Submission to

Senate Standing Committees on Economics

Legislation Committee

Regarding

Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020 [Provisions]

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SDA Submission to Senate Standing Committee on Economics Legislation Regarding Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020 [Provisions]

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Executive Summary

The Shop, Distributive and Allied Employees' Association (SDA) represents the Australians whose needs are intended to be met by the JobMaker Hiring Credit. The JobMaker Hiring Credit intends to create jobs for those aged 16 to 35 years old, and the SDA is the largest organisation in the country representing these workers with 40% of the over 205,000 SDA members under the age of 25 (approximately 83,000 people) and 57% (approximately 120,000 people) under 35.

Intervention is needed for those under 35 given the disproportionate impact of both COVID-19 and negative intergenerational trends. However, the intervention needs to be effective. The SDA is particularly concerned that the *Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020* (the Bill) and resulting rules will incentivise junior rates over pay-equity and the splitting of rarely offered full-time jobs into part-time and casual work. Workers in industries in which SDA members work (retail, fastfood and warehousing) are at greater risk of this perverse outcome given the span of hours worked and the convenience of casual and part-time work for employers. As the legislation is enabling in nature, there are few accountability and success measures built in. This must be redressed for the policy to be an effective method to transition from JobKeeper to the Hiring Credit.

In its current drafting the legislation is at risk of enabling rules that create an incentive for insecure work, an incentive for disengagement with school education, and an incentive for high staff turnover including at the end of the program – a new economic cliff. As such, it is at risk of further exacerbating the long-term impacts of COVID-19 and intergenerational trends.

To address the issues with the design of the Hiring Credit, changes are needed that will provide for:

- long term and stable employment outcomes,
- effective protections for workers,
- effective accountability and transparency measures, and
- coherence to other elements of the policy package.

The SDA highlights the need for resolution of potential design flaws including:

- an effective additionality test that relies on more than headcount and payroll totals, which draws on full time equivalence to reduce risk of splitting roles,
- access to dispute resolution drawing on the Fair Work Commission processes, to avoid similar interpretation issues as occurred with JobKeeper when tax advice varied from industrial law, and
- allowing claims for two roles, to avoid those on minimum wages being unable to afford their costs in the event of reduction in hours due to the design of the scheme, and
- several other recommendations as outlined in Appendix 1 - Recommendations.

The SDA supports the ACTU submission.

Shop, Distributive and Allied Employees' Association (SDA)

1. The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions with over 205,000 members[1]. The SDA has membership in retail, fast food, warehousing, hairdressing, beauty, pharmacy, online retailing, and modelling. The majority of SDA members are low-income earners, women and under 35 years of age. Retail and food services are two of the three lowest industries for median weekly earnings.[2] In 2018, the median weekly earnings of all Australians was $1066[3], some 34% higher than retail workers.

2. The SDA has a long history of representing workers on matters of workplace safety both physical and psychological, on their pay and conditions of work, and other matters that support, protect and advance their interests. The SDA advocates through enterprise bargaining; ensuring Awards and the National Employment Standards (NES) provide a relevant safety net; and through numerous submissions made to parliamentary and government inquiries and other important reviews that relate to their experiences. The SDA has 10 policy principles that guide our engagement in these reviews. For a list of these, see Appendix 2: Rationale for SDA policy positions.

3. The SDA represents the Australians whose needs are intended to be met by the JobMaker Hiring Credit. The JobMaker Hiring Credit intends to create jobs for those aged 16 to 35 years old, and the SDA is the largest organisation in the country representing these workers with 40% of the over 205,000 SDA members under the age of 25 (approximately 83,000 workers) and 57% (approximately 120,000 workers) under 35. The membership is also 60% women (approximately 131,000).[4]

The impact of COVID-19 and other factors for 16 to 35 year olds

4. The first case of COVID-19 was detected in Australia on 25 January 2020. Soon after the Prime Minister, Scott Morrison, declared the COVID-19 outbreak a national pandemic on 27 February and the World Health Organisation declared a global pandemic on 12 March 2020. Since March this year, the SDA has been responding to the needs of working Australians in this context. The SDA campaigned for a Retail Industry Rescue package, and then undertook one of the largest

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[1] Internal SDA data.
[2] ABS, "6333.0 - Characteristics of Employment, Australia, August 2018" (https://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0 accessed 9/7/2019)
[3] ABS, "6333.0 - Characteristics of Employment, Australia, August 2018" (https://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0 accessed 9/7/2019)
[4] Internal SDA data.

occupational health and safety campaigns to reduce risk of infection and reduce customer abuse and violence. Since then, the SDA has advocated for wage claim after wage claim for our essential frontline workers, including claims to have the General Retail Industry Award increase brought forward from the scheduled 1 February 2021 date.

