

National Union of Workers Submission to the ACTU Insecure Work Inquiry

Legal and Illegal Forms of Indirect Employment

Executive Summary

The National Union of Workers represents workers in a range of industries including warehousing, logistics, food processing, manufacturing, poultry, defence, logistics, dairy, market research and call centres.

Nearly all industries covered by the National Union of Workers comprise workers facing insecure employment. With the noted exception of the market research and call centre industries, it is the ever growing use of both legal and illegal indirect employment models that is causing the most hardship for workers in our industries.

The two employment models being regularly used by employers are third party labour hire and contracting. Both these models shift risk from the employer to the worker reducing their job security and their ability to bargain for better wages and conditions.

The legal use of labour hire firms to create an indirect employment relationship is flourishing throughout industries covered by the National Union of Workers and throughout the Australian economy overall. There has not been a great deal of academic research done on the impact that labour hire companies are having on the Australian economy in relation to productivity and occupational health and safety. In addition there has been little research linking limits on collective bargaining with the deployment of transient labour hire workers working in host companies.

In this respect, Australian workplace law has not been designed with the current workplace landscape in mind. Despite the process of Award Modernisation, the Award system was and remains written to cater for a largely full-time workforce with casual employment only expected to fill seasonal gaps. The Award system does not provide proper collective bargaining rights for the 40% of the workforce that are employed in precarious roles and employers use all legally available avenues to skew the employment relationship so that they are not directly accountable for the workers that produce the commodities that they sell. Alarming Australia is one of only a handful of developed countries worldwide with no licencing system for labour hire providers.

The National Union of Workers has had some success in limiting precarious employment models at an enterprise level by negotiating site rates for labour hire workers and conversion clauses in agreements. While these small wins have helped win better rates of pay and job security for workers at these sites they are only temporary victories and

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structurally the workplace laws are not designed to protect workers employed by labour hire firms.

This is why in 2012 the National Union of Workers will be embarking on the “Jobs You Can Count on Campaign” to improve the working conditions of both directly and indirectly employed workers employed in our industries in insecure roles. As part of this campaign we have done preliminary research on the way indirect employment models are effecting our members and how our members, both full time and casual members see themselves and their role in the workplace.

Indirect employment, particularly the use of unregulated labour hire companies and contractors, has a negative impact on the workplace and the economy as a whole. The use of indirect employment models reduces productivity, increases workplace accidents and shifts the risk from those profiting from commodities to those producing them.

Indirectly employed workers paint a bleak picture in which employers are able to divide them from directly employed workers, offer them the less desired jobs and provide no job security. A phone survey of NUW labour hire members revealed that over 80% wanted permanent secure work and would gladly forgo their casual loading in exchange for part time or full time work.

Focus group research revealed that while divisions do exist between those that are employed directly and their indirectly employed coworkers, most resentment is directed towards the employer. Permanent members place great importance on their own job security and are aware that workers employed indirectly have far less job security.

The other indirect employment model being used in many of the union workplaces shifting risk onto workers is contracting, which is most prevalent in the poultry industry. There are two kinds of contracting being used in the poultry processing industry, sub-contracting and cash contracting. Both models shift accountability away from the companies producing commodities.

Sub-contractors are forced to operate as independent contractors despite being completely dependent on poultry processors for all their work and cash contractors are employed by head contractors who report to poultry processing site managers. These head contractors often pay cash in hand at well below the minimum wage and do not adhere to the Fair Work Act. Subsequently cash contractors usually do not receive sick pay, annual leave, superannuation and other benefits that other workers take for granted. Two on the record statements and a number of statements with names changed to protect those involved have been included in this report. These statements clearly illustrate the negative effects that sub-contracting and cash contracting have on the lives of workers by shifting the risk from those profiting from the production of commodities to those producing the commodities.

