



RTBU

Select Committee on Job Security
 Department of the Senate
 PO Box 6100
 Canberra ACT 2600
 Submitted via email to jobsecurity.sen@aph.gov.au

9 June 2021

SUBMISSION TO SELECT COMMITTEE ON JOB SECURITY

The Rail, Tram and Bus Union (RTBU) represents over 30,000 workers across Australia in the rail, tram and bus industries. We thank the Senate Select Committee on Job Security for the opportunity to provide a submission to this Inquiry.

This submission focuses on the following Terms of Reference:

- a) The extent and nature of insecure or precarious employment in Australia;
- d) The aspirations of Australians including income and housing security, and dignity in retirement; and
- e) The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies.

In particular, this submission deals with the issues of increasing casualisation and the growth of labour hire. These two issues are closely connected (especially in the rail, tram and bus industries) in that labour hire workers are predominantly employed on a casual basis.

The extent and nature of insecure or precarious employment in Australia

Casualisation

The RTBU notes that trends in the casualisation of the workforce have been covered in other submissions to this Inquiry. For example, the submission by Associate Professor Angela Knox & Associate Professor Susan Ainsworth (35) notes that ABS labour force data from August 2020 shows there were around 2.3 million casual employees in Australia at that time, representing approximately 22% of total employees. This figure had decreased from 2.6 million or 24% of total employees in February 2020, reflecting the impact of Covid pandemic (ABS 2020).¹ Knox and Ainsworth also note that the level of casual employment has remained stable and high in Australia, representing around a quarter of total wages. Casualisation is most common, however, in lower wage roles that rely on award safety

¹ Angela Knox and Susan Ainsworth, Submission to the Senate Select Committee on Job Security, Submission 35, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Submissions, accessed 7 June 2021

Rail, Tram & Bus Union Australia **The Power of Union**

Office: Level 2, Trades Hall, 4-10 Goulburn Street, Sydney NSW 2000
Phone: 02 8203 6099 **Fax:** 02 9319 2096

net conditions. Furthermore, casuals are much more likely to have insecure weekly hours and three times more likely to want additional hours.²

These figures are borne out by the real-life experiences of our members. For example, in Brisbane around 25 per cent of Bus Operators employed by Brisbane City Council are casuals. In recent years the workload on Bus Operators in Brisbane has increased, but there has not been corresponding increase in the number of permanent full-time or part-time positions of employment. Significantly, the casual pool has the highest share of women in Brisbane's bus workforce, so female employees are therefore bearing the brunt of the insecure nature of this form of employment.

Labour hire

Labour hire companies are exponentially increasing in volume and influence in Australia. It has been estimated that there are approximately 5,800 labour hire companies across the country which distribute approximately \$12.7 billion in wages³. The RTBU has found that workers employed by labour hire operators in our industries are predominantly employed on a casual basis at or just above award minimums, with no promise of ongoing and secure work.

In the rail industry, the proliferation of labour hire is a recent phenomenon. As recently as 2016, the rail landscape only had a handful of labour hire companies most of which only had a few staff performing specialised work.⁴ Today however labour hire providers in rail have well and truly established themselves as a major player in the industry. The National Office of the RTBU has identified 193 labour hire companies that currently offer staffing solutions in rail. Of these, only a small handful have enterprise agreements.

Lower pay and conditions

As mostly casual employees, labour hire workers face precarious employment conditions. They are often expected to make themselves available weekly but receive daily text message notifications telling them if they will be required to work the following day thereby denying them basic job security.⁵ They receive pay and conditions at or just above the minimum award safety net and as such form part of a secondary market of employees with lower pay and conditions than those individuals engaged by traditional unionised employers with enterprise agreements.

The RTBU has found that some casual contracts in the rail industry require the employee to cover the cost of their own training before being able to start work. This can lead to employees paying thousands of dollars in training costs to the labour hire company without a guaranteed job at the end of that training. Track worker qualifications, for example, can cost around \$10,000 to \$15,000 in these contracts, depending on the classification. Even where an employer agrees to cover the costs of training, if an employee leaves the employer before a certain date, the employer is provided a right to recover the training amount in a court of law against the employee.

² IBID.

³ Finance and Administrative Committee of the Queensland Parliament, *Inquiry into the Practices of the Labour Hire Industry in Queensland* (2016), 4; ACTU, *The Future of Work in Australia: dealing with insecurity and risk* (28 November 2011), 8; : Even as early as 2008 about 5% of the Australian workforce obtained their jobs through labour hire firms and about a quarter of those were paid directly by the labour hire company; Jill Billington et al, *Lives on Hold: Unlocking the Potential of Australia's Workforce – The Report of the Independent Inquiry into Insecure Work in Australia* (2012), 23: More recently best estimates hold that about 3 to 4% of the Australian workforce work in labour hire and it is rapidly growing.

⁴ Author's personal experience: Lawyer in National Office of the RTBU from April 2016 to present.

⁵ Education and Employment References Committee, *Corporate Avoidance of the Fair Work Act 2009* (September 2017), 46.

The aspirations of Australians including income and housing security, and dignity in retirement.