5. During the COVID-19 pandemic and the resulting economic crisis, the SDA has observed that those most impacted have been women, those on low incomes and younger workers. The SDA outlines the gendered impact of COVID-19 in the July 2020 paper, *A Pink Recession… so why the Blue Recovery Plan? COVID-19 – Impact on Women*. Similarly, the impact on low-income earners can be found in a recent supplementary report on the impact of COVID-19 edition of *Inequality in Australia*[5] and in the context of food insecurity in August of 2020 in *Hunger Report 2020.*[6]

6. The impact for 16 to 35-year olds has been explored in several papers that demonstrate that there has been an increased infection risk, greater loss of jobs or hours of work, reduction in access to food and other essentials, significant mental health impact and increased housing insecurity. Detailed analysis on employment and economic outcomes can be found in research from The Melbourne Institute[7], on mental health impacts the Human Rights Commission[8], on sentiment from Youth Insight[9] and in the international context from the OECD[10].

7. The pandemic also exacerbates other intergenerational inequity. The grandparents of those eligible for the JobMaker Hiring Credit and those currently retiring have had access to falling interest rates over 30 years resulting in asset increases through both the housing and share markets. Many in that generation also had access to free tertiary education, received generous superannuation tax concessions and can access superannuation and government pensions at a younger age. The next generation has lived with significantly higher childcare costs for their children, wage stagnation (including tangible reductions in some industries through cuts to penalty rates and differential delays to annual wage rises) and rising income tax bracket creep over the past decade. Those that follow will have different economic conditions, such as dealing with the increased aggregate tax burden (to help recover from the current recession and growing costs of health and community services), in a context with fewer Australians of traditional working age compared with the very young and the elderly and their own life expectancy being longer.

[5] http://povertyandinequality.acoss.org.au/inequality/inequality-in-australia-2020-part-1-overview/
[6] https://www.foodbank.org.au/wp-content/uploads/2020/10/FB-HR20.pdf
[7] https://melbourneinstitute.unimelb.edu.au/publications/research-insights/search/result?paper=3504613 ; and https://theconversation.com/5-charts-on-how-covid-19-is-hitting-australias-young-adults-hard-147254
[8] https://humanrights.gov.au/our-work/childrens-rights/publications/impacts-covid-19-children-and-young-people-who-contact-kids
[9] https://youthinsight.com.au/news/covid-19-coronavirus-youth-understanding-and-sentiment-wave-4/
[10] https://www.oecd.org/coronavirus/policy-responses/youth-and-covid-19-response-recovery-and-resilience-c40e61c6/

8. Even prior to COVID-19, as outlined in an August 2020 green paper by The Australian Actuaries, it was clear that despite significantly better health, education, and social outcomes than previous generations, young people have worse economic, housing and environmental outcomes.[11] The green paper notes broader impacts of the pandemic that will also affect intergenerational equity going forward, including risks to mental health and economic and housing outcomes. The combination of the two—the pre-existing conditions and the further impact of the pandemic—must be responded to with policies that are targeted at this and other significantly affected cohorts, such as women and low-income earners.

9. Policy intervention is needed for those under 35 given the disproportionate impact of both COVID-19 and negative intergenerational trends. However, the intervention needs to be effective. The SDA is particularly concerned that the Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020 (the Bill) and resulting rules will incentivise junior rates over pay-equity and the splitting of rarely offered full-time jobs into part-time and casual work.

10. Workers in industries in which SDA members work (retail, fast-food and warehousing) are at greater risk of this perverse outcome given the span of hours worked and the convenience of casual and part-time work for employers. As the legislation is enabling in nature, there are few accountability and success measures built in. This must be redressed for the policy to be an effective method to transition from JobKeeper to the Hiring Credit.

The need for long-term stable employment outcomes

11. The stated intent of the Bill is to improve the prospects of individuals getting employment or increase workforce participation. This is an admirable aim given the long-term effect on employment of the recession on those entering the workforce for the first time (especially those aged 16 to 25) and the youth un- and under-employment rates[12]. This goal should be enshrined in an accountability process for both the expenditure and the long-term outcomes.

12. At time of drafting, the only accountability metric provided is in the Portfolio Budget Statement for the Australian Taxation Office (ATO). The metric describes that the administering department, the ATO, "aims to administer the program in accordance with the law". The only detail of outcomes is a high-level estimate of 450,000 jobs for those under 35 contained in a fact sheet provided with the Budget.

[11] https://actuaries.asn.au/Library/Opinion/2020/AAIEIIGreenPaper170820.pdf

[12] In September 2020, unemployment in Australia was 6.9%, with 29,500 more people out of work and underemployment and youth unemployment worsened. Youth unemployment rate went up 0.4 points to 14.5%.

