



Electrical Trades Union of Australia

Proud to be Union

22 July 2022

ETU Submission to the Attorney-General Department's Review of Changes to Casual Employment Laws

The ETU

1. The Electrical Trades Union of Australia (ETU)¹ is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing over 60,000 electrical workers across the country.
2. The ETU's membership has significant concentrations in the resources, construction and power industries, although is spread throughout the economy including the manufacturing, tourism, entertainment, business equipment and defence support industries.
3. A typical ETU member is a highly skilled electrotechnology worker who has completed at least a four-year apprenticeship and is subject to ongoing training, certification, licensing and development requirements.

Background

4. The ETU understands that the purpose of the Attorney-General's **Review** is to examine how the amendments made to casual employment arrangements by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* (Cth) (**FW SAJER Act**) are operating.
5. Prior to the enactment of the FW SAJER Act, the ETU raised significant concerns about the Act's provisions in respect of casual employment and called for such provisions to be overhauled or scrapped by way of its submission to the Education and Employment Legislation Committee's inquiry into the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery Bill 2020)* (**Bill Submission**).
6. The ETU understands that the review team has read its Bill Submission and that it is asked not to reiterate matters set out in it for the purposes of the Review. For the sake of clarity, the ETU considers that the concerns and criticisms raised in its Bill Submission remain relevant and hopes that the review team finds them useful.
7. Further, the ETU refers to the letter from the ACTU to the review team dated 7 July 2022. The ETU supports the matters set out in the ACTU's letter as well as the documents referred to therein.

Observations since the enactment of the FW SAJER Act

8. Prior to the enactment of the FW SAJER Act, the ETU had many members whose employers purported that they were casual employees notwithstanding the fact that they did not satisfy the old common law definition of a casual employee and therefore were actually permanent

¹ The ETU is a Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**), a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).

employees and entitled to the benefits of permanent employment (or at some point during their employment, this was the case).

9. The enactment of the FW SAJER Act had the effect of retrospectively converting many of these employees to casual employees and thereby stripping away their entitlements. This is because the common law definition paid regard to the real substance, practical reality and true nature of the employment relationship. In contrast, the new legislative definition (which has retrospective application) ignores such matters and instead focuses on the terms of the offer of employment through a prescriptively narrow lens.
10. Further, the enactment of the FW SAJER Act, as anticipated, has not resolved the many issues facing casual employees in the industries in which the ETU's members work and, instead, has amplified them. Casual employees continue to work full-time hours with their rosters set far in advance and without the option of being able to refuse shifts. Many feel vulnerable in their employment and are scared to request conversion to permanent or otherwise speak out about matters such as safety issues. In most part, they also continue to be engaged as labour-hire on terms and conditions that are inferior to their host company's direct employees. In addition, the COVID-19 pandemic has seen many casuals dismissed or go without income during periods of mandatory isolation.
11. Evidently, the passage of the FW SAJER Act has in fact realised the many concerns and criticisms raised by the ETU in its Bill Submission.

ETU Position

12. While the ETU does not oppose there being a legislative definition of casual employees in principle, such a definition (unlike the current definition) should reflect the old common law definition which focused on whether the employment is regular, systematic and predictable and included a consideration of the real substance, practical reality and true nature of the employment relationship.
13. Further, the conversion mechanism in the FW SAJER Act cannot work effectively in the industries in which the ETU's members work for reasons including (without limitation) that casual employees are often moved between short-term projects (e.g. small construction projects, turnaround work etc) so that they are unable to meet the eligibility requirements. This is particularly common in the labour-hire industry. Further, employers are easily able to avoid the mechanism where there are anomalies to an otherwise regular pattern of hours such as where a casual has been absent from work due to COVID-19 isolation requirements.
14. Lastly, despite the ETU's earlier submission as to the expected deficiency of the FW SAJER Act, and the now clear evidence that those expected deficiencies have been borne out, the limited benefit that may have been realised from the amendment simply has not materialised due to a complete lack of monitoring, compliance and enforcement from the regulator. The Fair Work Ombudsman has not engaged with workers or their representatives on these matters, and with regard to the construction sector, the Australian Building and Construction Commission has actively obstructed Unions' attempts to assist casual construction workers from seeking to enforce their rights.
15. The ETU will be raising the failure of the SAJER Act and pursuing legislative reform for casual employees, and insecure work more generally, in the lead up to the Jobs and Skills Summit.