The JobMaker Hiring Credit – a recipe for insecurity

Australian Council of Trade Unions submission to the Senate Economics Committee inquiry into the Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020

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australian council of trade unions

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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.

As the voice for Australian workers, the ACTU has a deep and abiding interest in the efforts of the Government to assist the Australian economy to recover from the devastating impact of the Coronavirus pandemic. The JobMaker hiring credit scheme is particularly important because it represents one of the Government's first attempts to stimulate the recovery from the crisis, rather than an attempt to ameliorate its effects as we have seen with JobKeeper and other similar programs. It is disappointing therefore that that Government has delivered a program that will exacerbate the insecure work crisis the economy was already experiencing prior to the pandemic and which fails to address the disproportionate impact that the Covid recession has had on women.

The ACTU has a number of significant concerns about the lack of safeguards in this program, as outlined in the Budget documents, which we believe may incentivise the creation of insecure jobs over secure ones. It is our hope that this submission will result in significant changes to this program to address these complaints. We are however concerned that due to the nature of this bill, which leaves virtually the entire detail of the scheme to be dealt with through as yet unseen rules, that achieving this change will be difficult.

ACTU issues with the legislation offered

Lack of specificity

This bill, like many which the Parliament has been asked to consider over the previous year, contains almost no detailed information about the operation of the program it purports to enable. Instead vast powers of discretion as to the scheme's operation are left entirely to the Minister through the issuance of rules which, while subject to disallowance, are significantly more difficult for stakeholders to examine, consider and provide input on. Indeed, the concerns outlined in this submission thus far are based on a post-budget factsheet which may, theoretically, have little resemblance to the program which is ultimately implemented. We, and this Committee, have no real ability to provide oversight on the program as implemented because it is utterly opaque to us at this stage. While we are confident that the Government has no intention to deliberately mislead on this issue and that any change between the post-budget factsheet and the actual program will be as a result of feedback or new information, we, as well as the Parliament, are essentially being asked to approve of this program on the basis of limited detail and trust. Indeed it is possible, due to the wide latitude granted to make changes to the rules of the program, that if in the future a dispute arose as to the operation of the program, the Minister could simply change the rules such as to remove any right of appeal or redress. It is particularly concerning that the Bill appears to grant the Minister this wide latitude to make changes to the program through the making of rules through to October of 2022 – a time that includes the forthcoming election period and which extends beyond even the most pessimistic estimates of when normal parliamentary functioning will have resumed.

The Government is attempting to categorise this program as yet another emergency response, including it as an amendment to the Economic Recovery Package Bill (2020) which was an emergency measure, as outlined in Schedule 2 of the Bill, introduced at the height of the pandemic and national lockdowns. It is therefore drafted in that manner, with limited parliamentary oversight and significant Ministerial discretion as is often the case with bills of this type. The JobMaker Hiring Credit is not an emergency response. It is a long-term and, nominally, carefully planned economic initiative which is planned to run through to October of 2022. It is inconsistent with the principle of the rule of law for the Government to continue to utilise emergency response provisions to avoid oversight. In our view there is no justification for why this program should be subject to such limited parliamentary oversight. This is particularly concerning given the significant issues the ACTU has with the program as currently outlined – issues which the parliament will have little ability to correct and monitor.

There is always a balance between specificity in the legislation and discretion of the relevant Minister to make changes to a program based on changing circumstances. The ACTU understands that, due to the Coronavirus and the associated truncated 2020 parliamentary schedule, this balance has shifted somewhat towards Ministerial discretion over the last 10 months. We are concerned however that this does not become standard practice – Parliament must regain the ability to effectively interrogate Government policy through the legislative process. Citizens have a right to know and understand what a law is, how it will operate and know it is subject to parliamentary oversight. This is not the case with this legislation. We urge the members to continue to demand an explanation from Government as to why the basic underpinning mechanics of this program cannot be legislated.

ACTU concerns with the program as proposed.

A lack of safeguards against the replacement of existing employees with subsidised workers

The ACTU is concerned that the program, as outlined in the factsheet published on Budget.gov.au in the days after the Budget's release, does not contain sufficient safeguards against unscrupulous employers taking advantage of the scheme to receive public funds, in the form of subsidies, for replacing secure, full-time workers with insecure part-time and casual workers.

While we understand that the headcount and payroll increase requirements are intended to avoid incentivising this behaviour, we are concerned they are inadequate. As it stands, under this scheme, an employer would be able dismiss a full-time employee and replace that employee with two part-time workers. While the headcount check would prevent the first worker being subsidised, the employer would still be able to claim a subsidy for the second worker, receiving one or two hundred dollars a week in return for reducing the security of the employment of their workforce. This is obviously an unacceptable outcome – to both the worker and to Government.

It is the view of the ACTU that, rather than merely seeking to avoid incentivising this behaviour, this program should include additional safeguards which actively disincentivise the dismissal of existing staff and their replacement with multiple, insecure, subsidised workers. It is critical that these safeguards are in place to avoid this program creating thousands of 'on-paper only' additional jobs that represent no real increase in actual employment and a real decrease in the quality of work available in the labour market.

