

National Union of Workers

Submission to the Productivity Commission's

Workplace Relations Framework

Introduction

The National Union of Workers (**NUW**) is a large Australian trade union registered under the *Fair Work (Registered Organisation) Act 2009* (Cth).

It represents both permanent and casual workers (directly and indirectly engaged) in a range of industries including warehousing, logistics, food processing, manufacturing, poultry, defence logistics, dairy, and market research.

It is the NUW's view that precarious employment is the most pressing problem facing Australian workers, and the part of the industrial relations system most urgently in need of reform. Consequently, this submission focuses on this particular issue. In addition, the NUW supports the proposals put forward by the Australian Council of Trade Unions (**ACTU**) in its submission on other industrial relations matters.

This submission is divided into three sections. The first section describes how a poorly regulated labour hire system can result in increased insecure work and bring down standards of living. In the second section, specific case examples from NUW industries are provided, and in the third and final section, suggestions to reform the current model of labour hire in Australia are proposed.

Background

Under the current enterprise bargaining framework, a company that commits to employing its workers part time or full time is obliged to pay sick pay, annual leave entitlements and bargain collectively with its workers, while a company that chooses to employ significant numbers of non-permanent employees through a third party can ensure it keeps wages low by avoiding having to collectively bargain with its workers.

This has flow on effects for the overall economy because casual or non-permanent workers are less likely to receive adequate training and host employers are less likely to invest in skilling workers that are employed indirectly. This creates industry wide skills shortages and creates an environment where cut throat competition around labour costs removes the incentive for companies to invest. Companies that do commit to secure jobs are at a comparative disadvantage and cannot attract investment or credit to compete with competitors shifting risk onto employees.

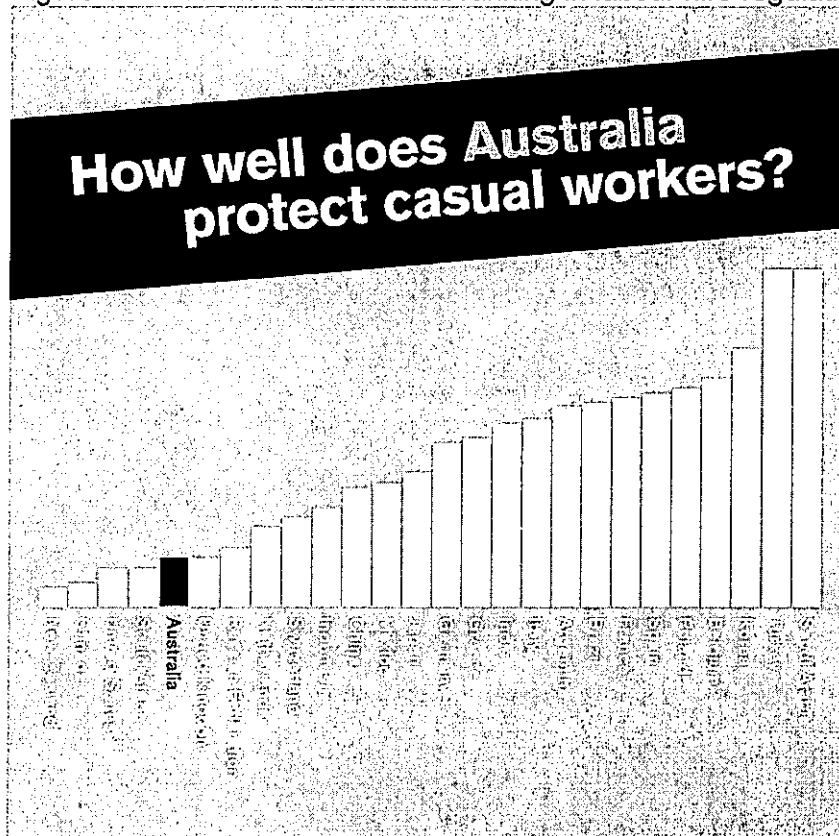
The Organisation for Economic Cooperation and Development (OECD) has conducted research into how temporary/non-permanent workers' employment is protected using the following indicia:

- i. Whether there are limits on the type of work where temporary work is legal
- ii. Whether there is a minimum length of employment for temporary workers
- iii. Whether any special authorisation or reporting is required for engaging temporary workers
- iv. Whether employers must provide equal pay and benefits to temporary workers

Adopting its usual approach of measuring countries' performance using a numerical scale, the OECD research uses a single number score to compare countries across each of the indicia. The research clearly demonstrates that Australia falls in the lower group of countries, receiving an OECD score of just 1.67, far behind other advanced (and quickly developing) economies including Korea, Belgium, Brazil and India.

Figure 1 shows Australia's international ranking when measured against other developed countries.