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Insecure work comes in many shapes and sizes and this submissions does not address every model used by employers in our industries. Instead it focus on indirect employment models that seperate companies profiting from commodities from the workers whose labour is being used to produce those commodities. Indirect employment is increasing rapidly throughout the Australian economy and as a result a growing number of workers are facing reduced job security and are unable to bargain for better wages and conditions. The ACTU's Secure Jobs Better Future Campaign and the National Union of Worker's Jobs You Can Count on Campaign need to be successful to avoid this crisis permanently reducing the standard of living enjoyed by working Australians.

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Part 1

The impact of Labour Hire on the Australian Economy

1) The purpose of this section is to analyse the labour hire industry in general and its impact on the Australian economy.

2) **Main Findings:**

There are over 2000 labour hire companies operating in Australia. The vast majority of these companies are small, capital poor operations which are more often than not used to undercut the collective bargaining rights of directly employed workers without producing direct material benefit for the Australian society. A licensing system is needed as a first step to better regulate the use of labour hire agencies to increase productivity, reduce workplace accidents and protect the collective bargaining rights of workers.

3) **Industry Overview:**

The Labour hire industry is growing and a diverse range of companies are involved in both buying and selling the labour of casual workers. While larger labour hire companies like Skilled, Hays, Chandler Macleod, Manpower, Adecco and Ranstad are capital rich and are more professionally run, the industry as a whole is uncontentrated and volatile and the unregulated nature of labour trading means that entry into the market is easy and competition is fierce.¹

The ease with which new companies enter the market, leads to price wars as highly transient workforces are shifted from workplace to workplace. Host companies and labour hire companies work together to stifle the ability of labour hire workers to build collective strength with directly employed workers.

Labour hire companies that refuse to rotate staff in and out of workplaces are easily undercut by competitors willing to comply in order to win the right to supply labour to established host firms. Labour hire workers are less likely to gain wage increases and job security as more labour hire companies enter the third party labour market and stifle workers rights to collectively by offering host company easy access to highly transient labour.

Companies sourcing labour from labour hire firms lobby hard for the industry to remain deregulated and subsequently less concentrated because this keeps their overall labour costs down by making it harder for their workers to collectively bargain.

¹ Paul McMillan, *IBIS World Industry Report L7862 Temporary Staff Services in Australia*, IBIS World, May 2011, p16-17

As large multinational companies continue to acquire smaller operations the size of the bigger labour hire companies will increase but proper consolidation of the industry will not occur without stronger regulation around labour hire. Labour Hire companies require little capital to start up because they basically only trade in the service of providing labour. Without any kind of licensing the industry will in all probability remain unconcentrated and this will aid host companies who will continue to pressure labour hire companies to rotate casual staff through their operations to reduce the ability of permanent and labour hire workers to build collective strength on site.

Branding and reputation are obviously important for labour hire companies and a labour hire company's reputation is dependent on the labour (workers) they provide, their ability to service business needs (number of workers provided, compliance with a businesses wishes regarding rotation of labour) and their cost. Labour hire companies that establish ongoing close relationships with individual businesses are more likely to survive long term. Those with strong databases of accessible transient workers are the ones that work best with businesses who essentially want workers that they can bring in and kick out of their operations on a whim.

3) Comparison with the Employment Placement Service Industry (for permanent roles):

The Employment Placement Services industry revolves around companies sourcing permanent labour from an agency that acts as an intermediary between the employer and the employee, the agency takes a fee from both the employer and the employee when the employee is deployed to work for the employer.² Some of the major players in this industry including Chandler Macleod and Hays Specialist Recruitment Australia are also involved in the Labour Hire Industry.³ The Employment Placement Service Industry is more consolidated with the top four companies in the industry controlling 59% of the total market share. This industry receives 30% of its market share from providing employment services for Centrelink and its unemployed welfare recipients. This industry is more capital intensive than the Labour Hire Industry but is still an easy industry to enter.⁴ Involvement in the Employment Placement Services Industry allows companies to develop their databases and utilise them to service labour hire requirements. Employment Placement Companies have preferred supplier contracts with other companies, particularly with large corporations and this enables them to establish the strong links that lead to labour hire arrangements on top of employment placement services. 10-20% of all employment placements come out of such arrangements and this practice is gradually increasing. Sometimes an Employment Placement Company is part of a panel of such companies from which companies can source workers from.