A scheme designed to produce insecure work

Linked to the above, another expression of the programme's general encouragement of the creation of insecure work is that the additionality requirements proposed in the Budget factsheet provide no protections, and in fact the scheme's design incentivises, the hiring of as many insecure part-time and casual workers as possible to fill any vacancy an employer will have in future. For example, under the programme as currently written, an employer with a number of vacancies which together represent 3 FTE (Full-time Equivalent) roles could hire 3 full-time workers and receive a subsidy of $600 a week. Alternately, they could hire 6 part-time or casual employees to fill the same vacancy and receive a subsidy payment of $1200 a week – for the same vacancy and virtually the same outlay for the employer. This programme appears to be designed to produce insecure jobs, with no requirement that workers be kept on after the program has ended nor any incentive for employers to do so.

That there is no safeguard in the programme to disincentivise this behaviour, in fact that it appears to be encouraged by the design of the scheme, must be reversed. The Australian economy is currently in dire need of secure, full-time employment for the nearly one-million unemployed workers looking for work. This problem is likely to worsen when, in early 2021, the JobKeeper program ends and some proportion of the workers currently reliant on that program to sustain their employment become unemployed. That the Government has seen fit to design a scheme which will produce precisely the opposite outcome – a proliferation of insecure jobs –is a great shame which must be rectified.

Lack of disincentive to churn

The program guidelines outlined in the Budget factsheet also do little to disincentivise, or prevent, employers from churning through employees on short-term contracts or short engagements and continuing to receive subsidies for each new set of workers, at least until their headcount baseline is re-evaluated. While there is no financial incentive in the programme to encourage this behaviour, there are several reasons that an unscrupulous employer would engage in the behaviour beyond the financial. Workers new to a business, particularly those still in a probation period, are generally considered to be less likely to refuse unreasonable requests or to complain about unsafe or unacceptable work practices. They are more likely to be exploited and are less likely to have had the opportunity to meet with their union representatives or establish support networks among their co-workers. While an employer may not receive a higher subsidy level for churning through workers under this scheme, these attributes are attractive to some employers, for reasons which should not be encouraged.

Once again, the programme appears to have been designed with the idea that simply not financially incentivising bad behaviour is a sufficient guard against that bad behaviour occurring. Australian unions believe that we must go further than that. Those who engage in excessive churn of subsided workers under this scheme should not continue to receive public funds. There must be some mechanism through which this behaviour can be monitored, investigated and prevented included in the design of this program.

Low subsidy value

The subsidy that this program provides, $200 a week for 16-30-year olds and $100 for those aged 30-35 is relatively low. The total subsidy for a 16-30-year-old for a year-long position is only $10,000 while a 30-35-year-old will attract a total subsidy of $5,000. While these figures, or at least the one which applies to a 16-30 year old, is fairly congruous with other wage subsidy programmes, such as the under-subscribed ReStart program[1], there is very little policy rationale available for why this low number has been used. It appears in the past that this has been largely driven by a desire for the subsidy to represent a lower figure than the total cost of providing Newstart, now JobSeeker, to a person for a year - approximately $15,000. This upper-limit on the value of wage subsidies that the government is willing to provide however also generates an upper-limit on the effectiveness of the program. As we have already seen with ReStart, $10,000 (or less) a year does not provide a sufficient incentive for many businesses to consider hiring a worker that they would otherwise not have hired. This means that while a subsidy of this amount may be effective at 'shuffling the queue' in terms of who is selected to fill existing jobs, they are of limited utility in terms of actual job creation. The Committee should consider recommending to the government that it review the amount of subsidy offered by the program to ensure that its potential job creation effect is maximised.

Low hours requirement

The requirement that workers are employed for only an average of 20 hours per week in order to be eligible for the full subsidy must be reconsidered. For many workers, particularly those in low paid jobs or to whom junior rates apply, 20 hours a week of work provides insufficient income to cover basic living expenses. For example, a worker being paid the minimum wage of $19.84 an hour would, before tax, take home only $396.80 a week – a sum which will not cover basic living costs such as rent, food and electricity. An 18 year old, receiving the junior rate of 70% of the minimum rate under the General Retail Award would, after working 20 hours a week, only earn $299.74 – before tax.[2] This means that, in these cases, the employer is receiving nearly as much money, in the form of a publicly-funded subsidy, to employ the worker as the worker is receiving as pay.

Compounding this issue is the fact that it appears under the proposed guidelines that workers are unable to qualify for the hiring credit under two employers simultaneously. While we understand the rationale behind this, it may have problematic implications. For example, if a worker can only obtain 20 hours work from one employer, which provided insufficient income for living expenses as noted earlier, they often have no choice but to seek additional part-time or casual work with another employer. However because the worker is not eligible for the subsidy with their second employer, they are a less attractive candidate for any open positions – making it hard to find the second job they have been forced to find due to the low hours available at their primary place of employment. The impact of this low hours requirement, in situations where the worker desires

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1 https://www.theguardian.com/business/2020/oct/14/an-utter-failure-coalition-blasted-over-program-for-older-unemployed-as-underspending-revealed

2 http://awardviewer.fwo.gov.au/award/show/MA000004#P553_45264

more hours, both in terms of the Impact on worker earnings and the comparative earnings of employers through the subsidy must be considered.

