

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

4 October 2023

By email: eec.sen@aph.gov.au

Dear Committee Secretary,

Catholic Social Services Australia (CSSA) appreciates the opportunity to make a submission to the Senate Standing Committee Inquiry into the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth) (the Bill). The Bill is an important step towards improving job security and the minimum standards safety net for Australian workers, especially those on the margins of the labour market.

Catholic Social Services Australia (CSSA) advocates for the Catholic Church's social service ministry and is the peak body for Catholic social service providers, including CatholicCares and Centacares in dioceses across the nation and providers such as Mackillop Family Services, Marist 180, and Jesuit Social Services. CSSA members provide a wide range of services across the social services sector, including family support, early childhood education and care, community aged care, and disability support.

Our members work to support a cohesive, inclusive, and just society where everyone has the opportunity to thrive, flourish and develop their full potential. CSSA's work is underpinned by Catholic Social Teachings principles: solidarity, the preferential option for the poor and vulnerable, the rights of workers, the dignity of work, and protection and care for the environment.

As not-for-profit employers in the care and support economy, CSSA members are fundamentally reliant upon government funding to engage the workers to deliver crucial community services. This Bill will help to improve labour standards in our sector, but only to the extent that current funding models are reformed to reflect the true value of the work being undertaken and required and the true cost of providing quality administration to support that work.

Please see the CSSA submission attached. Please contact the principal author, CSSA Government Relations and Policy Officer Ron Johnson, (ron.johnson@cssa.org.au) if you require any clarification or further information.

Yours sincerely,



Monique Earsman
Executive Director
Catholic Social Services Australia

Catholic Social Services Australia (CSSA)

Submission to the Senate Education and Employment Legislation Committee inquiry into the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (Cth)

Introduction

Catholic Social Services Australia (CSSA) would like to thank the Standing Committee on Education and Employment for the opportunity to make a submission concerning the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (the Bill).

CSSA also acknowledges and thanks the Minister for Employment and Workplace Relations, the Honourable Tony Burke MP, and the Department of Employment and Workplace Relations (DEWR) for their work on bringing this important legislation before the Australian Parliament.

The Bill aims to close legal loopholes that have facilitated the expansion of insecure work types and reduce Australia's high levels of insecure work (by OECD standards¹). CSSA believes that the changes proposed in the Bill will open more opportunities for Australian workers and their families to have improved economic and social circumstances.

However, from the perspective of CSSA members, as not-for-profit employers, many of the potential benefits of these legislative reforms are reliant upon significant improvements being made to the Commonwealth and State/Territory funding models and grant arrangements for the provision of care and support services.

Grants need to genuinely match the cost of providing quality services and attracting, retaining, and training a skilled workforce in secure jobs with fair pay and safe working conditions. For example, as a first step, the current 1.2% productivity offset² applied to all Commonwealth Government grants needs to be abolished, at least for not-for-profit and charitable community services organisations.

The theory apparently underpinning the productivity offset is that it may create an incentive for community service organisations to focus upon finding more efficient ways of working. However, the reality for CSSA members is that it is actually causing inefficiencies due to funding shortfalls, an inability to raise wages beyond the Award minimum, and cuts to staffing- all inhibiting their ability to provide the necessary services to clients. The productivity offset has no place in the not-for-profit care and support sector.

Furthermore, Commonwealth models for community services grants funding and indexation are based on crude, narrowly construed formulas, using Consumer Price Index (CPI) and Wage Cost Index (WCI) figures. These formulas typically result in funding that falls significantly short of the actual cost of providing the quality of services required.³

Overall, CSSA views this Bill as a very important initiative, particularly because of its capacity to assist the most vulnerable of workers in the Australian Labour market, many of whom work in the care and support economy. CSSA views the amendments as being consistent with the Object of the *Fair Work Act 2009* (Cth). CSSA strongly encourages the Senate Committee to recommend to the Senate the passing of the Bill in its entirety.

¹ OECD Library, OECD Employment Outlook 2019: *The Future of Work*, OECD, 2019.

² See 2023-2024 Budget Paper 1 (2023), P. 79 & P. 199, Table 6.1, Commonwealth of Australia.

³ See: Gilchrist, David, J., and Clare T. Feenan. 2023. "Economic Paper 2: Why the CPI and WPI are not Appropriate Bases for Human Services Funding Indexation." Working Paper Series on the Economics of Human Services, Centre for Public Value, UWA Business School, Perth, Australia.

Key aspects of the Bill:

The Explanatory Memorandum accompanying the Bill lists the ways in which the Bill would amend the *Fair Work Act 2009* (FW Act) and related legislation to improve the workplace relations framework and to strengthen the work health and safety (WHS) framework. The table below provides some CSSA commentary on key aspects of the Bill most pertinent to CSSA members.

