Restricting casual employment opportunities would be economically dangerous

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Industry is increasingly fearful that changes to casual employment under consideration by the Federal Government will dramatically restrict the choices that many Australians – especially young workers – make about how they wish to work.

The big risk is that, as part of the government's proposed next round of workplace changes, it will lock stock and barrel adopt a long-standing union agenda fixated on restricting casual employment even though such arrangements suit workers and their employers.

The fear is entirely understandable given ongoing uncertainty with the Government's vague plans to change the definition of casual work and its opposition to casual employees working 'regular and predictable hours'.

What is certain is that there is simply no justification for further changes to the regulation of casual work. Despite the myths perpetuated by the ACTU, there has been no growth in the rate of casual employment for decades and casual employees working regular hours have never had stronger rights to obtain permanent employment than they do currently.

Indeed, a new Ai Group research paper demonstrates that casual employment has fallen to its lowest level in a decade. According to the latest ABS statistics, there are now around 2.5 million casual employees in Australia, accounting for 22.1% of all employees. This compares with a peak over the past decade of 25.5% of casual employees in 2016.

It is the young who will suffer the most with restrictions on casual work. Our report found that 39% of casual employees are between 15-24 years old, and another 19% are 25-34. Casual employment often provides young employees with entry to the labour market and helps workers balance educational commitments. Any new restrictions will also hurt the many other people who want to work as a casual, including working regular hours as a casual, but nonetheless want the ability to be absent from work when it suits them – be it to accommodate other commitments or to simply pursue interests outside of work.

Restricting casual employment would make it harder for people to access a form of work that delivers the financial benefit of a 25% casual loading and the capacity to take on addition work when it suits them.

These statistics highlight that it would be folly and unfair for the Federal Government to introduce restrictions on casual employment that would harm businesses and employees. The kinds of changes under contemplation would inevitably increase business costs and risks, reduce investment and reduce employment.

These changes, should they see the light of day, will impact businesses and their employees just as the economy is expected to be facing a downtown and as unemployment is on the rise.

We need only look at the recent past to see the dangers of tinkering with casual employment regulations.

A couple of years ago, businesses were extremely concerned about two decisions of the Federal Court which determined that two employees of a major employer, WorkPac, were not casuals, even though they were engaged and paid as casuals. Thankfully, the deeply flawed decisions were rightly overturned by the High Court of Australia in 2021 in the *WorkPac v Rossato* case, and a commonsense approach was restored.

In the High Court proceedings, evidence was given by the Department of Employment and Workplace Relations that the potential cost to industry of not overturning the Federal Court's decisions would be up to $39 billion.

Around the same time that the High Court's decision was handed down, Parliament wisely amended the Fair Work Act to define a 'casual employee' in a manner that closely reflected the High Court's clarification of the common law definition.

In addition, the Act was amended to protect employers against 'double-dipping' claims by employees who had been engaged and paid as casuals, but who turned around years later and argued they were entitled to annual leave and other entitlements they had been paid a significant casual loading in place of full-time benefits.

Before the High Court's decision and the legislative amendments, at least eight 'double-dipping' class actions were being pursued. All of these actions were quietly withdrawn once the new definition of a 'casual employee' and the 'double-dipping' protection was inserted into the Act.

A further major aspect of the 2021 reforms gave casual employees robust rights to convert to permanent employment after 12 months of regular employment with a business.

Given the recent history, the potential costs to industry and the adverse consequences for workers, it would be unfathomable and economically dangerous to contemplate re-creating all the problems that were only recently solved. There is nonetheless genuine industry concern that this is precisely what the government is considering.

The Government needs to provide industry with certainty by urgently ruling out changes to casual work that are inconsistent with the notion of casual employment endorsed by the High Court. It should respect the decision of the highest court in the land.

It also needs to rule out watering down the important current legislative protections against 'double dipping' and rule out altering the very strong casual conversion provisions only recently introduced under the National Employment Standards which already balance the needs of employers and employees.

Since it was elected, the Government has, one after the other, implemented a series of unbalanced industrial relations changes that will do nothing to boost productivity or assist businesses to grow and increase employment. The changes so far have only looked to deliver on a wide range of longstanding union claims.

Enough is enough. The current casual employment arrangements need to be preserved to prevent Australian businesses and their workforces losing the choices and agility they need to prosper.

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https://www.theaustralian.com.au/commentary/why-changes-to-casual-work-rules-risk-our-economy/news-story/c86c779d0bad8a5e5fc72b43bd8a41e7