13. The committee should be offered more detail regarding the modelling of the program costs. In doing so, the committee should be offered the number of jobs, ages of expected beneficiaries, types of jobs, the expected outcomes by gender and age, and estimated costs as key accountability metrics. These objectives should then be compared to what actually happens as a result of the program, which could be analysed through statements of employment outcomes from participating employers that would be publicly available and relate to the period of the JobMaker Hiring Credit.

14. With regard to outcomes from the policy, there is no coherence with significant policy drivers including in employment being long-term, skills being developed for an effective recovery of the economy, participation in school education and gender equity.

    14.1. If the policy genuinely seeks to achieve employment, it could provide an incentive for transitioning an employee from the Hiring Credit to ongoing employment. This might operate for the end of the second year of the program, based on participation in the first. Another way to approach this could be penalties or lesser incentives if workers are on short term contracts or casually engaged when the employer previously had a different proportion of their effective full-time employment engaged part-time and full-time in ongoing roles.

    14.2. The drive towards investment in skills through vocational education and training, including traineeships and apprenticeships should not be undermined by the Hiring Credit. COVID-19 has hastened the growth of digitisation and automation, particularly in the wholesale and retail industry. As a result, there is a need for all jurisdictions to fund more training in digital capability at varying levels of complexity, from entry-level to diploma-levels. COVID-19 has also resulted in retail employees being exposed to dangerous levels of customer abuse and risk of infection. And they are supervised by much more junior staff than supervise and manage people in other industries. There is a need for skills in operations of retail, and an immediate and urgent need for units of competency in prevention and responses to customer abuse and violence. In that context, it will be important for the Senate to check this policy and its interactions with other incentives provided to ensure training is able to assist an effective recovery.

    14.3. All policies at every level of government that impact those who are required to be at school should be consistently treated to ensure absolute clarity about government expectations on engagement with compulsory schooling. Rather than having a criterion of 16 years of age it would be more effective to consider an option that mirrors the state-based compulsory schooling rules or another way to achieve the financial independence test used in JobKeeper. The Committee should inquire into how the tests operate with the payments listed in for eligibility, namely JobSeeker Payment, Youth Allowance (Other), and Parenting Payment.

14.4. The JobMaker Hiring Credit is a key part of the fiscal policy response to COVID-19 which has seen disproportionate impacts on women. Women have a higher representation in roles such as health care, retail, child-care and education – more women have been exposed to the virus as a result of their work. Women are also a greater proportion of the front-line workers in industry sectors subject to aggression and abuse, such as food retail and nursing and are likewise a high proportion of those in aviation, hospitality, and non-essential retail which closed for customer facing work. To date, there has been no gender analysis of policy decisions and no discussion about addressing the impact on women for this and other COVID-19 budgetary responses.

15. The policy is in essence a wage subsidy, which are welcomed but need to be designed well. The experience of the Youth Jobs PaTH program demonstrates this. It was widely criticised for a lack of employment outcomes and for risking workers being paid at levels below the minimum wage. These types of subsidies play out differently in different industries. Critical issues of design of the JobMaker Hiring Credit in the context of retail, fastfood and warehousing include how it operates given the span of hours of work, the prevalence of part-time and casual employment, and the increases and decreases in work during periods of demand (e.g. the lead up to Christmas and the sales that follow). The controls on expenditure are unclear in the documentation to date and the design of the program risks a significant overspend or capping that would cause the program to not meet its objective of making new jobs.

16. In its current drafting the legislation is at risk of enabling rules that create an incentive for insecure work, an incentive for disengagement with school education, and an incentive for high staff turnover including at the end of the program – a new economic cliff. As such, it is at risk of further exacerbating the long-term impacts of COVID-19 and intergenerational trends.

Recommendations

A. That the committee analyse the number of jobs, estimated costs and impact of any capping arrangements.
B. That legislation require employers to provide end of program statements of employment outcomes that will be publicly available for the period of the Hiring Credit.
C. That legislation enable penalties and/or provide incentives for employers to transition employees from the JobMaker Hiring Credit to ongoing part-time and full-time employment.

D. That the committee compare the JobMaker Hiring Credit with other incentives to ensure there are incentives to offer ongoing employment with training that will assist an effective recovery of retail from the infection risk and economic impacts of COVID-19.
E. That legislation specify the criteria for those aged 16 to 18 be the same as JobKeeper to avoid disincentives to engagement in compulsory education.
F. That a gender analysis of the impact of the Hiring Credit be undertaken prior to implementation.
G. That the committee analyse the impact of different levels of subsidy on different cohorts in varied industries, age brackets and genders as the rate may be so low as to be a disincentive to take up the program.

The need for effective protections for workers

Learning from JobKeeper

17. The fact sheet describes that:

    17.1. "The JobMaker Hiring Credit will contain robust integrity features that operate in a similar manner to the JobKeeper Payment drawing on the existing regulatory and enforcement infrastructure of the tax law. In addition to the existing administrative and civil penalties and criminal offences that apply in the taxation law, integrity features range from the eligibility requirements for employers and employees to specific rules to address contrived schemes and fraud."