² Paul McMillan, *IBIS World Industry Report L7861 Employment Placement Services in Australia*, IBIS World, May 2011, p11

³ *ibid*, p20-21

⁴ *ibid*, p11-14

4) OHS:

There are strong causal links between the use of third party employment and occupational health and safety problems in the workplace. These problems revolve around blurred lines of responsibility and short term employment leading to a reduced knowledge of the workplace which in turn leads to a greater chance of injury and safety breaches. Precarious employment also increases the likelihood of workplace injuries going unreported and increases the difficulty of prosecuting for occupational health and safety breaches. Third party labour hire employers are often not financially capable of paying fines and compensation to injured workers and may choose to wind up their operation rather than meet financial obligations in relation to a workplace injury.

The use of labour hire agencies builds a triangular relationship between worker, labour hire agency and the employer. The lack of a proper contractual relationship between an agency worker and their host employer blurs the lines regarding who is responsible for monitoring worker performance and occupational health and safety. A worker that has to report to two masters has unclear guidelines in terms of their legal responsibilities, grievances and disciplinary issues procedures and the psychological and social contract with their employer given that they are legally bound to one party but working for another.⁵

There is a growing body of evidence which suggests that labour hire workers face a greater risk of injury than directly employed workers completing the same task. In a case study completed before the use of labour hire had reached current levels, it was found that the percentage of labour hire workers who made workers' compensation claims was twice as high as the number of permanents making claims. The same study also found that labour hire workers "face greater risk of being hit or hitting moving objects resulting in a higher level of wounds and crushing. They also experience more trips and falls in occupations requiring mobility at the workplace as well as a higher level of repetitive strain injuries among clerical workers."⁶

The use of labour hire workers and contractors also reduces accountability around the recording of workplace accidents and safety breaches by government regulatory bodies. Occupational health and safety regulators do not properly record accidents, safety breaches and injuries when non direct employees are involved. This is partly because of disorganisation and confusion around how incidents should be recorded when a third party is involved and partly because of the economic pressures faced by non direct workers, which leads them to cover up incidents and not report workplace injuries. When injuries and incidents go unreported it disrupts regulatory targeting and surveillance and can lead to rogue employers with poor health and safety records and inadequate procedures

⁵ Richard Johnstone & Michael Quinlan, *Working Paper 38, the OHS Regulatory Challenges Posed by Agency Workers: Evidence from Australia*, Australian National University: National Research Centre for OHS regulation, September 2005, p5

⁶ IBID, p6

slipping under the radar and avoiding prosecution. This interferes with both incident reporting and overall regulatory safety plans.

The statement below, given by a worker who was injured while working in a poultry processing facility in Victoria illustrates the lengths companies will go to in order to avoid penalties for safety breaches. It also gives an illustration of the way companies can manipulate the blurring of the lines around the employment relationship that third party employment creates.

I am 20 years of age and am from India. I came to Australia on a Student Visa to study Community Welfare. I got a job in Evisceration (EV) with a Victorian poultry facility in March 2009. My job involved cleaning the EV room and the equipment including the chicken neck trimming machine.

In April 2009, I was attempting to clear debris from an unguarded chicken neck trimming machine when my left arm got caught and I was sucked into the machine. I suffered a serious injury which resulted in shock, severe bruising, full thickness laceration to the area around my eye, and nerve, muscle and tendon damage to my left arm. At the time the incident occurred I was on my own cleaning the EV room, as the rest of the workers were on a break when the injury occurred. I was stuck in the machine for approximately one hour until fire fighters attended the site and were able to dismantle the machine.

