SUBMISSION

Prepared by Springvale Monash Legal Service for the

Education and Employment Committee,

Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]

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Our organisation

Established in 1973, Springvale Monash Legal Service ('SMLS') is a community legal centre that provides free legal advice, assistance, information, and education to people experiencing disadvantage in our community. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, the Fair Work Commission, the Federal Circuit Court, Family Court and the Victims of Crime Assistance Tribunal. We provide several duty lawyer services for both family violence and criminal lists at the Dandenong Magistrates' court, as well as a Children's Family Violence duty lawyer at the (Dandenong) Children's Court. Our specialist family violence clinic assists clients with child protection, child support, intervention orders, parenting plans, and court representation. Through these various services, our staff are trauma informed and have significant expertise in assisting families impacted by sexual assault and family violence. We have several integrated programs that ensure clients can access holistic legal assistance, including a social work program, a financial counselling partnership with Good Shepherd ANZ, several Health Justice Partnerships and various outreach services across Melbourne and the South East.

For most of our 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

In addition to our legal assistance work, SMLS has a significant community development and legal education program that is developed in collaboration with our community.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and people seeking asylum, particularly unaccompanied humanitarian minors and women escaping family violence.

SMLS and Employment Law

SMLS recognises that there is an ongoing need within our local community for free employment law assistance for workers. The complexities and constantly shifting nature of employment law is often difficult for our clients to navigate, particularly for clients from culturally and linguistically diverse communities.

At SMLS we aim to empower clients to become better informed of their rights and of the legal avenues available to assert those rights.

We also understand that our clients may not always be in a position to self-help if, for example, a matter is complex or if a client is facing disadvantage due to factors such as limited English or disability. Some clients may feel intimidated by the employer and may not otherwise be willing to assert their rights in the absence of a legal advocate. We seek to redress these power imbalances by providing ongoing assistance which may include preparing applications to the Fair Work Commission and negotiating a settlement with employers.

Our employment law service may provide advice and assistance in relation to: Unfair treatment in the workplace or unfair dismissal, workplace bullying, discrimination, disputes regarding unpaid or underpaid wages, unpaid leave, redundancy, sham contracting and other entitlements.

In addition to our onsite employment law clinic, we operate a duty lawyer outreach service at the Fair Work Commission in partnership with Job Watch in response to ongoing need within our local community for free employment law assistance. We also deliver the International Students Accommodation and Employment Legal Clinic, in partnership with Study Melbourne, WEstjustice and Jobwatch.

Terms of Reference

These submissions seek to respond to the following aspects of the proposed bill:

1. Statutory definition of casual employee and casual conversion entitlement in the National Employment Standards ('**NES**')
2. Flexible work directions
3. Simplified additional hours agreement
4. Simplified Classifications, Loaded Rates and Exemption Rates
5. Compliance and enforcement reforms

Acronyms:

CLC community legal centre

FWA *Fair Work Act* 2009

FWC Fair Work Commission

FWO Fair Work Ombudsman

NES National Employment Standards

SMLS Springvale Monash Legal Service Inc

**Client names and details in these submissions have been changed to protect client confidentiality.*

SUMMARY OF RECOMMENDATIONS

1. Statutory definition of casual employee and casual conversion entitlement in the National Employment Standards ('**NES**')

    Recommendation one

    Introduce a statutory definition of employee, with a presumption that all workers are employees.

    Recommendation two

    That the proposed s 15A(4) be removed, and that there be included that, in the absence of an express agreement between the employer and employee, it is presumed the employment is on a permanent basis.

    Recommendation three

    That there be a positive obligation on employers to satisfy themselves that the employee has understood the Casual Employment Information Statement.

    Recommendation four

    That the employer bear the onus of proving that there were reasonable grounds not to offer casual conversion.

    Recommendation five

    That s 66L be regarded as a civil remedy provision.

    Recommendation six

    That the Fair Work Commission ('**FWC**') have automatic jurisdiction to arbitrate disputes regarding casual conversion.

2. Flexible work directions

    Recommendation seven

    That the employer bear the onus of proving that a flexible work direction is reasonable; that employers must give at least 14 days notice of the direction; and that the default expiration of the directions under s 789GZI be reduced to no more than six months.