18. The JobKeeper arrangements had several significant flaws that should inform the drafting of the rules for the Hiring Credit. There is a risk that the JobMaker Hiring Credit will repeat the error of implementation of JobKeeper without a mechanism for dispute resolution that channels through the Fair Work Commission. For example, three SDA members that were long-term casuals were incorrectly classified as ineligible by their employers. With 12, 7 and 4 years service, they had not worked the required number of weeks in the previous 12 months but were engaged on a regular and systematic basis. Under the JobKeeper scheme there was no way they or their union could raise a dispute or propose less conservative tax advice that was more consistent with their entitlements under workplace law. Other examples of the need for a mechanism for dispute resolution from JobKeeper can be found at Appendix 3: Case Studies.

The need for disputes resolution

19. The JobMaker Hiring Credit creates similar vulnerabilities by its design. It has no definition of work (e.g. hours worked versus hours paid), contractual obligations (e.g. casual, part-time, full-time, contractual periods), or headcount. JobMaker Hiring Credit requires a dispute resolution

capacity through the Fair Work Commission, whether it be related to eligibility, to termination or displacement of existing work, discrimination or other issues.

20. The design of the program exacerbates risks of unfair dismissal and adverse action such as reduction in hours of work. For example, a casual worker usually doing 20 hours of work might have their hours reduced to zero in favour of a new worker for whom the employer receives the Hiring Credit. A single role that is full-time and 38 hours might be split into two which would achieve 40 hours of work with double the Hiring Credit. A 29-year-old turning 30 could be reduced to zero hours in order to recruit a new team member who would attract the higher rate of payment. This is likely to occur for women returning to work after pregnancy given the average age of first-time birth is 29.9 years (all births 30.6 years). Mothers and others on parental and other forms of leave who are unable to work 20 hours will be further disadvantaged by the policy design.

21. For many, there is currently no recourse built into the policy. Because the program is designed to be short term, many workers will not meet the minimum employment periods for standing in the Fair Work Commission for unfair dismissal, which is to be employed for at least 6 months before they can apply for unfair dismissal or at least 12 months if they work for a small business. They may also have no standing in the context of discrimination or other legal processes because the design of the program is the cause of the change rather than there being formal adverse action attributable to the pregnancy.

Issues with eligibility

22. The JobMaker Hiring Credit factsheet explains that for the employer to be eligible, new employees must be aged 16 to 35 years and be in receipt of income support payments (such as JobSeeker Payment, Youth Allowance (Other), or Parenting Payment) for at least one of the three months before they were hired. However, upon reading the fact sheet in more detail it is apparent that the edges of eligibility are age (when one is turning 30 and 36), hours of work, and dates and periods for which a worker was entitled to an eligible payment of social security. These are particularly complex in the context of casual work and time taken for Centrelink, workplace and taxation rulings and may create unnecessary complexity in implementation.

23. Further eligibility conditions are indicated as applying to employers based on the employer's headcount and payroll on 30 September 2020. This date presents a risk to the program's integrity. Similar to concerns raised by the National Apprentice Employment Network the Boosting Apprenticeships Commencements scheme, this program is at risk of acknowledging current work and being abused by some. The objective of the program is, in part, to soften the

transition out of JobKeeper subsidies which end on 27 September. So, an unscrupulous employer who acted quickly on the cessation of the JobKeeper program to terminate staff could assess their head count on 30 September and then re-employ those staff to get a Hiring Credit. While there are arguments both ways, the objective of a JobMaker Hiring Credit should be to 'make' new jobs in addition to those that were saved by JobKeeper. The headcount date should be during the effective JobKeeper period.

24. Two changes might simplify the program and allow for more effective program design:

24.1. Firstly, employers should be permitted to claim for workers whose second employer receives a Hiring Credit. While ideally work is full time, the program is designed for part-time and casual work and the costs of living need to be accommodated. Why this is important is apparent from Table 1: Incentivising junior rates and Table 2: Incentivising part-time work which shows how the program provides incentives for employers to pay less to lower paid workers. The total subsidy is relatively low at $10,400 per year, and as such will be treated as a minor cash injection or focussed on covering a greater proportion of the costs of lower paid workers. The reality is that many low paid workers hold multiple jobs and if two are permitted to claim the worker might have twice the chance of an ongoing role at the end of the JobMaker Hiring Credit period.

24.2. Secondly, using headcount and payroll hides displaced workers. The design of the program needs to account for patterns of work of those eligible. It is not clear from the published advice what the impact will be considered headcount. For example, do those with zero hours (workers who are 'on the books') count, how will the termination and reemployment of workers impact (for example industry trends such as Christmas and sales peaks hiring), and if effective or equivalent full-time employment will be considered. Aggregate payroll increases can be caused by pay rises at senior levels, EBA negotiations and restructures. The test of payroll, this does not acknowledge various rates of pay as they appear in different industries, or for those of different genders. The interaction between headcount and payroll should be modelled prior to the rules being presented. The additionality test must be improved to ensure that perverse outcomes are minimised.

