

RCSA feedback to the Draft report of the *Secure Jobs, Better Pay Review*

RCSA appreciates the opportunity to provide feedback to the draft report of the *Secure Jobs, Better Pay Review*. 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 endorses and supports the feedback provided by ACCI both to the review and to the draft report, which RCSA helped to inform through consultation.

In addition to our support of ACCI's submission, we welcome the opportunity to also share direct feedback from our members specifically in relation to the findings and recommendations on fixed-term contract limitations.

Recognition of complexity

We welcome the review's recognition of concerns around the complexity and ambiguity of the changes. This aligns with RCSA's initial feedback which highlighted the significant practical challenges our members have faced in implementing these reforms. Coupled with changes to casual employment, these amendments have created substantial risk and confusion for employers looking to employ workers in non-ongoing roles.

Need for Evidence-Based Approach

RCSA shares the panel's view that there is little evidence available around the extent to which the use of fixed-term contracts is inappropriate or contrary to the broader job security ambitions of the government. Indeed, the data indicates that a substantial proportion of fixed-term contracts have historically transitioned into permanent, full-time roles, and that the proportion of those transitioning to full time roles has not been altered as a result of the passage of the legislation.

We welcomed the panel's acknowledgement that 'alongside the complexity and confusion employers have experienced implementing these reforms... detailed evidence is not available about the use of fixed-term contracts and the choice to limit them to 2 years and 2 renewals.' It is concerning to hear that these changes, which have had such significant impact for employers, appear to have been made with little data or evidence to support either their need or their purpose.

This validates RCSA's concerns around forming 'blanket' solutions to perceived specific problems in niche or isolated areas of the labour market. Applying a broad solution to a specific problem simply results in the creation a whole raft of new problems that didn't exist previously, in areas where there was no problem or concern that needed to be addressed in the first place.

Response to Draft Recommendation 16

Full repeal of fixed-term contract limitations.

We welcome the Panel's recommendation that Government reconsider its approach to limiting the use of fixed term contracts and support it firmly. Indeed, RCSA strongly believes that the limitations introduced in the Secure Jobs Better Pay Act should be repealed in their entirety. On the basis of the review's findings, there is no evidence to justify their need nor to indicate that the changes have had any implications for the way fixed-term contracts are used, the volume of fixed-term contracts in market nor the proportion of workers on fixed-term contracts transition into full term employment.

All they have done is inject complexity, confusion, risk and uncertainty for employers, which is reflected in feedback to the review. Perhaps more concerningly, as outlined in our earlier feedback, our members indicate that in the on-hire sector, the changes have negatively impacted choice and opportunity for workers. Workers in non-ongoing roles who had previously been able to choose to have their employer manage paid annual and sick leave on their behalf through engagement on a fixed-term contract are now only able to be engaged as casual employees. Beyond paid leave, workers engaged on multi-year project-based work are already being let go at the end of a contract, rather than employed permanently. These changes have only been in effect for a year, so we expect the impact for people's jobs will become more pronounced over time.

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.

The impact of the changes for business and workers has been significant, and there is concerningly little evidence for either their need or their impact on the Government's ill defined job security ambitions.

The broad introduction of limitations has created vast new problems in a range of workplaces where there is no evidence that the use of fixed-term contracts was inappropriate or of issue at all.

There is little to no evidence to support the need for these limitations on fixed-term contracts. The changes cost jobs and create uncertainty and risk for business in scenarios where fixed-term contracts had previously been a positive influence in the workplace. For that reason we believe the **limitations introduced to fixed-term contracts in the Secure Jobs, Better Pay Act should be repealed in their entirety.**

Amending the framework to make exceptions more readily applicable in practice

While we support full repeal of the changes, if the Panel is unwilling to make that recommendation to Government, we believe that making exceptions more readily accessible could go some way toward stemming the volume of new problems these limitations create and minimising their unintended consequences.

While we appreciate and understand an exception approach by sector/industry, we also believe that there should be consideration of how we can incorporate exceptions that address distinctive scenarios and challenges that stem from the blanket approach to fixed term contract limitations.

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 majority of shorter-term workforce placements as well. As outlined above, RCSA members source, place, and manage workers across almost every industry and sector. 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.

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.

These placements won't necessarily all occur within a single industry or sector. RCSA believes that staffing firms who are engaged in sourcing and placing workers at a host site in non-ongoing roles across multiple industries and sectors should be able to access blanket exemption from the limitations as they exist.

Our survey data, as presented in our initial submission, showed that around 50% of affected members had to move workers to casual employment as a direct result of these changes. This figure likely understates the true impact given the short-term nature of many on-hire assignments.

If the government's aim for these changes was to support greater 'job security', the unique ability of the on-hire industry to pool and collate a broad range of short term work opportunities to create longer-term, more secure work opportunities delivers to that ambition. The roles filled by on-hire workers are not intended to be ongoing/permanent roles. Staffing firms leverage their client networks to find the next job opportunity for workers, while maintaining a consistent and ongoing employment relationship with them.

The ability to do that while offering paid annual and sick leave entitlements, as opposed to only offering casual employment, is surely a better outcome for government on its ambitions for enhanced job security.

For that reason, RCSA believes **on-hire placement, as an activity rather than a ‘sector’, should be exempted from limitations on fixed term contracts.’**

Introduction of a principles-based framework that would allow limitations and exemptions to be determined through the Fair Work Commission (FWC)

RCSA and its members appreciate the logic and ambition of the panel’s thinking around this consideration, but we have reservations around how it might evolve in practice.

Our major concern with the approach taken in Secure Jobs, Better Pay on limitations on fixed-term contracts is the ‘blanket’ nature, or breadth of its coverage. This is not the first time we have seen Government attempt to address isolated, industry-specific challenges with broad-based regulation. RCSA strongly believes that perceived issues or challenges around the use of industrial instruments or contracts should be addressed where they exist, and not across the entire labour market.

To that end, the thinking behind having the FWC make determinations around the use of fixed-term contracts, perhaps through the Awards system, might appear to be an effective way of targeting regulatory response to areas where there is evidence of an issue or problem. While conceptually that is something RCSA could support, we have significant concerns around how that approach might play out in practice.

The process and requirements for attaining exemptions must be clear and unambiguous. In addition, the application and administration of exemptions across the labour market needs to be simple and streamlined.

As a peak body representing members who supply workers across every industry and sector, RCSA is very concerned that an FWC-based approach to determining exemptions could result in nuanced and specific requirements on the use of fixed-term contracts across a large number of industries, sectors and awards. Awards are already highly complex to interpret and navigate and this could create further complexity for employers in understanding and administering different requirements and rules for use of fixed term contracts across multiple sectors. For employers placing workers across every sector and industry, a complex web of bespoke requirements around the use of fixed-term contracts (by industry) would likely render them inaccessible in practice.

RCSA appreciates the ambition of the recommendation to adopt a principals-based approach to exemptions through the FWC , but has reservations around the practicalities, administration and reality of that approach.

Summary:

RCSA welcomes and support’s the Review Panel's recommendation that the government reconsider its approach to limiting the use of fixed term contracts. That being said, our position and feedback on the draft report can be summarised as follows:

- 1) RCSA strongly believes that repeal of the limitations in their entirety is the approach best supported by evidence and findings of the review
- 2) If the report will not consider recommending repeal of the limitations in their entirety, then making exemptions more readily applicable in practice, including a blanket exemption for on-hire placements, is the preferred approach
- 3) Use of a principles-based approach through the FWC, while conceptually positive for targeting regulation, has the very real potential to create substantial administrative burden and huge complexity