3. Simplified additional hours agreement

    Recommendation eight

    We recommend that the employer be required to inform the employee in writing, the impact of the simplified additional hours agreement or enterprise agreement on any Award entitlements the employee may otherwise have; satisfy itself that the employee has understood; and require the employer to provide the simplified additional hours agreement in writing.

4. Simplified Classifications, Loaded Rates and Exemption Rates

Recommendation nine

That the community legal centre ('**CLC**') sector be consulted in any ongoing process to simplify Awards.

5. Compliance and enforcement reforms

Recommendation ten

That the FWC or the Fair Work Ombudsman ('**FWO**') be given the power to determine disputes regarding entitlements; and ensure the FWO and the CLC sector are appropriately resourced to offer assistance to vulnerable and disadvantaged workers.

Recommendation eleven: We oppose any measures that remove the BOOT or to limit the timeframe for the FWC to consider enterprise agreements.

INTRODUCTION

We thank the Education and Employment Committee for this opportunity comment on the proposed Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020.

These recommendations are based on our extensive work assisting the most disadvantaged workers in our community. Many of our clients are unwilling or unable to advocate for themselves due to a range of complex and interconnected reasons. Employment relationships almost always have a significant power imbalance between employer and employee. This imbalance is further deepened if the employee has other indicators of disadvantage or vulnerability in their lives.

Given SMLS's location in one of the most multicultural local government areas in Victoria, many of our clients are from non-English-speaking backgrounds and have lived in Australia for varying periods of time; from new arrivals to immigrants from the early 1950's. We frequently assist people who have found themselves in workplaces where they do not have a strong understanding of their workplace rights, or the tenure of their employment is uncertain and shaky. Our clients are predominantly low-income earners.

Being from different minority groups mean they will face a range of factors which impact their employment. It is difficult for people to understand how to complain when faced by poor behaviour from an employer or colleague, fearing for their ongoing employment if they speak up. The threat of poverty and destitution is very real for our clients, many of whom have dependants who would suffer significantly if the family bread winner loses their job. For many, this results in a reluctance to self-advocate and seek help, as the cost of unemployment is too high.

This was true for our client Sara*, who moved with her husband and three children from Afghanistan in 2016. As new migrants, they struggled to find work. She finally found a job as a home care worker. She generally worked seven days a week for a minimum of 50 hours per week. The wages were very low, and after the first few weeks of employment, Sara's boss stopped paying her. Sara kept working because her boss was promising to pay her soon, and because it was very difficult for her to find work the first time. Sara's visa type precluded her from eligibility for social security and she was worried about how long it may take her to find her next job. She also had family members depending on her. She was unaware of her legal rights and new little about the service delivery sector of Victoria. By the time she found out about SMLS and made an appointment with us, she had been unpaid for approximately 6 months, as well as underpaid for her first few weeks.

SMLS sent her boss a letter of demand that went unanswered, so on Sara's instruction we filed an application to the Federal Circuit Court for a claim for more than $50,000.

During the time waiting for the hearing date, the company that employed Sara was de-registered by ASIC. We applied to ASIC to have the company reinstated, and then joined the director as a party to the application. The court then ordered the parties attend a mediation. With the assistance of a barrister, the matter was successfully settled in Sara's

favour. Sara was not able to navigate the complexities of this matter without the assistance of a community legal centre.

SMLS has also assisted clients with disabilities experiencing exploitation and discrimination at work. Clients with a disability face discrimination due to their disability and they often need to rely on work colleagues to function in the workplace. This can put them in a position of vulnerability with those co-workers and management. Being able to complain and being taken seriously when they do complain are common concerns we have heard from clients.

One client, Steven*, suffered serious albinism in addition to a mild learning disability. He struggled to find work and had minimal family support. He tried to apply for the disability support payment through Centrelink, however, was denied. He eventually found night work at a factory, who paid him $5.00 per hour. He attended a legal education session with SMLS one day, and yet decided not to get legal help with his underpayments, as 'it isn't worth it. I know I have problems, so why should they pay me properly- if I complain I won't have a job at all.'

SMLS also assists international students who are often unwilling to ask employers for their legal entitlements due to a fear of losing their job and facing destitution, an inability to pay course fees and the possibility of losing their visas as a result. This is a common scenario where the threat of being without employment is so significant that people accept discrimination, exploitation and unsafe working conditions.

