintained when they retire. Superannuation should supplement and support the Age Pension. This is only achieved through workers having an adequate income stream to meet a level of spending consistent with community standards, financed through or by a combination of superannuation, private savings and the age pension.

The Government will need to take restorative action to ensure that a generation of workers are not consigned to poverty in retirement due to the early access to superannuation scheme. Action will be needed to abolish the \$450 per month minimum threshold for superannuation guarantee eligibility, ensure superannuation is paid to every worker, on every dollar. Critical to this will be achieving a superannuation guarantee of 15 per cent. The Government forced workers to make a decision between a dignified retirement and getting by now, a decision which should never have been imposed upon them. The Government has a responsibility to rebuild the retirement savings of these workers.

## Rebuilding a Better Economy

Until a vaccine is developed, COVID-19 will remain a significant issue for the Australian economy and community. We will need to remain vigilant about the health risks of the virus and ensure decisions that are made continue to safeguard Australians, but we also need to start actively planning for the recovery of our economy and the creation of good quality jobs for all. Far from returning to business as usual, we need to use the spirit of cooperation that has guided our response to the crisis to ensure we rebuild in a way that delivers a better and fairer Australia.

Any talk of returning to ‘pre-coronavirus’ policy settings ignores the fact that for many Australians the economy was not working even before this crisis. Thirty years of neoliberal trickle-down economics have led to rising inequality, an erosion of the social safety-net, record-low wage growth, and too many people in insecure employment or without enough work. The crisis has revealed the structural weakness of that model of economics and the very real human costs of such an approach.

As outlined above, Prior to COVID-19, Australia had the third worst rate of non-standard work in the OECD, often described as insecure work, this includes casual, contract, labour hire, gig workers and part time workers seeking more hours. As a nation we had no credible national plan to address climate change and its growing environmental, economic, and social impacts. Women are structurally disadvantaged in the labour market and the gender pay gap sits at 14.6%. Too many



people are living in poverty and longstanding problems like mental health, homelessness and youth unemployment are likely to be exacerbated by coronavirus. Aboriginal & Torres Strait Islander people face extreme disadvantage in every aspect of their lives. As we plan our rebuild, how policies equitably distribute resources and effectively mitigate inequality will be a key marker in their usefulness to rebuilding Australia.

As the Centre for Future Work identified early on, if we just wait for “business confidence” and “consumer confidence” and “market stability” to recover, we will have many years of recession/depression ahead of us. A shock of this scale cannot be solved with normal “counter-cyclical” measures. It will require an ambitious, aggressive, government-led effort to rebuild the economy and put Australians back to work – like a Marshall Plan for the aftermath of COVID-19.

In our recent policy paper, *Rebuilding jobs and our economy beyond the COVID-19 health crisis*<sup>20</sup>, the ACTU has laid out just such a plan designed to create 2 million secure jobs and to rebuild a fairer and more equitable economy. The plan lays out 8 key priorities for rebuilding the Australian economy.

**Improve the quality and security of jobs by creating 2 million new permanent jobs and halving the number of insecure jobs.**

We need to revise our labour laws and labour market institutions; re-visit our wage fixing mechanisms; reconsider the unfettered expansion of precarious employment arrangements; and strengthen the capacity for workers to protect their rights and genuinely participate in change by organising in their trade unions. Secure jobs, higher pay and genuine consultation will drive productivity, lift living standards, increase domestic demand and lay the ground work for rebuilding Australia and a better life for working people.

Immediate steps to halve the number of insecure jobs should include a qualifying period for casuals to have the right to convert to permanent work after 6 months of employment. Another form of insecure work that is far too prevalent in Australia is the use of rolling fixed term contracts that deny permanency to workers. Australia is one of only seven OECD countries that does not put a limit on the maximum length of fixed term contracts. We should impose a limit of four contracts or 2 years’ service, whichever comes first, before the employee must be offered permanency.

