

2022 FEDERAL ELECTION POLICY STATEMENTS

WORKPLACE RELATIONS POLICY – FORMS OF EMPLOYMENT AND ENGAGEMENT

Key Points

- It is vital that businesses have the ability to engage workers in whatever form of employment or engagement suits the needs of the business.
- The casual employment uncertainties have been comprehensively settled in legislation, in awards and in the High Court. It is in no-one's interests for this to be disturbed.
- The High Court has also recently provided a lot more certainty for independent contracting arrangements.
- It is a myth that insecure work is increasing. The level of casual employment, labour hire employment, fixed term employment and independent contracting have not increased over the past decade.
- Only a very small proportion of workers are gig/platform workers and most carry out this type of work to supplement their income, not as their main job.
- As a proportionate and practical response to emerging changes in work, Ai Group proposes a careful consideration of the following areas:
 - What minimum standards should apply for accident insurance for gig/platform workers?
 - How can any disincentives be removed that may be adversely impacting upon the provision by platform businesses of enhanced safety and welfare benefits to their contract workers?
 - Are any changes needed to payroll tax arrangements?
 - How can relevant awards be made more flexible to enable platform businesses to implement employment models, rather than contractor models, should they wish to do so?

Policy Approach

Employers and employees need flexibility with forms of employment, not more restrictions. Many employees do not wish to work on a permanent basis. The constant calls by unions and others for more restrictions to be placed on casual employment, labour hire, fixed term employment and gig/platform work need to be rejected.

The casual employment problems that caused so much uncertainty and cost risks for employers have been comprehensively addressed through the changes to the *Fair Work Act* in March 2021 and through the High Court's unanimous decision in the *WorkPac v Rossato*¹ case in August 2021. It is now time to move on.

¹ *WorkPac v Rossato & Ors* [2021] HCA 23.

We now have a definition of a ‘casual employee’ in the Act that closely aligns with the common law meaning of a ‘casual employee’ as determined by the High Court. All modern awards have been aligned with these legislative provisions. The last thing that is needed is for these outcomes to be disturbed and for more uncertainty to be inflicted upon employers and employees.

The level of casual employment in Australia has been constant for the past 23 years, except for the short-term reduction in casual employment that occurred during the pandemic. Labour hire employment, fixed term employment and independent contracting are no different. The incidence of these forms of work have not increased.

The High Court recently provided a lot more certainty for businesses and workers in relation to independent contracting arrangements, through its February 2022 decisions in the *CFMMEU v Personnel Contracting*² and *ZG Operations v Jamsek*³ cases. These decisions have relevance to contracting arrangements in all industries, including the gig/platform industry. The proportion of the workforce who are platform/gig workers is very small. The Grattan Institute reported⁴ in 2016 that fewer than 0.5% of the workforce earned income from digital platform work based on an assessment of figures published by a selection of digital platform information, bank transaction data, and other research reports. This figure remains a reliable estimate of the proportion of the workforce who are gig/platform workers. Between 2016 and 2021, the proportion of the workforce who are independent contractors fell from approximately 9% in August 2016⁵ to 7.8% in August 2021⁶. The industries which have the highest percentage of independent contractors are Construction (25%) and Administrative and support services (18%).⁷ Any increase in the proportion of the workforce who are gig/platform workers could be expected to show up as an increase in the proportion of the workforce who are independent contractors, but this has not occurred as pointed out in the 2018 HILDA report. The report’s authors said that the “evidence indicates that, if the gig economy is growing as rapidly as is commonly believed, then either it involves the substitution of one type of self-employed worker for another (as might be happening in the taxi industry) or it is largely consigned to second jobs”.⁸

Many people highly value the ability to work flexibly and supplement their income via on-demand platforms.

On-demand platform work has been particularly important to the community and the economy during the pandemic. For example, many restaurants would not have survived without on-demand platform delivery services, and many thousands of workers have continued to earn income in circumstances where they have been stood down from their jobs in other industries.

² [2022] HCA 1.

³ [2022] HCA 2.

⁴ Minifie J, Grattan Institute, *Peer-to-Peer pressure, Policy for the sharing economy*, April 2016.

⁵ ABS, *Characteristics of Employment*, August 2016, published on 2 May 2017.

⁶ ABS, *Characteristics of Employment*, August 2021, published on 14 December 2021.

⁷ ABS, *Characteristics of Employment*, August 2021, published on 14 December 2021.

⁸ Wilkins, R. and Lass I (2018) *The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 16*, Melbourne Institute: Applied Economic & Social Research, University of Melbourne.

We don't need radical reforms like the creation of a new category of 'dependent contractor' or the deeming of contractors to be employees. The High Court's recent guidance provides a clear delineation between employees and independent contractors. This common law approach is far more workable than any model which deems contractors to be like employees.

Ai Group is not suggesting that no reforms should be considered for gig/platform work and workers. There are a few discrete issues that need to be carefully considered such as:

1. What minimum standards should apply for accident insurance for gig/platform workers?
2. How can any disincentives be removed that may be adversely impacting upon the provision by platform businesses of enhanced safety and welfare benefits to their contract workers?
3. Are any changes needed to payroll tax arrangements?
4. How can relevant awards be made more flexible to enable platform businesses to implement employment models, rather than contractor models, should they wish to do so?

During the recovery from the pandemic and beyond, platform businesses will play an important role in delivering much needed flexibility for businesses, workers and the community. If this flexibility is strangled with excessive regulation, workers, businesses and the broader community will be much worse off.