Common questions to be answered

25. The fact sheet also does not deal with two common questions:

25.1. Firstly, hours worked versus hours paid for work, and the resulting potential for non-payment of superannuation. The JobKeeper program permitted workers to receive payments for hours not worked and as a result did not receive ordinary time earnings, and the resulting superannuation.

25.2. Secondly, can a person whose employer is getting the Hiring Credit still get their social security payments especially the JobSeeker payments. During JobKeeper they were permitted to access both and for low paid-workers they may be eligible for payments with 20 hours of work.

Simplifying the design

26. With regard to other operations of the scheme that impact the rights of workers, it may be appropriate to simplify the rules to avoid cost of implementation. For example, it is not clear why there are two differential rates. If the focus of the policy is youth un- and under-employment the first rate of $200 would be adequate. If the intent is to smooth transition for those over 25, then a continued eligibility may have been more appropriate. At any boundary of such policies, there is a risk of discriminatory practices and differential rates increase that risk. In particular, women are likely to be treated differently given the average age for having a baby is 29 years and that places them in the second tier.

27. The differential rates will also have a distortionary effect in some industries at the other end of the age brackets. This is particularly true for those workers engaged on the General Retail Industry Award. Table 1: Incentivising junior rates shows that the JobMaker Hiring Credit is designed to encourage the employment of school age workers with a significant proportional benefit the younger the worker is. Combined with the impact of the incentive for engagement of part-time workers (see Table 2: Incentivising part-time work) there are several ways the program works to encourage part-time and casual work.

28. There are other industrial issues that arose with JobKeeper that should be avoided with this program. Employers receiving subsidies should be paying wages to their workers consistent with community standards. For example, penalty rates and minimum wage increases for retail that are timed consistent with other industries. Where an employer does not do so, or there is evidence of other poor working conditions, the ATO should be given powers to not provide and recoup or fine the entity.

Critical design changes

29. In regard to the protection of workers, it would be remiss of the rules of any such program as the JobMaker Hiring Credit to progress without dealing in particular with the need for:

29.1. an effective additionality test that relies on more than headcount and payroll totals, which draws on full time equivalence to reduce risk of splitting roles,

29.2. allowing claims for two roles, to avoid those on minimum wages being unable to afford their costs in the event of reduction in hours due to the design of the scheme, and

29.3. access to dispute resolution drawing on the Fair Work Commission processes, to avoid similar interpretation issues as occurred with JobKeeper when tax advice varied from industrial law.

Recommendations

H. That the legislation include provisions for disputes resolution through the Fair Work Commission.
I. That legislation and any associated rules specify the start date of 27 September for consistency with the change of date for JobKeeper to encourage continuous employment.
J. That the recommended provisions for dispute resolution include clear protections, procedures and penalties for:
    a. casual staff being displaced by newly hired staff and still considered an employee for headcount despite reductions to hours or being a zero-hours worker,
    b. single roles being split into two for increased headcount but no increase in hours worked with effect of reducing employment both part-time and full-time, and
    c. women returning to work after pregnancy and others on parental and other forms of leave who may not be able to work more than 20 hours.
K. That legislation and any associated rules specify a more effective test for additionality as headcount and payroll are inadequate, for example the use of full-time-equivalence as it is less prone to abuse and distortionary industrial practices.
L. That legislation enable a single rudimentary rate, rather than a differential rate for those aged 30 to 35. This would avoid complexity of implementation and reduce risk of discriminatory practices for those returning to work and specific age brackets including women returning after pregnancy.
M. That legislation require payment of appropriate wages, including penalty rates and minimum wage increases for retail that are consistent with other industries.
N. That the legislation include provisions to require adherence to other conditions of work such as workplace health and safety, industrial and other laws and that where these conditions of work are not met the ATO has the power to recoup the funds.
O. That legislation require payment of superannuation be guaranteed on the full subsidy.

The need for accountability and transparency measures

30. The Bill authorised the Commonwealth to make payments that are for the primary purpose of improving the prospects of individuals getting employment in Australia, that such payments must be in relation to a relevant period that occurs from 7 October 2020 to 6 October 2022, and that rules be enabled. This is scant on detail and provides an open account for expenditure of public monies. While disallowance processes are possible, there is little accountability and transparency expectations. The legislation needs to be more comprehensive—the government needs to choose a simple scheme with reported outcomes or a complex scheme that drives good behaviours towards increasing employment.