A third early step to convert insecure and precarious work into secure jobs is to the expand the coverage of the Fair Work Act to include all workers rather than just employees. The limitations of nineteenth century definitions of employment has left many workers, like gig economy workers, outside the protection of our industrial laws. By regulating work generally, the Act should capture

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<sup>20</sup> <https://www.actu.org.au/media/1449112/rebuilding-jobs-and-our-economy-post-covid-19.pdf>

a variety of relationships where workers should have protection and the right to act collectively. At the same time, it can avoid creating an incentive for corporations to artificially structure their workforce in ways designed to avoid obligations to the workers involved. By offering all workers the rights to freedom of association, collective bargaining and access to fast effective dispute resolution, the Act would facilitate greater job security for these workers.

### **Lift wages and living standards.**

This crisis has highlighted the critical nature of the work of many of the lowest paid and precarious workers in Australia who have led us through this crisis – health workers, supermarket workers, transport and logistics, agricultural workers, aged-care workers, cleaners and many others. We need to prioritise ensuring that workers are properly valued, including through reinvigorating collective bargaining, reducing insecure work and establishing a new Living Wage.

We need to remember the lessons of the Great Depression when cuts to workers' wages made the depression deeper and longer. Without the relatively strong minimum wage increases which have been implemented since 2017, overall wage growth in the Australian labour market would still be tracking at below 2% – even lower than the record-low increases recorded in 2016 and early 2017. If there is no increase in the minimum wage, overall wage growth this year will sink below 1%. We need changes that increase workers' bargaining power so that wage growth occurs across whole industries and lifts both domestic demand and living standards.

In rebuilding the Australian economy, the role of government employment in influencing wage settings will be vital. Artificial wage caps for public sector employees drags down wages. Pre-COVID-19 we have the lowest public sector wage growth on record. Conversely, injecting stimulus into the economy through public sector employment and wage growth lifts the living standards of workers and market expectations on wages. Public sector workers need a pay rise. Public sector work should also mean that workers are directly and permanently employed. The rise of labour hire and agency work in public sector jobs risks diminishing the job security and undercutting the wages of public sector workers, and mandated change is required to bring these jobs back in-house.

### **Strengthening and investing in public and community services that are our first line of defence against 'shocks' like COVID-19, bushfires and drought**

We need to ensure crucial services remain in public ownership and are properly funded. We need public investment in public services and institutions – not cuts and austerity measures. The crisis shows that some critical services that we have relied upon the market to deliver, such as aviation, research and development, regional media, energy, utilities, transport, education and health need more active ownership, control and investment by government.

Active ownership, control and investment by government should also extend to the community services that we rely on for recovery from such 'shocks', Mental health services, social housing, disability services and other such supports should not be provided at the whims of the market, but should be given long term funding security and be available to all Australians. The long-term effects of this crisis will see many who have not needed these services coming to them for help. They should not be confronted with an overwhelmed, underpaid workforce that was already struggling to provide support to all who needed it. Australians deserve access to these services, and the workforce they employ deserves security.

During COVID-19 the capacity of government to redeploy workers across the public sector to provide a "surge" workforce has been limited by the previous policies of staffing caps and outsourcing public services. The rebuilding of the public sector to ensure capacity is available where and when it is needed requires an active rethink. Outsourcing the delivery of public services to private operators has not been in the public interest. Bushfire recovery efforts have changed the conversation from delivering services in the cheapest possible way (in the short term) to maximising safety, security, sustainability and resilience over the longer term. Rather than capping the public service the approach should be to limit the use of insecure, temporary and rolling contracts. The inefficiencies in having to manage constantly rolling employment, staff turnover, new contractors, inductions and re-applications detract from time and effort that is needed to improve our nation's capacity to respond to shocks and emergencies and deliver essential services in times of crisis.

