

RCSA Submission to the Review of the *Secure Jobs, Better Pay Act*.

RCSA appreciates the opportunity to provide feedback to the Review of the *Secure Jobs, Better Pay Act*. RCSA is the peak body representing the recruitment and staffing industry, which includes the labour hire industry, across Australia and New Zealand.

RCSA represents over 1000 corporate and individual members who source, place and manage permanent and temporary workforces across almost every industry in the country, supporting private and public organisations with their professional, skills and labour demands.

As an active member of the Australian Chamber of Commerce and Industry (ACCI) RCSA wishes to endorse and support the thorough and comprehensive feedback provided by ACCI to this review, which RCSA helped to inform through providing consultation with the industry.

In addition to our contribution to ACCI's submission, we also welcome the opportunity to share direct feedback from our members in relation to the impact and effect of new limitations on fixed and maximum term contracts.

Loss of flexibility for legitimate non-ongoing assignments

The introduction of fixed and max-term contract limitations has had a significant impact in the on-hire sector. As RCSA indicated to policy makers prior to the introduction of these measures, limitations on fixed and maximum term contracts have worked against the legislation's ambitions for greater 'job security'. Instead, they have simply created great complexity and challenge for staffing large infrastructure projects, while removing the opportunity for many workers to be engaged on paid leave arrangements when placed on shorter-term assignments.

As indicated earlier, RCSA members source, place, and manage workers across almost every industry, supporting labour and professional demands across all forms of business and government. A significant portion of our membership support seasonal and project-based work by providing specialist workers for the part, or period, of the project that they are required for.

For example, a construction firm who is engaged to build private or public infrastructure, will often contract a staffing firm to source and manage its workforce for the duration of the project. The staffing firm will then assess which workers or skills are needed for which part of the project, source experienced and specialised workers, and engage them in line with the period that they are required, with the contract finishing upon completion of their work or completion of the project in full. These staffing firms also manage the administration and work health and safety requirements for these workers.

However, in an uncertain economy with fluctuating building material costs and challenges sourcing skilled labour, project timelines can easily be derailed by extenuating circumstances. The consequence of such delays is that work is also pushed back, meaning workers' contracts will often need to be extended beyond the original finishing date of an existing contract. Some of these large infrastructure projects can take years to complete, so both the initial contracts, as well as any extensions must retain a level of flexibility to reflect this.

For staffing firms that support seasonal or project-based work, it is simply not feasible—or fair—to engage workers on ongoing full or part-time contracts. As described above, timelines and start dates are often subject to extenuating circumstances, meaning there may be big gaps in which the workforce, and their skills, are not required on-site.

The ability to engage workers for a defined period in which they are needed, and offer them full or part-time employment, guarantees certainty both businesses and workers. It prevents businesses from having to stand down their workers for long periods of time, and workers have set start and finish dates to plan their lives or other work around (whether that is with the staffing firm or another employer). Additionally, a fixed-term contract does not allow either party to terminate the contract early. In fact, the only amendment that can be made to a fixed-term contract is an extension—should the employee agree to it.

Indeed, the limitations on fixed and maximum term contracts have essentially removed them as a viable option for engaging a worker who may be required for a period longer than 2 years but not in a permanent, ongoing capacity, which is not uncommon on large infrastructure projects.

RCSA conducted a survey of members to seek feedback on the impact of the changes on method of engaging employees since their introduction.

The majority of respondents who were aware of the changes indicated they had changed the method by which they engaged a proportion of their workforce as a result of the introduction of limitations on fixed and maximum term contracts. Around 50% of those surveyed indicated that they had moved workers into casual employment in response to the changes. RCSA's view, based on conversations with members over time, is that many of those moving workers into casual arrangements did not respond to the survey and that the actual proportion of on-hire workers converted to casual employment in response to this change is likely to be significantly higher than 50%, given the short-term nature of many on-hire assignments.

Unique nature of on-hire arrangements and effect of limitations on those pooling work opportunities

The unique nature of on-hire employment arrangements has meant that the introduction limitations on fixed and maximum term contracts has now rendered those contracts inaccessible and unworkable for the majority of shorter-term placements as well. It is extremely common in on-hire arrangements for a staffing firm to pool multiple work opportunities across multiple clients for a single worker. For example, a 'temp' receptionist may be placed with one client for three months, then be placed immediately with another client for a period of 5 months before moving straight into a new 'temp' reception role with a different client again. Indeed, on-hire firms can sometimes pool short-term temp placements for a single candidate over several years.

Across all of these placements, the employer is the on-hire firm. Historically, firms would offer their workers the choice between being engaged either in a fixed and

maximum term capacity, or as a casual, depending on their own preferences around being paid a loading or having paid annual leave.

Limitations on fixed and maximum term contracts now mean that each new placement for that worker constitutes an extension of their contract with their employer, even if the work is with a different client and place of business. Clearly, these 'temp' roles are not the equivalent of permanent and ongoing position. They are short term assignments that cannot be guaranteed but are pooled where possible by staffing firms for workers who wish to continue to the next assignment where it is available. Nonetheless, as a result of these changes the only option for a staffing firm to engage a worker for short-term assignments is as a casual or permanent employee. Given no ongoing placements are guaranteed, the only workable option left for these types of placements is casual employment.