31. The bill appears to permit any payment that is relevant to those directly or indirectly impacted by the COVID-19 pandemic, not just the policy outlined in the factsheet. In the absence of draft rules and given the breadth of payments enabled, it is hard for any stakeholder to provide specific proposals on how to improve the accountability and transparency of the program. The experience of similar legislation with JobKeeper was confined to a time of high intensity of virus spread and for a more limited period of time.

32. Some clear constraints that outline key confines around which the government can operate the rules are needed and an amendment of that kind would enable redrafting for a simpler payment that is less prone to abuse, where it is abused forms of recourse, and where it is not abused simple documentation to check if the objective of the legislation is being met.

Recommendations

P. That legislation, not rules, be used to define the program to reduce openness to change without transparency.
Q. That legislation include protections for whistle-blowers and provisions for complaints direct to the ATO and that such complaints be reported publicly.
R. That legislation outline the process for publicly sharing the outcomes during the period of the Hiring Credit and during the period that follows.
S. That, if the legislation does not achieve specificity, recommendations of the SDA be considered recommendations for the rules.

The need for coherence in the policy package

33. The JobMaker Hiring Credit is not operating in a vacuum. There are other JobMaker policies, there are other COVID-19 pandemic responses, and there are external operational environments. These impact on the decision making of large employers. For example, Woolworths have said it will not be partaking in the JobMaker Hiring Credit scheme because it wouldn't feel right to take advantage of it while trading has improved for the business due to the universal need for supermarkets. This indicates the entity is responding to reputational risk.

34. Retail is uniquely placed to quickly employ many workers who have been displaced, given its size, its ability to place workers without qualifications, and its digital transformation. To create jobs in this industry, skills relating to retail industry digitisation/automation and the retail industry occupational context (including dealing with customer abuse and infection control) are needed. If large employers choose not to take up this program, there will be an even greater need to deliver on other necessary responses to the economic impact of COVID-19.

35. In addition to redesigning the JobMaker Hiring Credit, the route to recovery from COVID-19 must include other wage subsidies, investment in skills and training, and related policies such as mental health and housing policy.

Recommendations

T. That the committee analyse other policy interventions needed to achieve success in employment outcomes for those under 35 including other wage subsidies, investment in skills and training, and related policies such as mental health and housing policy.

Conclusion

36. In its current drafting the legislation is at risk of enabling rules that create an incentive for insecure work, an incentive for high staff turnover and no incentive to retain workers at the end of the program. As such, it is at risk of further exacerbating issues faced by workers under 35.

Table 1: Incentivising junior rates

YEARS OF AGE	RETAIL EMPLOYEE LEVEL 1 *(e.g. shop assistant; check-out operator; store greeter; trolley collector; demonstrator; orders)*	X 20 HOURS	JOBMAKER HIRING CREDIT	BALANCE	PROPROTIONAL GAIN FROM JUNIOR RATES
15 AND UNDER	Not eligible for JobMaker				
16	$214.20	$214.20	$200	$14.20	93%
17	$257.00	$257.00	$200	$57.00	78%
18	$299.80	$299.80	$200	$99.80	67%
19	$342.60	$342.60	$200	$142.60	58%
20	$385.40	$385.40	$200	$185.40	52%
21 TO 29	$428.20	$428.20	$200	$228.20	47%
30 TO 34	$428.20	$428.20	$100	$328.20	23%
35 AND OVER	$428.20	$428.20	$0	$428.20	0%

Notes:

- *Base Rate of Pay for Part-Time / Full-Time workers. Casual loading and penalty rates may apply.*
- *If a worker is engaged in school, penalty rates are likely to apply.*
- *Compulsory schooling or education may be required to age of 15 (ACT/NT/Tas/WA) or age of 17 (NSW/Qld/Vic).*

Table 2: Incentivising part-time work

YEARS OF AGE	BASE SALARY OF 1 FULLTIME *38 HOURS*	JOBMAKER HIRING CREDIT	BALANCE	BASE SALARY OF 2 X 20HR PART-TIME *40 HOURS*	JOBMAKER HIRING CREDIT	BALANCE	PROPROTIONAL GAIN FROM PART-TIME WORK COMPARED TO FULL-TIME
15 AND UNDER	Not eligible for JobMaker						
16	$406.98	$200	$206.98	$428.40	$400	$28.40	44%
17	$488.30	$200	$288.30	$514.00	$400	$114.00	37%
18	$569.62	$200	$369.62	$599.60	$400	$199.60	32%
19	$650.94	$200	$450.94	$685.20	$400	$285.20	28%
20	$732.26	$200	$532.26	$770.80	$400	$370.80	25%
21 TO 29	$813.58	$200	$613.58	$856.40	$400	$456.40	22%
30 TO 34	$813.58	$100	$713.58	$856.40	$200	$656.40	11%
35 AND OVER	$813.58	$0	$813.58	$856.40	$0	$856.40	0%

Notes:

- *Base Rate of Pay for Part-Time / Full-Time workers. Casual loading and penalty rates may apply.*
- *If a worker is engaged in school, penalty rates are likely to apply.*
- *Compulsory schooling or education may be required to age of 15 (ACT/NT/Tas/WA) or age of 17 (NSW/Qld/Vic).*

Appendix 1: Recommendations

Long term and stable employment outcomes

A. That the committee analyse the number of jobs, estimated costs and impact of any capping arrangements.

B. That legislation require employers to provide end of program statements of employment outcomes that will be publicly available for the period of the Hiring Credit.