Overwhelmingly, the main priority of our clients is to remain in gainful employment, even in instances where the employer has contravened its legal obligations. This contributes to an unwillingness to complain of an employer's unlawful conduct. Many of our clients are reluctant litigators and may not have the means or confidence to enforce their rights out of their initiative. In many instances the fear of losing work is far from imagined.

Jack* worked for a company installing ABN infrastructure in residential neighbourhoods. He was a labourer and worked alongside a small team. When he originally got the job, he was required to obtain an ABN in order to start work. Jack had no idea what the difference between an employee or a contractor was but was desperate for work so he followed the instructions. He was offered to be paid around $19 per hour.

He worked for the same person, who provided all the equipment and tools. He worked regular full-time hours and had no say in how much he was paid per site. All the other labourers were employed the same way. Jack attended a community legal education session one day and started to learn about his rights at work. He also learnt about workplace safety and realised that as a contractor, he was not necessarily covered by his bosses' work place insurance. He subsequently asked his work place to clarify his role and was told not to come back to work.

We acknowledge that clients may have the option of pursuing an unfair dismissal or general protections claim under the FWA. However, in our experience, the client

primarily wants their job back and reinstatement is very rarely achieved. In many cases the client struggles to find new work.

We do highlight that the prevention and penalisation of employer misconduct must be a central focal point when considering these reforms. We reject any moves to place the primary responsibility on our clients for what is effectively the failure of the employer to comply with its legal obligations and the consequences of the broader social, political and economic factors that places our clients at a systemic disadvantage.

What is particularly concerning is that some employers appear to deliberately exploit our clients' disadvantage as part of their business model. For example, in our work assisting international students, we frequently see that the employer is relying on our client's ignorance of the law and/or our client's urgent need to acquire an income as a means to offer less than the client's statutory entitlements. In many instances, our clients report that their employer has a tendency to predominantly recruit international students. In our minds, the law does not do enough to prevent and respond to this kind of malicious exploitation.

Even in the absence of this form of outright and deliberate exploitation by the employer, when the employer breaches its obligations under the Act, it may in effect be undeservingly profiting from our clients' disadvantage. To us, the government carries a moral imperative to prevent the intolerable result of employers effectively benefiting from the social and economic disadvantage of some workers.

Given the profile of our clients and their workplaces, our recommendations revolve around implementing statutory protections to promote independent monitoring and enforcement of the Act. As many of our clients do not have the means or confidence to enforce their rights without support, we prioritise any measures which as far as possible, relieves workers of the burden of enforcing statutory rights and entitlements. Any legislative reforms need to acknowledge the power imbalances between our clients and employers and the resultant inequality of bargaining power. We support measures which maximises the employee access to justice. We see opportunities for the Fair Work Ombudsman ('**FWO'**), the Fair Work Commission ('**FWC**') and the community legal centre (**'CLC'**) sector to promote access to justice to the most vulnerable and disadvantaged workers.

In addition, SMLS endorses in full the submissions made by WEstjustice to the proposed Fair Work Amendment Bill 2020, in particular its recommendations in relation to:

- sham contracting;
- civil penalties in small claims;
- improving the FWO's power of enforcement; and
- accessorial liability.

CASUAL EMPLOYEES	
Proposed Changes	SMLS comments
• An objective statutory definition of 'casual employee' which incorporates the key common law principle that a casual is someone who has no firm advance commitment to ongoing work. • If this test is met at the commencement of employment, the casual status will remain unless the employee converts to full-time or part-time employment. • If an employee commences employment with a firm advance commitment to ongoing work, they will not be classified as a casual employee under the statutory definition. • A new casual conversion entitlement in the National Employment Standards (NES) will provide eligible casual employees with a clear pathway to convert to ongoing full-time or part-time employment. ○ After 12 months of employment, employers will be required to assess all casual employees and, in the absence of any known or foreseeable reasonable business grounds, offer eligible employees conversion to full-time or part-time employment.	We see the benefit for both employers and employees of establishing statutory clarity on the definition of a casual worker. We would go further and recommend that the Act clarify the definition of an employee. Currently, an individual's employment status is determined by the court through the common law 'multi-factor test'. This test is complicated and ambiguous, and leaves employees with little clarity as to what their employment status and legal entitlements are. Clients who are new arrivals or speak limited English are especially vulnerable to be subjected to sham contracting arrangements. They may not appreciate the distinction between being an independent contractor and an employee. In the cases we have seen, the client is usually paid below the Award rates under the sham contracting arrangement. Accordingly, we recommend the changes introduce a definition of 'employee'. This definition must presume all workers are employees to shift the burden on the purported principal contractor to prove otherwise. A statutory presumption of employee should be created to deter unscrupulous employers, and remove the burden from mistreated employees to prove their employee status. **Recommendation one:** introduce a statutory definition of employee, with a presumption that all workers are employees. We see that the proposed s 15A(4) states that whether a person is a casual employee is to be assessed on the basis of the offer of employment and the acceptance of that offer, not on the basis of any subsequent conduct of either party. This presumes that the parties have turned their mind to whether or not the employment is on a casual basis. However, from what we have seen on the ground, in many cases the employer does not expressly tell our client the basis of the employment. Especially for clients who are new arrivals, the employee may not even have an awareness of the distinction between a casual or permanent employee to know to inquire with the employer regarding the basis on which they are employed. Accordingly, it is often the subsequent conduct of the parties that can shed light as