Figure 1 - Australia's international ranking in labour hire regulation



Source: <http://projects.propublica.org/graphics/temps-around-the-world>

The NUW submits that this lack of protection for non-permanent workers results from a lack of labour hire regulation, and a failure of current laws to comprehend a changing labour market. This has negative consequences for Australian workers in terms of their job security and living standards.

A. Current lack of labour hire regulation impacts negatively on job security and living standards

The rise of this insecure work is a social and economic crisis.

A 2014 report published by the OECD entitled "Non-regular employment, job security and the labour divide" as part of the OECD Employment Outlook for 2014 contains important findings and suggests a strong link between increased use of labour hire and insecure work. The report notes that labour hire workers do not benefit from the same degree of protection against contract termination as permanent employees do, and have no certainty of hours and income.

For many of the increasing number of Australians engaged in temporary labour hire work, the increasing level of insecurity is not a choice, but rather their only opportunity for employment.

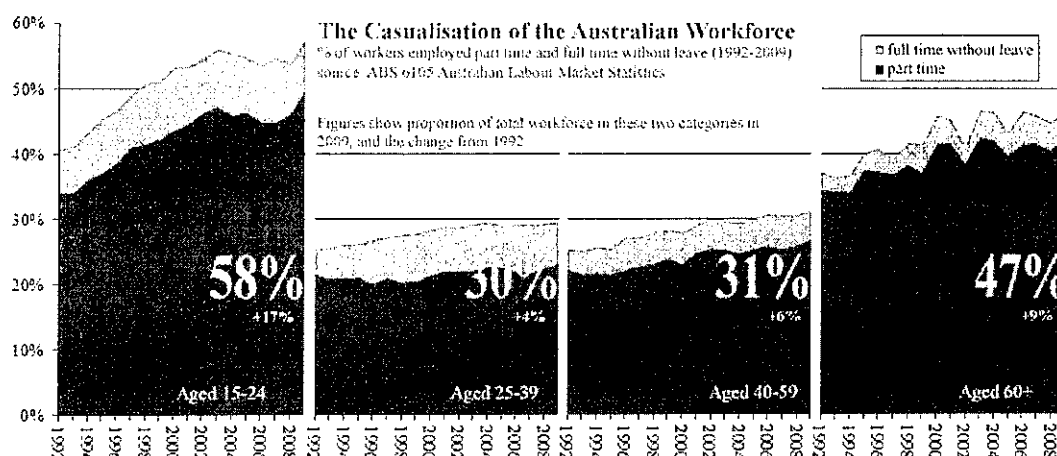
The divide between a rising periphery of precarious workers and a declining core of permanent employees threatens not only the notion of a "fair go for all" but our very social cohesion. Insecurity at work leads to anxiety at home and fear in the community. Reports of organised crime such as <http://www.abc.net.au/news/2014-05-03/wa-police-in-organised-crime-bust/5428212> show what inequality of employment opportunities and precarious engagement can breed.

Moreover, insecure work impacts adversely on workers' capacity to afford and maintain accommodation. As submitted by Hanover Welfare Services in the independent inquiry into insecure work entitled 'Lives on Hold', "it is often incorrectly assumed that people who experience homelessness are not engaged in the labour market or seeking employment." Figures show that around 40% of all homeless people are engaged in the labour market.

Not only is it difficult for temporary workers to find secure housing, but general financial planning and the possibility of securing a loan is also difficult. Workers relying upon daily text messages to receive income are in desperate need of a more stable income before they can effectively budget. Planning for time off work is near impossible when work notifications arrive sporadically and there is work via SMS one day, but none the next.

And the pattern is getting worse. As shown in Figure 2 below, since 1992 there has been a steady increase in the amount of Australians working full time and part time hours without the ability to access leave.

Figure 2 – The Casualisation of the Australian Workforce



Research continues to show links between increased use of labour hire causing insecurity of work, and diminishing opportunities for workers. See for example <http://theconversation.com/australian-dream-a-nightmare-for-many-labour-hire-employees-37479>

B. Case examples

The NUW represents many members that have lived their working life in precarious employment.

The following statements given by third party labour hire workers illustrate the effect that third party employment models are having on this transient workforce, and are being used by some employers to undermine the right of workers to collectively bargain.

At their site inductions, labour hire employees are often told that they will win conversion to direct full time employment if they meet the expectations of the host company. Labour hire employees are then ranked in terms of their speed and any worker who takes time off because they are sick, has had issues outside of work or even takes an unscheduled toilet break is quickly moved on. Workers who have been injured at work have had their hours cut afterwards. These labour hire workers are being stripped of any ability to bargain with the employer for fairness, safety and equity in the workplace.