C. That legislation enable penalties and/or provide incentives for employers to transition employees from the JobMaker Hiring Credit to ongoing part-time and full-time employment.

D. That the committee compare the JobMaker Hiring Credit with other incentives to ensure there are incentives to offer ongoing employment with training that will assist an effective recovery of retail from the infection risk and economic impacts of COVID-19.

E. That legislation specify the criteria for those aged 16 to 18 be the same as JobKeeper to avoid disincentives to engagement in compulsory education.

F. That a gender analysis of the impact of the Hiring Credit be undertaken prior to implementation.

G. That the committee analyse the impact of different levels of subsidy on different cohorts in varied industries, age brackets and genders as the rate may be so low as to be a disincentive to take up the program.

Effective protections for workers

H. That the legislation include provisions for disputes resolution through the Fair Work Commission.

I. That legislation and any associated rules specify the start date of 27 September for consistency with the change of date for JobKeeper to encourage continuous employment.

J. That the recommended provisions for dispute resolution include clear protections, procedures and penalties for:

   a. casual staff being displaced by newly hired staff and still considered an employee for headcount despite reductions to hours or being a zero-hours worker,

   b. single roles being split into two for increased headcount but no increase in hours worked with effect of reducing employment both part-time and full-time, and

   c. women returning to work after pregnancy and others on parental and other forms of leave who may not be able to work more than 20 hours.

K. That legislation and any associated rules specify a more effective test for additionality as headcount and payroll are inadequate, for example the use of full-time-equivalence as it is less prone to abuse and distortionary industrial practices.

L. That legislation enable a single rudimentary rate, rather than a differential rate for those aged 30 to 35. This would avoid complexity of implementation and reduce risk of discriminatory practices for those returning to work and specific age brackets including women returning after pregnancy.

M. That legislation require payment of appropriate wages, including penalty rates and minimum wage increases for retail that are consistent with other industries.

N. That the legislation include provisions to require adherence to other conditions of work such as workplace health and safety, industrial and other laws and that where these conditions of work are not met the ATO has the power to recoup the funds.

O. That legislation require payment of superannuation be guaranteed on the full subsidy.

Effective accountability and transparency measures

P. That legislation, not rules, be used to define the program to reduce openness to change without transparency.

Q. That legislation include protections for whistle-blowers and provisions for complaints direct to the ATO and that such complaints be reported publicly.

R. That legislation outline the process for publicly sharing the outcomes during the period of the Hiring Credit and during the period that follows.

S. That, if the legislation does not achieve specificity, recommendations of the SDA be considered recommendations for the rules.

Coherence to other elements of the policy package

T. That the committee analyse other policy interventions needed to achieve success in employment outcomes for those under 35 including other wage subsidies, investment in skills and training, and related policies such as mental health and housing policy.

Appendix 2: Rationale for SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a broken industrial framework. We seek an economic system that supports, protects and advances the interests of working people in this country.

Our predecessors built the conciliation and arbitration system which provided the foundations to our nations prosperity over a century ago, it is now our responsibility to build a system for the next generation.

Since the introduction of the Fair Work Act 2009 and subsequent radical changes to the financial and digital context inequality has grown and economic and political power has concentrated in the hands of a few.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will withstand the emerging world of work.

We engage in topics that help us drive this agenda and are guided by ten principles that we believe will create value for our members. Those principles are:

1. Address Inequality & Enshrine Fairness.
   Minimum expectations must be set and adhered to.

2. Equity & Empowerment.
   All workers must be supported to progress so that no-one is left behind.

3. Mobility & Security.
   A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.

4. Delivering Prosperity and Growth For All.
   A foundation for prosperity and economic growth must be achieved.

5. Protection in Work & Beyond.
   Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.

6. Workers Capital & Superannuation.
   Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.

7. A Strong Independent Umpire.
   A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.

8. Protection & Support for Our Future.
   Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.

9. Work & Community.
   Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.

10. Institutional Support for Collective Agents
    Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting:

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Appendix 3: Case studies

Case Study 1 – Three Long-term casuals not classified as regular and systematic

Three SDA members that were long-term casuals were incorrectly classified as ineligible by their employers. With 12, 7 and 4 years service, they had not worked the required number of weeks in the previous 12 months but were engaged on a regular and systematic basis. Under the JobKeeper scheme there was no way they or their union could raise a dispute or propose less conservative tax advice that was more consistent with their entitlements under workplace law.

