

# Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022

## Senate Standing Committee on Education and Employment

11 November 2022

### **About ACOSS**

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector.

ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas.

Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

### **Summary**

ACOSS supports a workplace relations system that is fair and provides equal protection for all. Together with delivering full employment, reform of workplace relations is needed to restore growth in real wages, reduce poverty, income inequality and inequities in rates of pay between genders, improve the security of employment and access to the regular paid working hours people need, and to improve pay and the quality of employment in care and community services.

We are supportive of the Bill's measures to address gender equity, improve pay, conditions and job security for community sector workers and prohibit sexual harassment in the workplace. We support proposals regarding fixed term contracts and flexible work, with caveats. We also support the Bill's proposals to streamline enterprise bargaining, and will be ready to work with government, unions and sector employers on implementing each element to improve conditions in our sector.

Critical to any improvement in the industrial relations system regarding the community sector is ensuring government commits to adequately funding any agreement or determination to increase pay for sector workers, as it remains the main funder of community services.

## Recommendations

Our recommendations are as follows:

**Recommendation 1:** Proposals to address gender equity and improve pay and conditions should be supported by the Inquiry.

**Recommendation 2:** Proposal to include job security in the Fair Work Act should be supported by the Inquiry.

**Recommendation 3:** Proposal to introduce Pay Equity, and Care and Community Sector Panels to the Fair Work Commission should be supported by the Inquiry.

**Recommendation 4:** Proposal to prohibit pay secrecy should be supported by the Inquiry.

**Recommendation 5:** Reforms to fixed term contracts should be accompanied by a government commitment to better contracting practices

**Recommendation 6:** Clear guidelines are required for employers regarding what is considered a reasonable request for flexible work

**Recommendation 7:** Equal Remuneration Orders must be supported by a guarantee for Federal Government financial assistance

**Recommendation 8:** Proposals to streamline the bargaining processes should be supported by the Inquiry.

Our points on the Bill are explored in further detail below.

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## Introduction

ACOSS welcomes the opportunity to contribute a submission to the Inquiry into *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* ('the Bill'). ACOSS thinks the enterprise bargaining system is not working for millions of workers in the care sector and community services or their employers. It is challenging, especially in the many smaller organisations across the sector, for unions and employers to use this complex, rigid and time-consuming process to negotiate pay and conditions for workers. As such, many sector workers are completely reliant on the Award system.

ACOSS supports the proposals contained in the Bill, and believe they represent an opportunity to strengthen the industrial relations system for community organisations and their workforces, improving the pay, conditions, and quality of employment in the sector. We welcome the focus on addressing gender equity and improving the remuneration and conditions for low paid workers in traditionally women-dominated industries. If passed into law, we will endeavour

to work constructively with government, unions and sector employers to ensure the proposals are implemented as beneficially as possible for our sector.

A crucial element in community services, for the Committee to consider, is the centrality of government to the vitality of the sector's workforce. The Commonwealth, state and territory governments remain the main funders of community services. Any determination or decision by the Fair Work Commission (FWC) to improve pay, conditions and workplace arrangements for community sector workers invariably involves the government adequately funding the increase. While we commend the Federal Government on its intent to address systemic issues such as gender equity in the workforce, and ensure wages start rising to meet cost of living pressures, it must also remain active and committed in investing in community services.

## 1. Gender equity and improving pay and conditions

ACOSS supports the Bill's proposals to address gender equity, namely:

- the proposal to introduce the promotion of gender equity as objects in the Fair Work Act;
- ensuring the Fair Work Commission can consider work value free of assumptions based on gender, and include consideration of whether there has been historical gender-based undervaluation of work being considered;
- removing the 'male comparator' as an evidentiary requirement in the FWC determining an equal remuneration order; and
- tackling sexual harassment in connection with work through a prohibition to be introduced into the Fair Work Act and a new dispute resolution function, and streamlined process, to be incorporated into the FWC.

We believe that these proposals offer an overdue updating of the legislation to more effectively improve gender equity in the workplace, noting again the central role government has in adequately investing in the sector and its workforce.