OUTLINE OF THE BILL	CSSA COMMENT
<p>*Improving job security by replacing the existing definition of ‘casual employee’ with a fair and objective definition and by introducing a new employee choice pathway for eligible employees to change to permanent employment if they wish to do so.</p>	<p>CSSA acknowledges that genuine casual employment relationships suit the mutual needs of many employers and employees. However, CSSA supports the proposed legislative changes to:</p> <ul style="list-style-type: none"> a) “[P]rovide casual workers with a greater ability to make a choice about their employment status, by providing a pathway to move to permanent employment if they wish. b) Enable an employee to “...have the opportunity to move from casual employment where they are in fact working like a permanent employee.”⁴ <p>CSSA members are concerned that, to a significant extent, the ‘casualisation’ of the care and support economy workforce is caused by the nature of funding models. For example, ‘fee-for-service’ funding with very thin margins can drive employers towards casual employment for staff. In circumstances when people receiving care and support cancel or postpone a booking, as often occurs, casual employment can prevent additional labour costs.</p> <p>CSSA recommends that all funding methods used by the Australian Government in the care and support economy be reviewed to ensure that funding and indexation arrangements are fully transparent, preference secure employment over ‘gig’ or casual work, and fully cover increases to all labour, overhead and other costs.</p>
<p>*Protecting bargained wages in enterprise agreements from being undercut by the use of labour hire workers who are paid less than those minimum rates.</p>	<p>CSSA strongly supports this change to protect the integrity of the enterprise bargaining system and to ensure fairness and job security for employees covered by enterprise agreements.</p> <p>However, the reality for CSSA members is that they are not provided with adequate funding to cover minimum Award and legislative labour standards, let alone enter into an enterprise agreement. A very small number of our members have entered into enterprise agreements with their care and support staff and, consequently, are operating at a significant loss.</p> <p>Current Government policy settings place CSSA members in the unenviable position of not being able to pay most of their workers a sufficient rate of pay to avoid poverty or financial</p>

⁴ Explanatory Memorandum, *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*, Para. 10.

	<p>hardship. CSSA members report being unable to attract suitable staff because the award wages are insufficient to rent or buy a home in the local area.</p>
<p>*Supporting workplace delegates by providing a framework for delegates' rights and including protections for workplace delegates when seeking to exercise those rights.</p>	<p>Catholic Social Teaching supports the formation and activities of labour unions as an essential voice to the collective concerns of workers. A framework for delegates rights and protections is an important part of sustaining labour unions and can open the way to more cooperative workplace relations.</p> <p>CSSA recognises that union delegates play an essential role in improving pay and conditions for workers, including through enterprise bargaining.</p> <p>CSSA members have a common interest with labour unions to ensure government funding for care and support economy services is sufficient to pay workers the true value of their labour, to have fair and safe working conditions, and to avoid poverty.</p>
<p>*Establishing a new protected attribute in the FW Act to improve workplace protections against discrimination for employees who have been, or continue to be, subjected to family and domestic violence.</p>	<p>CSSA strongly supports this initiative. One expected benefit of this change is that it will encourage employees to utilise their right to access paid family and domestic violence leave, where otherwise they may be too fearful.</p> <p>However, funding formulas need to be reformed to ensure that CSSA members can afford to cover the cost of Paid Family and Domestic Violence Leave and the full scope of National Employment Standards (NES), award and reasonable negotiated enterprise agreement standards and conditions.</p>
<p>*Allowing the FWC to set minimum standards for 'employee-like' workers, including in the gig economy.</p>	<p>This is an important improvement for those workers that it will affect including for care workers employed by companies like Mable.</p> <p>CSSA supports the position put by the ACTU that this change should go even further to apply to <i>all</i> workers who are in the "gig economy" whether they are employed through digital platforms or not.</p> <p>The proposed change will go some way towards ameliorating the labour cost-disadvantage faced by CSSA members compared to "gig economy" digital platform companies.</p> <p>However, if CSSA members are to be able to overcome the current huge problem of attracting and retaining a suitable care and support workforce, grant funding formulas will need to be reformed to include capacity for the making of enterprise agreements that include wages and conditions well above the minimum Award standards.</p>



Conclusion

From the perspective of CSSA, contingent on the reform of government funding and indexation arrangements, the most important impact of the Bill will be to ameliorate some of the disadvantages faced by vulnerable care and support workers on the margins of the labour market. Improving the terms of the employment relationship for these workers can reasonably be expected to also improve the quality of care for the hundreds of thousands of persons and families in need who access the services of CSSA member organisations.

CSSA appreciates the Committee's consultation on the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*. Although some amendments in the Bill may not directly apply to CSSA members or their employees, the Bill, overall offers a very welcome opportunity to improve the fairness of the Australian industrial relations system.

CSSA strongly encourages the Senate Committee to recommend to the Senate the passing of the Bill in its entirety.

