Send Fair Work changes back to drawing board

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As anyone who employs another Australian knows only too well, our workplace relations system is incredibly complex. The *Fair Work Act* has 800 sections, there are 121 modern awards and more than 100,000 separate wage rates and allowances for employers and employees to navigate.

Into this confounding space – and in the middle of a cost-of-living crisis – the Federal Government has dropped another near-300 pages of legislation that, amazingly, required an extra 500 pages to try to explain it.

Our workplace relations experts are still poring over the Fair Work Legislation Amendment (Closing Loopholes) Bill, identifying the intended and unintended consequences, the inconsistencies and the layer upon layer of additional complexity.

This includes new definitions for 'employees', 'employers' and 'casuals' and 13 different start dates for different measures.

Good luck to anyone else trying to decipher what it really means for their business or their job.

The reality is – and this is the important point – this Bill still represents the most radical restructuring of our workplace system in decades. Despite the Government's repeated attempts to play down its impact, the Bill will potentially impact every business - big and small - that employs casuals, uses labour hire or engages contractors and reaches across the entire gig economy.

Furthermore, buried in the Bill, and curiously absent from the public consultation process, are significant new powers and protections for union officials and their shop stewards.

What is also clear is that the Government was planning a repeat performance of its multi-employer bargaining strategy last year, when it pushed through sweeping union-friendly reforms in a similarly complex omnibus bill in just five weeks.

Thankfully, this time around, the Coalition and crossbench, including senators David Pocock and Jacqui Lambie, have united to delay the Bill until at least February so it can be the subject of proper parliamentary scrutiny through the inquiry process.

They have also called on the Government to bring forward elements dealing with issues such as silicosis, domestic violence, and PTSD for first responders, so they can be dealt with urgently. This is a responsible and common-sense approach that is welcomed by business.

But after that, there are a number of reasons why Government should go back to the drawing board on the entire Bill.

First, of significant concern are measures that redefine casual work in a way inconsistent with the simple and easy to apply approach that was only recently reaffirmed in the High Court, with a three-page and multi-step test that will be complex, confusing and costly for industry to apply in practice.

The Bill also introduces an avenue for casuals to convert to permanent employment after just six months in a role. Importantly, employers will have no reasonable grounds for refusing a request and will face heavy financial penalties if they get it wrong.

These changes will likely force employers to offer either fewer opportunities for casual work or provide casual employees with either less regular work. This is a foreseeable outcome because employers that classify their employees incorrectly will also now be subject to heavy financial penalties.

In short, this is a bad outcome for employees who look to casual jobs for flexibility, regularity and the additional up-front income. Ironically, it will make their work more insecure.

Second, among the many unresolved issues relating to labour hire is confusion over who will be captured by the new rules. It is unclear how widely these changes will apply to independent contractors, with the whole concept of ‘employer’ and ‘employee’ being rewritten elsewhere in the Bill.

Third, regarding gig work, with its new concept of ‘employee-like’ work, the Government is attempting to retrofit an outdated wage-setting model on the most innovative section of the economy. Again, it is unclear who will be covered but, contrary to the Government’s claims, we now know that tradies working through Airtasker are likely to be captured.

Fourth and further demonstrating the breadth of the Bill, the road transport industry is facing another attempt to enable an industrial tribunal to set new prescriptive rules around the terms and conditions for truck drivers. The last time an initiative like this was implemented the livelihood of a vast number of owner-drivers looked set be destroyed as they were priced out of work and the Government abandoned the system.

Fifth, any suggestion that the Bill will not impact small business doesn't stand up to scrutiny, especially given the impact of major definitional changes to casuals and independent contractors alone.

If anything, small businesses will be the most impacted as they spend hard-earned money grappling with complex changes during a cost-of-living crisis without the aid of a dedicated HR department or large legal budgets. The so-called small business exemptions are better described as window dressing.

Finally, as if the changes didn't go far enough, the ACTU has already signaled a fight to ensure that small businesses' premises – from farms to home offices – are easier for union representatives to enter unannounced.

The combined impact of these 800 pages risks delivering the opposite of what the Government hopes to achieve by stifling jobs, productivity and wages growth with confusion, complexity and cost.