**Recommendation 1: Proposals to address gender equity and improve pay and conditions should be supported by the Inquiry.**

## 2. Job security

ACOSS supports the inclusion of job security in the objectives of the Act. Relevant protections should be readily accessible for workers while minimising administrative burdens for employers. The emerging 'gig economy' in care and community services and other sectors requires better regulation to ensure people have certainty of employment and decent pay and conditions.

**Recommendation 2: Proposal to include job security in the Fair Work Act should be supported by the Inquiry.**

### 3. Expert panels

ACOSS supports the introduction of the Pay Equity Panel and the Care and Community Sector Expert Panel within the Fair Work Commission to determine equal remuneration order cases, and certain award cases. We are pleased to see there will be a standing panel of experts with detailed knowledge and understanding of the community sector and its workforce. We hope that this will offer continuous improvement of determinations made by the FWC in relation to our sector.

**Recommendation 3: Proposal to introduce Pay Equity, and Care and Community Sector Panels to the Fair Work Commission should be supported by the Inquiry.**

### 4. Prohibiting secrecy

ACOSS supports the Bill's proposal to prohibit secrecy around pay and conditions to allow employees to assess whether their remuneration is fair and comparable to that of other employees in the same workplace or industry. We think improved transparency amongst workforces with similar attributes and experiences will help raise the expectations for pay and conditions more generally, including in our sector, support efforts to close the gender pay gap and serve to highlight areas requiring further investment by government at different levels.

**Recommendation 4: Proposal to prohibit pay secrecy should be supported by the Inquiry.**

### 5. Limiting the use of fixed term contracts

We are supportive of the government's intent to limit the use of fixed term contracts in employment situations to improve job security. For the proposal to be fully effective, we believe it must be supported by corresponding improvements to government contracting practices.

The prevalence of short-term government contracts in funding service delivery combined with the lack of adequate notice being given for contract renewals, exacerbates the use of fixed term contracts in the sector.

In the 2022 Australian Community Sector Survey (ACSS), when organisational leaders were asked if they agreed with the statement 'Funding timeframes are long enough', only a quarter (26%) agreed, and the majority disagreed (59%). Further, 31.6% of leaders responding to the ACSS stated that their longest government contract was three years or less.<sup>1</sup>

In the 2022 ACSS, organisational leaders were asked to recall the last time a government funding contract came up for renewal, and to indicate how many

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<sup>1</sup> ACOSS, [Carrying the Costs of the Crisis: Australia's Community Sector through the Delta Outbreak](#), 2022.

weeks in advance the organisation was notified as to whether it would be renewed. Only 5.1% of leaders stated their organisation received 24 weeks or more notice. Over 61% of leaders said their organisation received notice of 8 weeks or less, and 12.4% stated they received no notice at all. It is because of contractual behaviours such as these that the use and rolling over of fixed term contracts remains a regular occurrence.<sup>2</sup>

We recommend that as part of the government pursuing changes to the use of fixed term contracts, it should improve government contracting processes for community services. This involves lengthening the time of a service contract to five years or more, and significantly improving the notification procedures to a minimum of six months, so that organisations can better plan and take care of their workforce with sufficient time.<sup>3</sup>

**Recommendation 5: Reforms to fixed term contracts should be accompanied by a government commitment to better contracting practices.**

## 6. Expanding access to flexible work conditions

We are supportive of the Bill's proposal to facilitate better access to flexible work arrangements for employees, especially in circumstances where an employee, their family or household are experiencing family or domestic violence.

The healthcare and social assistance workforce is comprised of about 76% women, who in addition to their professional roles, disproportionately carry the burden of household, family and caring responsibilities. Chronic underinvestment in the sector by governments reduces opportunities for employees to control how their work is scheduled and organised, and to manage work and care. This jeopardises the work-family balance for many employees.

It is important that the practical effect of the Bill's proposal strikes a balance between the needs of employees for flexibility with the workplace requirements of employers to maintain continuity of care for people they help. For instance, in the community sector, service provision and support for people in need mostly requires staff in person at a worksite such as a childcare centre, local neighbourhood centre, aged care facility or a person's home. Whilst employers endeavour to accommodate the personal needs of employees, this will not always be possible.

As such, the Bill must be accompanied by clear and constructive guidance as to what a reasonable request for flexible work is deemed to be, and what the Fair Work Commission may consider 'reasonable business grounds' to refuse a request. More detailed guidance and explanation from the outset of this reform will help reduce the number of unnecessary potential disputes taken to the FWC.