From our experience, insecure work has a profound impact on the lives of workers in the rail, tram and bus industries. These impacts include, but are certainly not limited to:

- income and housing security are at risk as casuals may not be eligible for social security safety net measures. The exclusion of casuals from the JobKeeper scheme, for example, showed how casual workers are often treated as second-class citizens;
- insecure employment impacts on a family's capacity to arrange childcare (which predominantly affects women);
- inconsistent or unpredictable hours can have a negative impact on work-life balance, the ability to manage family responsibilities and custody arrangements;
- casual workers in the rail sector are more likely to move between employers, but do not have portability of entitlements such as long service leave;
- limited access to training and limited prospects of career advancement can have a negative impact on job satisfaction; and
- the casualisation of jobs performed by women impacts an already worsening income gap between the retirement income of men and women.

The effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies.

Unlike workers at a traditional employer, labour hire workers are placed at clients' sites and moved around as required. This is especially so in rail where the work location varies daily often across thousands of miles of track. We have found that when labour hire workers in our industries find an opportunity for more secure employment, they take it. This leads to an abnormally high level of staff turnover in labour hire operations. Furthermore, the precarious nature of their engagement (and fear of consequences) means that labour hire workers are less likely to speak out on issues such as safety.⁶ This means that the traditional role of trade unions in detecting and responding to poor workplace practices is compromised.

Small Cohort Agreements

Under the Fair Work Act, employers are able to secure agreements with a relatively small number of employees who are often selectively chosen and are not really representative of the wider workforce that will eventually be employed under the agreement.⁷ The mere fact that the group is small is not a deterrent to approval and unless the union can show that the small cohort was not employed for a bona fide business reason, there is nothing legally improper in using this approach.⁸ Examples of this approach have been seen at John Holland⁹, Carton and United Breweries¹⁰ and many others. Although it is clear that using a small cohort may still allow the Fair Work Commission to find that the group is fairly chosen, the liberty of employers to use this approach has been slightly curbed by the decision in *CFMEU v One Key*¹¹. In this instance, Flick J found that the agreement could not have been 'genuinely agreed to by the

⁶ Anthony Forsyth, *Victorian inquiry into the Labour Hire Industry and Insecure Work* (31 August 2016), 21 [3.18].

⁷ Education and Employment References Committee, above n 3, 14-15.

⁸ *Ibid* 15.

⁹ *Construction, Forestry, Mining and Energy Union v John Holland Pty Ltd* (2015) 228 FCR 297: Full Federal Court upheld an agreement voted on by three employees as meeting the fairly chosen test despite the volume of employees it would apply to later.

¹⁰ ABC, *Battle of the Brewery, Background Briefing*, 28 August 2016 (Ann Arnold): Three employees voted on an agreement in Perth that was now to apply in Victoria. In this segment Ms Arnold states "In fact the employee representative who signed the EA on behalf of the others, only worked for the company for six days, and is not too sure what he was asked to sign." In response to this, the employee representative (Ethan) says "...didn't really know much about it, I just sort of signed it because they asked me to do it" and when asked if he knew what the agreement was for he honestly states "No, I've got no idea."

¹¹ *Construction, Forestry, Mining and Energy Union v One Key Workforce Pty Ltd* [2017] FCA 1266.

employees covered by the agreement' due to the huge and varied classifications of employees that the agreement covered.

This small cohort approach is a very easy method for start-up labour hire divisions to deploy and thereby ensure they have pay and conditions which are as close to the legal minimums as possible. Despite the OneKey decision it is still a very real problem. For example if a labor hire company only has one or two classifications and hires a couple of 'friendly' workers in each, an agreement can easily and validly be made before it is rolled out to a future workforce.

Labour hire's perception of itself

Labour hire was originally created to fill staff shortfalls for traditional employers. However, labour hire operators have managed to increase their offering to become part of the standard workforce of their hosts.

The RTBU contends that the increased presence of labour hire in the rail industry has created a systemic problem for the workplace bargaining system. Where unions attempt to bring the pay and conditions of members in labour hire in line with industry standards, labour hire resists such measures because it would undermine their main competitive advantage of labour costs - thus undermining their operating model. In short, labour hire views itself as being part of the **labour hire industry** rather than the **rail industry** - and therefore operators believe the pay and conditions they offer do not need to align with rail industry standards.

Recommendations

The RTBU notes that the downward pressure that labour hire operators put on industry pay and conditions has been recognised by parliaments at both state and federal level. The introduction of state-based labour hire licensing schemes is a positive step that will help to make operators more accountable. Nevertheless, much more can and should be done to tackle the negative impacts of both casualisation and the growth of labour hire. To that end, the RTBU suggests a number of reforms:

- a. Properly defining casual employment and providing a right for casual employees to convert to permanent employment after six months where they so choose;
- b. Ensuring that labour hire workers receive the same pay and conditions as other workers doing the same work;
- c. Ensuring labour hire workers have a right to employment by the host after six months continuous employment;
- d. Expanding multi-enterprise bargaining so that both the direct employer (labour hire) and the host can be forced by unions to bargain for an Enterprise Agreement for those workers that are engaged on the same project or site;
- e. Preventing small cohort agreements; and
- f. Where there are intractable negotiations, providing an ability to arbitrate any remaining items on the parties' log of claims.

Yours sincerely,



Mark Diamond
NATIONAL SECRETARY