Case Study 2 – Example of reduction from full-time work

A retail business with a number of stores with 6-8 employees at each. The employer initially treated the JobKeeper payment as a wage and hours equalisation tool.

At one store with one permanent employee who was the manager:

- F/T Manager was directed to reduce to 25 hours per week (roughly equal to $750)
- Casuals were directed to increase hours up to the value of the JobKeeper payment
- No account made of caring responsibilities and university commitments.
- the direction to the Manager to reduce hours did not follow the requirements under s789GDC. The test of whether or not the Manager could "be usefully employed" had not been considered. It had been simply a financial decision to make the Government responsible for all payroll responsibilities and maximise the utility of casuals receiving more under the scheme than they would ordinarily earn.
- the direction to the F/T Manager had no consultation. The employer simply gave the direction without taking into account any of the workplace, useful work or employee factors.

Discussions the union had with the owner were successful in resolving a number of matters:

1. Increasing casual hours must be by agreement only
2. The scheme did not provide licence to simply cut the pay of F/T manger to $750.
3. Consultation had to occur and consideration given to individual circumstances
4. the union argued that the payment scheme was not a wage and hours equalisation tool to nullify all employer payroll obligations and transfer this to the Federal Government. The union argued that the starting point was to assess what useful work could be performed and then determine, using the JobKeeper enabling directions and requests provisions, how best to keep workers usefully engaged

Case Study 3 – Reductions in hours to 'earn' JobKeeper

Medium Sized Fashion Brand:
Several staff were left off JobKeeper as the company mis-interpreted the industrial meaning of "regular and systematic" casuals. Meanwhile the remaining staff across the company (all casual workers), are being made to work between 20 and 30 hrs. While they usually are only rostered for 10-15.

Fast Food Franchise:
The owner of a small franchise (Single store) was attempting to withhold JobKeeper applications from staff unless they agreed to one of the following options:

1. Agree to do 25 hrs per week.
2. If they work less than 25 hrs per week, they must take out $25 per hour not worked and give it to the owner.
3. For staff vulnerable to Covid who wished to stay home during the pandemic: Give the owner the entirety of their $1500 per fortnight, in return for him keeping their job.

Not accepting an option would mean termination. Prior to JobKeeper, all staff were on minimum 6 hr fortnight contracts under the Fast Food Industry Award.

In the end the staff compromised and accepted 15-18 hr contracts in return for the owner applying for JobKeeper and nominating them as eligible employees. The employees hoped that this would be a good decision, as it would secure their employment in the long term. However, systematic bullying ensued. Now only 2 of the 7 original staff remain. The bullying was due to the owner feeling he was ripped off by his staff and his sense of entitlement to the JobKeeper payments.

Case Study 4 – Dismissal of casual and no recourse for dispute resolution

Retailer changed rosters to optimise JobKeeper payments – i.e. they decreased all permanent hours to reflect the JobKeeper payment, and increased part time and casual hours up to the$750 equivalent.

In communicating these changes via email, the employer made a number of misrepresentations about employee obligations to agree to the new hours, including:

- *'all staff must return to work when directed to do so and cannot unreasonably refuse your assigned hours or shifts on the basis that you can rely on Job Keeper payments if eligible'.*
- That '*refusal by an employee to comply with the direction of the company in respect of their return to work can result in disciplinary action or termination*'

When the store reopened in May a new roster was given to a casual member that stated the hours allocated were '*to make up required hours. These must be observed'* and there were to be *'no changes'*. The new weekly roster had 27 hours over 4 shifts. The previous rosters over 6 months had been on average 1 shift a week.

Our member raised the issue of requiring work up to the increased hours to 'match' the JobKeeper payment. The member previously had an ankle injury which was at risk by increased hours standing on the shop floor.

After raising his enquiry our member was terminated 'due to the pandemic related downturn in trade'.
An application was filed in the FWC for unfair dismissal.

ISSUES

- There was no recourse in unfair dismissal proceedings where an employer increased hours to JobKeeper payments
- Misrepresenting the obligations of casuals, and threatening termination was not a question the employer needed to address in the UFD.
- One purpose of JobKeeper to help employees retain a connection to their employer, casuals can be terminated at any time, and cannot simply rely on the JobKeeper payment. This is difficult to reconcile, due to the fact that this was an exact circumstance contemplated by the JobKeeper scheme – i.e. there are many workers who are receiving JobKeeper regardless of available work (e.g. hospitality), and many of them are casual. Indeed, in light of further shut-downs in Victoria, the majority of employees at this company would now be stood down while receiving JobKeeper, while this particular member has lost that security.

It is very difficult for casuals to raise issues in the workplace as there is little recourse or protection against being dismissed even if they qualify for JobKeeper.

This was settled at conciliation, but the member is no longer employed.