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<sup>2</sup> ACOSS, [Carrying the Costs of the Crisis: Australia's Community Sector through the Delta Outbreak](#), 2022.

<sup>3</sup> ACOSS, [Valuing Australia's Community Sector: Better Contracting for Capacity, Sustainability and Impact](#), 2021.

**Recommendation 6: Clear guidelines are required for employers regarding what is considered a reasonable request for flexible work.**

## **7. Equal remuneration orders determined by the FWC**

ACOSS is supportive of strengthening the mechanisms by which the FWC can determine an equal remuneration order (ERO). However, we strongly advise that the Federal Government commit to funding any future increase for our sector due to an ERO determination, as the main purchaser of community services. Otherwise, the financial viability of community service providers will be jeopardised. This is a lesson that has been learnt the hard way.

In February 2012, then Fair Work Australia made a decision to increase the pay for certain employees in the social, community, home care and disability services industries between 2012 and 2020. It was only after sustained and intense advocacy efforts over a long period of time that the sector obtained supplementary funding to afford the ERO. In the meantime, providers felt significant pressure and strain in their capacity to remunerate their workforces.

It is imperative that for any future equal remuneration order for community services to be passed on, and for providers to maintain staffing levels and assistance for people in need, that the government guarantee to funding the additional remuneration.

**Recommendation 7: Equal Remuneration Orders must be supported by a guarantee for Federal Government financial assistance.**

## **8. Streamlining the enterprise bargaining process**

ACOSS supports a workplace relations system that is fair and provides equal protection for all and sustains real wage growth over time.

Improving the industrial relations system is crucial for our sector, which is experiencing one of the highest employment growth trajectories in the economy. Over two million people are employed in Australia in health care and social assistance, representing about 15% of the total workforce. The workforce is projected to grow by over 300,000 workers in the five years to November 2026 in response to community demand for services such as aged care, disability care and early childhood education and care to name three key sectors.

The enterprise bargaining system is currently not working for millions of workers in the care sector and community services, or their employers. It is challenging, especially in the many smaller organisations across the sector, for unions and employers to use this complex, rigid and time-consuming process to negotiate pay and conditions for workers. That leaves many workers in the sector completely reliant on the Award system.

We support the introduction of a fairer and simpler system of enterprise bargaining that allows organisations to bargain together in multi-enterprise agreements to reach outcomes that better support care and community

organisations and their employees. We note OECD research demonstrating that sector level bargaining or coordination can assist in negotiating targeted raises in female-dominated and low-paid sectors.<sup>4</sup>

Given that, we are supportive of the supported bargaining and cooperative workplace bargaining streams proposed by the Bill. We are encouraged that the proposals to revise the current low paid bargaining stream to become the supported bargaining stream will allow sector workers struggling with low pay, modest conditions and job insecurity to achieve much more equitable outcomes. We are also supportive of the fact that the cooperative workplace stream is a voluntary process.

Should these proposals become law, ACOSS will work with government, unions and sector employers to ensure that the new bargaining processes work as effectively and beneficially for the sector as possible. We will aim to ensure that low paid workers see real increases to their pay and conditions and that employers have the capabilities and resources to ably manage their workforces to meet community need. This will require ongoing consultation from government, and collaboration from our sector, regarding the mechanics of implementing these reforms.

A critical question again is the role of government, at the Commonwealth, state and territory levels, in the negotiation process as the main funder of community services. Government must be at the negotiating table, otherwise its absence will undermine the negotiation process and any subsequent agreement.

Further, any enterprise agreement reached across multiple community sector employers in either the supported bargaining or cooperative workplace streams must be supported by investments by government that do not leave employers or workers out of pocket.

We strongly recommend that explanatory documents be provided detailing the practical impacts of the Bill's bargaining proposals on our sector, amongst others.

**Recommendation 8:** Proposals to streamline the bargaining processes should be supported by the Inquiry

## Acknowledgement

ACOSS prepared this submission in consultation with interested members and we thank them for their valuable input.

## Contact

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<sup>4</sup> OECD, [Can Collective Bargaining Help Close the Gender Wage Gap for Women in Non-Standard Jobs?](#) 2020, p. 6.