### **Support nation-building projects that create decent jobs and set Australia up for a better future.**

Government needs to take advantage of the historically low cost of borrowing money to invest in large national projects that create a lasting benefit to the nation, creating hundreds of thousands of new additional, secure jobs. Key priorities could include government investment in public transport projects, inter-city fast rail, sustainable public and community housing, new hospitals, schools and TAFEs and electricity transmission network upgrades. Investment in services is as critical as investment in public infrastructure and is necessary to ensure we don't further entrench gender inequality. There is a need for stimulus measures that link infrastructure, manufacturing of components and ongoing service employment opportunities. For example, the building of TAFEs provides an opportunity to create construction jobs, encourage local manufacturing in the supply of materials and components and ultimately results in increased employment for trainers and educators as well as providing a valuable service to the community. Industries will also need specific assistance and support. For example, Australia's manufacturing industry is in urgent need of attention. Our manufacturing sector has declined to around 7 per cent of the workforce, far below comparable nations. From 2006 to 2016 manufacturing jobs collapsed by 30 per cent to 729,000, with further declines since then likely. This trend must be reversed through positive government action.

Rebuilding Australia through new and creative partnerships with major super funds is an opportunity for government to provide returns to working people through increasing their retirement savings, creating jobs and ensuring projects that deliver large social benefits go ahead. The crisis has highlighted the vitally important role superannuation plays in our national economic system. While the ASX 200 dropped almost 30% in a two-month period, balanced superannuation funds dropped by only 12% and more defensive funds by half that again. This stabilising impact is underwritten by the superannuation guarantee providing an ongoing flow into retirement savings. The need to continue to increase superannuation contributions 8 (particularly given the large outflows associated with hardship access) to invest in nation building projects and support retirees is greater than ever.

### **Education and training**

Our domestic economy requires more skills in more industries than ever before and public investment in education delivers social benefit and an excellent rate of return. The contrast between federal decimation of TAFE funding and states where access to TAFE has been a centre-piece of government policy provides insight into how rebuilding TAFE, with strong links into key sectors and pathways into employment, can help improve economic outcomes. Government, as employer, provider and regulator, must ensure this delivers high quality skills and training. Private provision of nationally important skills development is inherently conflicted. Public money going to private providers has not improved outcomes or lead to better employment outcomes.

As we rebuild the economy the use of public money should be tied to outcomes that have a public benefit and public institutions are best placed to deliver on this goal. As we focus on development of our domestic economy we have an opportunity to refocus the education industry away from export and the insecure work models that underpin institutions betting on increasing foreign student numbers towards a more stable, secure employment model tailored to Australian needs. Where industrial transformation is underway, communities should be supported to re-skill and reorient for the future through the delivery of quality public education and training programs.

### **Dealing with the crisis of climate change**

Many nations around the world are looking to rebuild their economies in ways that reduce emissions and the physical and social impacts of climate change and restore nature. Australian Unions call on the Federal Government to align our economic recovery with a goal of achieving net zero emissions by mid-century at the latest and to make a greater contribution to global efforts under the Paris Agreement. Investment and policy support to reduce emissions and improve energy efficiency and productivity across our economy will create jobs and save businesses and households money in energy bills. Ensuring reliable and sustainable energy to existing industry is critical in avoiding large scale closures. Creating new industries that take advantage of Australia's world-class renewable energy and minerals industries to produce zero emissions metals and

mineral products can create thousands of jobs in regional Australia and position our nation at the forefront of low-carbon economic activity. Shifting away from being just a supplier of raw materials to insecure and damaged global markets towards being able to value-add and manufacture low emissions products will drive new technologies, skills and job creation. Investing in electricity transmission upgrades will support Australia's energy transition, maintain energy security and deliver high quality regional jobs. Restoring the damaged environment including waterways and landscapes and increasing resources to support and manage the natural environment including parks and conservation areas, can create jobs in areas most affected by recent droughts and bushfires.