A lack of rationale for the age limit

Australian unions are concerned that an age limit has been placed on this program without a strong policy basis. We understand the reality that the age group most likely to have lost their job or income as part of the Coronavirus pandemic are younger Australians and that this group is in desperate need of assistance from government both now and going forward to undertake training, find work and build their careers. What is equally true however is that many Australians aged 35+ have also experienced significant economic shocks, with more likely to occur in 2021 when many of this cohort who are currently relying on JobKeeper are likely to see that support end. The anxiety around what will happen to these workers, who are excluded from this program has, in our opinion, driven much of the concern around whether this programme is discriminatory.

The imposition of an age limit for the assistance the programme provides appears to be both arbitrary and without a strong policy rationale. There has been little evidence from the government that 35 represents a line in the sand, after which the effects of the coronavirus on employment and income suddenly reduce. It is also not clear why an age limit is needed at all – the Government has provided no rationale either in its public statements nor in this bill. It is our view that the Committee should recommend that, failing some compelling justification for the restriction, the age limit be removed from this scheme, or at least raised to 50 at which point the Restart subsidy, which offers the same amount, begins.

A failure to consider how women can participate in the program

Women have disproportionately suffered the impacts of the Coronavirus pandemic. In terms of jobs losses, working hour reductions, loss of income, increased caring responsibilities, greater rates of family violence and loss of superannuation, women have experienced greater impacts than men through this crisis.

Women were, at the peak of the crisis, more likely to lose their job than men and were less likely to eligible for support through either the JobSeeker or JobKeeper programs. The public discussion on this issue has been clear – women have been disproportionately impacted by this crisis and yet have received very little direct support from Government. In fact, the first industry to lose access to JobKeeper was Early Childhood Education and Care – a female dominated industry. It is disappointing then, that this program fails to adequately consider women and in fact ensures, through its design, that women will benefit substantially less from the program than men.

Firstly, in addition to the fact that women have an overall lower labour force participation rate than men generally, meaning they are less likely to qualify for the payments necessary for subsidy eligibility, women have also left the labour force at a greater rate than men due to the Coronavirus pandemic. This effect has been driven by multiple factors. Women were more likely to be employed in those industries which were hardest hit by the crisis,[3] meaning that when they became unemployed they were more likely to give up looking for non-existent work in their field – dropping out of the labour force. Women were also more likely to leave the labour force due to increased caring responsibilities – particularly in areas and at times where schools were closed due to lockdowns. Due to the substantial and intransigent gender pay gap, women were also more likely than men to be rendered ineligible for payments, including JobSeeker, due to their partner's earnings.

What this all means is that women are substantially less likely than men to be eligible for subsidy under this scheme, despite the fact that they are the cohort most in need of government assistance. While we acknowledge that becoming eligible for the scheme, at least for those women not precluded from payment eligibility due to their partner's income, is not onerous it remains unacceptable that this program has been designed in such a manner as to exclude many women from eligibility or from becoming eligible. That this is yet another in a long line of decisions by this government to ignore the gendered nature of the impact of the Coronavirus pandemic is greatly disappointing and must be rectified.

No requirement for employers to commit to safety and workplace rights

The program guidelines outlined in the Budget factsheet indicate that for an employer to be eligible for this scheme they must be "up to date with tax lodgement obligations", as well as a number of other requirements. This is not in itself an issue – it is a positive move to ensure that employers are paying their taxes and meeting their obligations prior to accessing public funding through this scheme. What is lacking however is a requirement that employers meet their obligations to their employees, particularly those employees whom the government is subsidising.

It is our view that this program should require employers to declare, upon accepting the subsidy, that their employees will receive the proper pay and conditions according to the award or the relevant agreement, that they will receive the appropriate superannuation and that they will be given appropriate training in order to operate safely in the workplace. With the likelihood that this program, as currently designed, will create thousands of insecure jobs which are more vulnerable to exploitation and workplace injury, this omission becomes all the more crucial. Employers who make this declaration and then fail to meet it should be forced to refund the value of all subsidies they have received under the scheme as well as face additional penalties.

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In summary

The ACTU has significant concerns about the policy settings for this program as outlined in the post-budget factsheet. We are concerned that the program creates significant incentives for the creation of insecure jobs over secure jobs and that it does not take sufficient action to prevent poor behaviour from employers.

It is equally concerning that the program represents yet another opportunity missed by government to provide meaningful assistance to female workers, who have so far suffered the brunt of the pandemic's impact.

As outlined above, we also have significant issues with the age limit applied by the scheme, the lack of a requirement for workers to be paid correctly and to provide a safe workplace, the relatively low value of the subsidy and the low hours requirement the program imposes. We also recognise that it is difficult, with the legislation as it is written, for the Committee to recommend changes to this bill which would see these issues addressed – as the actual bill contains no detail regarding the program to be implemented.

We strongly urge the Committee to recommend that the Government consider these issues and that changes be made to the program's guidelines, however they are implemented, to address them.

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