Loss of choice and opportunity for workers

While the nature of on-hire work sees the majority of its workforce engaged as casual employees, there had been a growing proportion engaged through fixed and maximum term contracts. RCSA understands that many on-hire firms would provide workers an option up front to be employed as a casual or on a fixed term basis for their non-ongoing assignments.

In these scenarios, employees would choose their method of engagement based on their own personal preferences and situation. Those choosing fixed-term contracts saw value in having unchanged rostered workdays week to week and access to annual and sick leave. Workers who preferred flexibility in their work and financial compensation for leave found casual employment more attractive.

While the majority of workers still preferred to receive a casual loading (higher wage), there were a number who would choose to be engaged through a fixed or maximum term contract because they enjoyed the ability to access paid annual leave.

In the on-hire industry, fixed and maximum term contract engagements were widely offered as an option or alternative to casual employment for workers who wished to choose it.

The effect of the limitation changes has removed that choice for workers, who are in the most part now only provided an option of casual employment as a method of engagement.

Beyond a reduction in choice for workers, these limitations have also impacted work opportunities for many. RCSA members responding to our survey indicated that while they themselves had not yet transitioned workers as a result of the change, they had seen clients with project-based work let workers go at the end of a contract rather than engage them permanently, given the role was not ongoing. These changes have only been in effect for a year, and we anticipate that the majority of workers who were engaged in project-based work on a contract that cannot run beyond 2 years are likely to lose work opportunity as a result of the changes. Not only is that a poor outcome for a worker who may have enjoyed the role and liked to continue, it is also disruptive for business and has the potential to result in further delays for large projects. With no ability to offer workers an extended period of work in line with the project they are working on, these organisations and businesses face losing not only the experience and skills of these workers, but their knowledge of the project too.

Additional direct feedback from RCSA members

Direct feedback from RCSA members indicated that in most cases, their workers who transitioned to other forms of engagement as a result of the changes to contract limitations were unhappy about the change. One member cited an example of a worker they transitioned into permanent employment with their client who left their role shortly after as they had preferred 'temping' and

wanted to stay on with the staffing firm. A number shared that they had observed job losses as a result of the change, in scenarios where a contract would have been extended for project-based work under previous arrangements, but instead a new person had to be brought in to work out the additional period.

Of great interest and concern was feedback from a number of different recruitment respondents advising that they had seen the loss of high paying, professional roles to Singapore in recent times, in response to the introduction of these limitations and other employment complexity and restriction imposed by *Closing Loopholes*. Multiple respondents cited the loss of role opportunities overseas, which was a notable theme in feedback to this member survey but is also a growing theme in conversations RCSA is having with its members over time. Increasingly, recruitment firms are providing feedback around the loss of role opportunities in Australia to overseas countries, not for the reason of cost saving, but flexibility. RCSA members cite trends to offshore high paying, high skilled roles, paying the same salary as they had here in Australia, but avoiding the IR complexity that is becoming a huge challenge for onshore roles.

Many respondents expressed frustration over the restrictions these changes place on their ability to engage workers, given the nature of on-hire work. Many staffing employers cited concern over the risks associated with employing casual workers after the *Closing Loopholes* changes but could not make a case for engaging workforce permanently when roles with clients involved short term placements and there was no guarantee of another role following the initial placement.

Loss of flexibility and opportunity were overarching themes in the experience of these changes for RCSA members. Frustration from business about the pointlessness of these changes, the fact that their on-ground impact was so contrary to the stated aims of the legislation and the complexity they added was palpable. Most feedback around worker and client response to the changes indicated that even when applied in the way intended by the legislation, workers, clients and employers were, in the most part, adversely impacted.

Recommendation of an exception for on-hire work placements

As indicated above, the nature of on-hire work regularly involves multiple short-term placements, often at different workplaces and industries, all for a single worker with a single employer. None of these temporary assignments constitutes a role that would otherwise be engaged permanently on an ongoing basis; however they are still subject to the same limitations. If the purpose of the limitations is to ensure employers are not avoiding permanent employment for roles that are ongoing in nature, the fact that short-term temporary on-hire placements are subject to them seems counterintuitive and unproductive.

RCSA recommends Government exempt on-hire placements from fixed and maximum term contract limitations. Removing limitations for on-hire employers who have fixed term assignment arrangements with their clients will increase flexibility for workers and employers. It will allow staffing firms to provide multiple employment options for temporary placement workers, based on their preference of engagement. It would also enable the sector to provide contingent and project-based workers to clients in a way that can better accommodate changes in timeframes and project extension challenges that can occur due to unforeseen or external factors.

The on-hire sector in Australia provides flexible staffing solutions that allow business to flex up and down outside of their core workforce, as required in response to market demand. Workers in the on-hire sector are predominantly engaged on temporary assignments and rarely engage with on-hire work with an expectation of ongoing, permanent work with their on-hire employer. For that

reason, RCSA believes making on-hire placement activity exempt from these limitations would go a long way to addressing the negative impact these changes have had upon worker choice, and flexibility for business.