### **Improve social, health and economic outcomes for people and communities that experience disadvantage.**

While improving the quality and security of jobs will improve our domestic economy and deliver significant progress towards addressing inequality in Australia, further interventions are necessary. Australian unions support actions and investment to improve public and social housing, address homelessness, and invest in physical and social infrastructure in Aboriginal communities. The delivery of these measures has an economic stimulus effect. When policy is properly targeted to the people and places most in need, we will see improved housing, employment, social cohesion, educational attainment, and health outcomes. Measures introduced as part of our coronavirus response, such as free childcare and the recent increase to the Jobseeker supplement and other welfare payments, clearly indicate that there is value in supporting the participation of our lowest income households in the economy, not just for their benefit but for the strength of the entire society and economy. Those measures should be made permanent.

Investing in long term community building and social services will provide more jobs and opportunities to a female dominated workforce, at a time when ABS data shows that lower paid women are bearing the brunt of the economic cost of this pandemic. .

Improving the quality and availability of these services will require not just more funding, but block funding with longer funding cycles, to attract a high-quality workforce and ensure continuity of service provision. Providing early access to these services, whether in housing support, mental health services or AOD counselling, will also take pressure off a health system that will be dealing with this crisis for some time to come, by reducing the numbers of people who will end up needing acute care or a hospital bed for problems that could have been avoided if they had been addressed earlier.

A fundamental economic inequality that must be addressed in order for Australia to rebuild the economy is the issue of taxation, particularly corporate taxation and tax loop-holes that benefit the wealthy in such a way as to reduce their effective rates of taxation well below any appropriate headline rate. The rebuilding of the economy that occurred in the post-war era saw significantly

higher tax rates than are currently in place. It wasn't until the late 80's that the top marginal tax rate dropped below 50%, and from the 1940's through until 1993 company taxes in Australia 10 were in the 42-49% range. Company tax revenue could be used to invest in nation-building projects, education, health care and programs to achieve full employment rather than for private benefit. Cutting corporate taxes reduces the capacity of the government to invest in society, funnels value created here to other places, and does not "encourage" investment in assets or jobs.

Australians will not only need economic support as they recover from this crisis. The longer-term impacts are still to be seen, but providing access to services for those who need it most will ensure we have the best chance of coming out of this with our community intact. Providing stable, secure jobs in this sector benefits us both economically and societally.

### **Embrace industry policy and 'Australian made'.**

The international economy will likely recover much more slowly than our domestic economy. As highlighted above we need to bolster both supply and demand locally. This will require initiatives to build domestic demand, support Australian businesses, create good jobs and ensure that workers have the income to buy more of the products and services produced and provided within Australia. We need the Federal Government to embrace industry policy and develop detailed sector by sector roadmaps and plans. These plans will need to revive and grow jobs, encourage new investment and look at how we build resilience. Industries like manufacturing, tourism, education, health services, hospitality, construction, health care, education and others have diverse challenges and intersect with many of the already identified opportunities for rebuilding Australia. The crisis has also highlighted vulnerabilities in medical equipment and manufacturing supply chains which will need to be addressed to prepare for the future.

The Federal Government can support local jobs and industry policy through government procurement. Government procurement rules should explicitly encourage and support local suppliers, manufacturers and service providers, with a focus on the security of employment that is offered. Putting Australian industry and services first should be a key principle of a new economic strategy of resilience, and should take into account a holistic view of the economic benefits of providing local, secure employment, guaranteed local supply chains and the opportunity to train and develop local workers.

## In summation.

The Government's response to the COVID-19 crisis has largely been one of good beginnings brought down by poor detail. The workers left behind by JobKeeper, the lack of action on leave and OHS and the poorly considered IR changes have exposed significant faults in the Government's response. Other decisions such as the decision to reduce the Jobseeker allowance after the crisis is over and forcing workers to drain their retirement savings for support have shown that the Government is committed to returning to their own version of 'business as usual'. Australians have welcomed announcements of support only to see the promises evaporate as details emerge. Australia deserves support programs which meet its expectation and aspirations and this crisis needs a response which builds prosperity and security for ordinary Australians. Much has been done to slow the spread of COVID-19 and keep the economy afloat – there is so much more to be done.

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