The following statements were made by labour hire workers employed on NUW sites:

- 1. I've never worked for someone like that. They have different ideas of how to treat people. The turnover of staff is unbelievable. 5 weeks ago there were 18 in my [induction] group and only 3 are left. Everyone comes and goes there are different people everyday. They shorten the hours and send people home. We are not allowed to listen to the radio or to wear singlets that show arms even though it's really hot. We are not allowed to chew gum and have to leave phones in the car. There is a lot of pressure to work hard because people are always getting fired.*
- 2. I didn't feel secure there. Each morning there was a tool box meeting, only supervisors were allowed to talk at these meetings and they talked about targets and acted intimidating to anyone who spoke up. People who did speak up were not seen again after that shift. There was a pick rate some people would do well and pick more than most and then supervisors raised the bar setting new targets. We were on the clock with the pick rates and there was no conversation allowed.*
- 3. That was a harassment driven kind of environment, it was too rough, the work was very hard for the pay, I see the OH&S and I don't feel safe.*
- 4. They stopped giving me shifts. I took a few days off sick and they stopped calling.*

5. *I could just tell from previous experience, that it would have a constantly high turnover of staff, and that you would be worked to the bone and I knew I wouldn't get full-time. I've since spoken to guys who still work there and they are all looking for new jobs.*
6. *I had an urgent personal situation so could not attend the first shift. I was not able to get a shift after that.*
7. *I went to get a panadol out of the car for my headache. They sacked me for doing it on their time. Wages have dropped for a casual. I heard before I started that they would go through their staff chronically.*
8. *It was slave labour and they talked to you like it was nothing. Come Friday they just keep you on standby for Monday. I called them Sunday and they wouldn't confirm anything, they call you at 4:30 or 5 in the morning. They were paying peanuts and the [pick] rates were really high.*
9. *I was injured and then they didn't give me shifts after that. I hurt my ankle and I didn't take time off, I had one sick day to recover but they didn't put me back on again.*
10. *I hurt my back. I agreed with the supervisor that I should go home. I called my labour hire agency and told them I needed a week off. They put me on standby and never called me back.*
11. *I had a family emergency - my sister had her tonsils swell up and she couldn't breath, she nearly died she couldn't breath and was going blue, I took her to emergency room, I had no choice I had to help or let her die. I had paper work to confirm this but they wouldn't even look at it, and they just told me to not bother coming back.*
12. *They let me go because I had to take time off as my son was hit by a car.*
13. *The agency told me I was no longer employed as I had too many toilet breaks.*
14. *They stopped calling me after I took a day off for a funeral. The agency said they don't know what happened.*
15. *It's like being a slave.*
16. *Once I finish up, I won't be working there after Christmas. I'm working in lay-buys. The way they run the place lacks organisational skills; they put pressure on you to work faster. They want you to do it fast and rush you - they said if you don't want to keep the pace up there is always someone ready to come in and fill your shoes.*
17. *I felt like a number. I had a serious issue with my family and I went home, the day shift supervisor didn't want me to and he had it in for me after that. His attitude generally was bad both before and after the incident but I only have one family that was the thing.*

C. Suggestions to reform the current model of labour hire in Australia

At many NUW sites, workers become vulnerable to a reduction in work hours and subsequently the equivalent of termination if they attempt to collectively bargain. At the same time, workers employed by small, poorly capitalised labour hire agencies risk being denied their full pay as agencies exploit workers' vulnerability by not properly adhering to industry awards and workplace agreements.

The lack of any regulation or industry specific statutory reporting requirements for agencies makes it easy for unscrupulous operators to ignore their obligations to workers.

The following legislative amendments should occur to ensure the *Fair Work Act 2009* (Cth) provides casual workers with genuine collective bargaining rights:

- a. The Act should protect workers in indirect employment relationships by providing a dual employment guarantee, which ensures wages and conditions in a collective agreement apply to all workers employed on the site of a host employer regardless of whether or not they are directly employed.
- b. The bargaining framework should not differentiate between direct and indirect employees. Third party workers should have full voting rights in an agreement that determines their employment standards.
- c. The Act's collective bargaining provisions need to be expanded to better facilitate multi-business, industry and sector-level bargaining. A strict focus on enterprise level bargaining permits irresponsible economic behaviour in which the legal identity of the employer is separated from the real source of economic power and control.
- d. Host companies should be prevented from sourcing outside labour during protected industrial action and lockouts.
- e. Protected action provisions should be amended to allow workers to take collective action in support of job security between bargains.

Conclusion

The NUW believes that this inquiry presents a unique opportunity for the Productivity Commission to tackle the scourge of insecure work, and this submission aims to simplify pathways to secure employment for casual and contract workers and address legislative gaps around third party employment which contribute to job insecurity.

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