○ Casual employees who choose not to convert, or are not made an offer, can access a residual right to request casual conversion, provided they meet the eligibility criteria. To reduce the regulatory burden on employers, employees will only be able to make a request to convert once every 6 months. • A statutory offset rule that requires a court to take into account a casual loading amount paid to an employee who is later found not to be casual under the statutory definition, so as to avoid employers having to pay the same entitlements twice.	to the nature of the employment. We would therefore recommend that in deciding whether a person is a casual employee, the subsequent conduct of the parties remain a relevant consideration. We would also add that in the absence of an express agreement as to the nature of the employment, there be a presumption that the employment is on a permanent basis. **Recommendation two:** that the proposed s 15A(4) be removed, and that there be included that, in the absence of an express agreement between the employer and employee, it is presumed the employment is on a permanent basis. To give full meaning to the protection offered by the proposed s 125B, we would recommend also that it include an obligation that the employer satisfy itself that the employee has understood the Casual Employment Information Statement. **Recommendation three:** That there be a positive obligation on employers to satisfy themselves that the employee has understood the Casual Employment Information Statement. We welcome the provisions placing obligations on the employer to offer permanent positions to casual employees in certain circumstances. We do note that the provisions allow for the employer to refuse casual conversion if there are reasonable grounds to do so. As many of our clients would be unable to gain ready access to critical employer information to test whether or not there are indeed reasonable grounds not to offer casual conversion, we recommend that the employer bear the onus of proving that the decision was not reasonable. **Recommendation four:** That the employer bear the onus of proving that there were reasonable grounds not to offer casual conversion. We welcome the proposed s 66L. To add greater deterrence for employers not to reduce or vary an employee's hours or terminate an employment in order to avoid any obligations to offer casual conversion, we recommend the s 66L be categorised as a civil remedy provision. This may also be another opportunity for a greater role for the FWO to monitor and enforce compliance with this provision.

	Recommendation five: That s 66L be regarded as a civil remedy provision. We welcome the inclusion of the power of the FWC to deal with disputes regarding casual conversion. We would go further and recommend that the FWC have automatic jurisdiction to arbitrate the matter without first requiring the consent of both the parties. In the context of a general protections application, we have seen, for example instances where the employer has refused to consent to the FWC arbitrating the matter. In those instances, the costs and effort of court intimidates our client from further pursuing the claim. For our clients who are vulnerable to experiencing systematic workplace exploitation, this falls outside of the ordinarily acceptable risks associated with litigation but rather becomes a systemic problem of reducing access to justice. Accordingly, we would recommend that the FWC's jurisdiction to deal with disputes regarding casual conversion not be contingent on the employer consenting to jurisdiction. **Recommendation six**: That the FWC have automatic jurisdiction to arbitrate disputes regarding casual conversion.
MODERN AWARDS	
Proposed Changes	SMLS comments
Flexible Work Directions Job Keeper flexibilities in the FWA are due to expire in March 2021, but some employers will continue to need them. The Australian Government proposes to continue to allow some employers to direct employees to perform different duties that are consistent with their skill or competence, or work at locations different from their normal place of work. These new 'flexible work directions' will be available for a period of 2 years where employees are covered by specific awards[1] and where the employer reasonably	If an employer imposes a sudden flexible work direction, this may have a significant impact on employees. A work direction to relocate for example may conflict with an employees' parental or carer responsibilities. We are also concerned that an employer may rely on an employee's refusal to comply with a flexible work direction as a basis for terminating the employment. It is therefore critical that there is independent monitoring and enforcement of these provisions to ensure that any flexible work directions are indeed reasonable. We see the FWC and the FWO may have a role here to offer a low-cost option of resolving these disputes.

believes that the direction is a necessary part of a reasonable strategy to assist in the revival of their business. Important safeguards will apply, including a requirement for employers to consult employees before giving a direction, protection of employees' base rates of pay and a requirement that the directions be reasonable in all the circumstances.	For the same reasons articulated above, we recommend again that the onus lie with the employer to prove that the flexible work direction is reasonable. We see at s 789GZL, it is currently proposed that the employer need only provide three days notice of the flexible work direction. This may be particularly onerous to our clients who have parental or carer responsibilities. It may be difficult to implement at such short notice any necessary alternative arrangements to accommodate for changes such as relocation. We would recommend therefore that employees be given at least 14 days notice of any flexible work directions. The proposed two-year default expiration of flexible work directions under the s 789GZI is far too long. As a further safeguard for employees, we recommend this default expiration be reduced to no more than six months. This will prompt the employer to more regularly turn its mind to whether the temporary changes are indeed still reasonable. **Recommendation seven:** That the employer bear the onus of proving that a flexible work direction is reasonable; that employers must give at least 14 days notice of the direction and that the default expiration of the directions under s 789GZI be reduced to no more than six months.
Flexibility for part-time employees The Australian Government will introduce new provisions into the Fair Work Act to allow employees to agree to work additional hours at their ordinary rates of pay. This will be a streamlined process where employers and employees can verbally agree to the additional hours on an ad hoc or standing basis. Part-time employees must agree to enter into these arrangements, and employers cannot exert undue influence or pressure an employee to enter into an agreement or take adverse action against them for refusing to do so. Additional hours agreements will	As mentioned, many of our clients lack the bargaining power to effectively negotiate the terms of their employment. They may have a tendency to simply agree to whatever is put to them by the employer because of the overwhelming fear of losing their job. The proposed changes to the making of enterprising agreements and simplified additional hours agreements needs to include protective measures to correct the power imbalances that may exist between employers and employees. We support mechanisms in place to ensure employee consent to the additional hours is given freely. We approve of the inclusion of s 168T which expressly recognises that refusal to enter or terminating a simplified additional hours agreement is a workplace right.

also only be available to part-time employees working at least 16 ordinary hours per week with a minimum shift time of 3 hours. Overtime will still be payable where employees work outside their span or spread of hours, or in excess of daily or weekly maximums contained in their award. Other amounts that would become payable for those hours, such as penalty rates or allowances, are unaffected.	For our clients, one of the major hurdles to enforcing their rights under the FWA is the absence of documentation. For these reasons, we recommend that the employer provide the simplified additional hours agreement in writing. We also recommend a statutory obligation be imposed on the employer to inform the employee in writing, the impact of the simplified additional hours agreement or enterprise agreement on any Award entitlements the employee may otherwise have and satisfy itself that the employee has understood. **Recommendation eight:** we recommend that the employer be required to inform the employee in writing, the impact of the simplified additional hours agreement or enterprise agreement on any Award entitlements the employee may otherwise have; satisfy itself that the employee has understood; and require the employer provide the simplified additional hours agreement in writing.
Simplified Classifications, Loaded Rates and Exemption Rates Complex pay and classification structures in awards create an unnecessary administrative burden on employers and make it harder for employees to understand their entitlements. Even determining what base rate to pay an employee can be difficult. The General Retail Industry Award alone contains around 80 base rates of pay and around 1,900 pay points. Employers must also navigate awards to ensure all rates, penalties, overtime and allowances are applied correctly. Some employers want the option of paying a single higher rate that includes these extra payments rather than working out multiple rates for a single shift. It is a complex task to introduce a new structure of pay rates that will form part of the fair and relevant minimum safety net. The	We see in principle the benefits of simplifying Awards for both employees and employers. However, it is important that any changes are not to the disadvantage of our clients. For example, many of our clients work on a casual basis or long and unsociable hours. In those instances, penalty rates and overtime may be an integral part of their income. The CLC may offer important insight into the experience of some of the most vulnerable and disadvantaged workers. We recommend that the CLC sector be consulted in any ongoing process to simplify Awards. **Recommendation nine:** That the CLC sector be consulted in any ongoing process to simplify Awards.

independent industrial relations tribunal, the Fair Work Commission, is best placed to consider the available evidence and implement changes tailored to each award. The Government supports the Fair Work Commission commencing an urgent process to consider implementing simplified classifications, loaded rates or pay and high salary exemption rates.	
COMPLIANCE AND ENFORCEMENT REFORMS	
Proposed Changes	SMLS comments
Supporting business to comply The Government understands most employers want to do the right thing. As such, the Government is investing heavily in helping to prevent breaches of workplace laws by improving the support available to employers. Reforms to support businesses to comply include: • new funding for the Fair Work Ombudsman to establish a new Employer Advisory Service for small businesses to receive free, tailored advice on their workplace obligations; • new funding to improve awareness of the Fair Work Ombudsman and its role and to review and enhance its education activities; • requiring the Fair Work Ombudsman and the Australian Building and Construction Commission to publish information about when they will commence, or defer commencing litigation for underpayment matters; • codifying the factors that the Fair Work Ombudsman may take into account when deciding whether to accept	We welcome the proposed changes to increase civil penalties and create offences for breaches of the Act. We see increasing the cap for the small claims list is also an important feature of increasing access to justice. We also support the moves to allow the FWC to arbitrate claims for unpaid or underpaid entitlements. It is not unusual for example that we assist a client with a dismissal claim at the FWC and that same client also has a claim for unpaid entitlements against the employer. For the sake of efficiency and increasing access to justice, we see the benefit of permitting the FWC to deal with both matters concurrently. Alternatively, given that the FWO already has the skills to handle claims for unpaid/underpaid wages, the FWO may also be well placed to give binding determinations regarding entitlements. We see these as good low-cost options for our clients. It is not uncommon that our client opts not to pursue wage recovery given the risks and costs associated with litigation at the courts. The option of pursuing underpaid or unpaid wages through the FWC or the FWO may promote greater access to justice. Increased employer penalties alone will not be enough to achieve employer compliance with the FWA. Mechanisms for effective enforcement of any breaches of the FWA must also be in place. As mentioned, many of our clients require support to enforce their rights. We therefore see a critical role here for the FWO to monitor and enforce compliance of these new reforms, particularly for the most vulnerable and disadvantaged worker. We also see the CLC sector plays a vital role in supporting clients enforce their statutory entitlements. We routinely hear from clients that they would not have pursued their rights under the FWA without SMLS' assistance. **Recommendation ten:** That the FWC or the FWO be given the power to determine disputes regarding entitlements; and ensure the FWO and the CLC sector

an enforceable undertaking; and • enabling the Australian Building and Construction Commission to accept enforceable undertakings for wage underpayment contraventions under the Fair Work Act.	are appropriately resourced and supported to offer assistance to vulnerable and disadvantaged workers.
ENTERPRISE AGREEMENTS	
Proposed changes	SMLS comments
Improving the application of the Better Off Overall Test (BOOT) The changes ensure that agreements reflect bargained outcomes and place greater emphasis on what the parties think are the best arrangements for their workplace. A time-limited discretion to approve an agreement that doesn't comply with the BOOT is designed to assist some COVID-19 impacted businesses. This provision builds on provisions that have been in the Fair Work Act since its introduction in 2009 and includes strong protections: the agreement must be agreed by employees, it is subject to a public interest test, and takes into account the views and circumstances of employers, employees and unions. Any agreement approved under this provision will expire after two years at most.	We are concerned that the imposition of a prescribed time frame for the FWC to determine an application under these provisions may unduly rush the process and compromise the FWC's ability to carefully scrutinise an application. We have concerns regarding the removal of the requirement that the agreement comply with the BOOT. We see that this risk having a detrimental impact on our clients. The proposed changes presume that the employer and the employees have equal bargaining power. There needs to be rigorous oversight over this process by the FWC. **Recommendation eleven:** We oppose any measures that remove the BOOT or to limit the timeframe for the FWC to consider enterprise agreements.