While I was recovering in hospital, a man visited me and gave me \$2000 in cash if I agreed to say I had been working for his company and not the parent company. He later told me I would receive \$300 per week until I could start work again. My wage prior to the accident was \$444 per week. Around a month later, he came to my house and gave me payslips he had created that said I had been working for his company during my time at the poultry facility.

In May, a manager from the poultry company and the man who had been paying me gave me \$1000 in cash to book a one way ticket to India, and said they would continue to pay me \$300 per week in India until I was fit to return to work. I flew back to India but my payments stopped after 3-4 weeks. In August I was told I could come back to Australia and work at the poultry company.

The Company did not give me any induction or training in relation to my role. Neither was I given any documentation to complete in relation to commencing employment.

5) Productivity:

Companies that use Labour Hire are able to avoid making productivity gains by reducing their overall labour costs and hence enabling their less than productive supply chain process to remain cost competitive. While an empirical study is yet to be done conclusively



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linking the use of casual workers with productivity drops, Guy Standing has pointed out that “casualisation induces workers to lack commitment to the firms of their employment, and lowers productivity. This traditional argument has been given additional spice by the recent belief among management “scientists” that among the most important skills in the services accounting for most new jobs is *emotional skill*, which apparently is best harnessed to the needs of companies by employment that engenders feelings of loyalty and commitment. Other downsides include a lack of skill acquisition, particularly those acquired from fellow workers. Casualisation tends to depress workplace innovations and makes workers not care for equipment or raw materials, resulting in higher non-labour costs. Employers and some policymakers also realise that workers who are relatively secure in their jobs are more likely to put pressure on management to improve working conditions and put pressure on management to improve efficiency in order to obtain decent profits.”⁷

Business groups and conservative politicians, commentators and think tanks have tried to link Australia’s declining productivity rates to the Fair Work Act but the timelines do not match and in fact there is more evidence to suggest a link between the use of casual labour and labour hire companies with declining productivity than there is to build a link between collective bargaining rights and productivity decline. The failure of the Howard Government’s *Work Choices*⁸ legislation to reverse Australia’s productivity decline despite the fact it prevented workers from collectively bargaining illustrates this.

Eslake and Walsh point out in their paper Australia’s Productivity Challenge that “higher productivity growth offers the best means of ensuring the survival of businesses and jobs in sectors of the economy likely to be adversely affected over the next decade by some of the side-effects of the present ‘resources boom’. The resources boom is likely to undermine the competitiveness of trade exposed sectors of the Australian economy such manufacturing and parts of the agricultural sector.”⁹ Businesses that depend on reducing labour costs through the use of labour hire to mask their own inability to increase their productivity are only creating short term solutions that will not help secure the long term survival of their business. Using labour hire to mask productivity inefficiencies may help a business reach a short term profit KPI but businesses very quickly develop labour hire dependency, which stops investing capital in training, machinery and other capital intensive solutions which increases their economy of scale and increases their productivity. Businesses that rely on labour hire may win in the short term but in the long run they end up with an untrained and unmotivated workforce that is unable to help the business increase its market share or its profit margins.

⁷ Guy Standing, *Economic Insecurity and Global Casualtion: Threat or Promise*, Springer, November 2007, p26

⁸ Work Choices Act 2005

⁹ Saul Eslake & Marcus Walsh, *Australia’s Productivity Challenge*, Grattan Institute, February 2011, p6

6) Global Supply Chain Focus and the need to work internationally to limit divide and conquer tactics used by business:

Businesses are outsourcing non core functions to respond to changes in work volumes. As they depend on global supply chains, multinational companies are dependent on boards/CEO's based overseas for capital, decision making and other support. Labour Hire and Supply Chain solutions (dependent on casual labour) are seen as a "flexible" option to managers who do not have the authority to make long term decisions on labour procurement but want to vertically integrate their supply chains in order to control more elements of the process that leads to their finished product. In a global context, the rise in the use of labour hire is occurring even more quickly than it is in Australia with continental Europe using the global financial crisis as an excuse to rush through massive deregulation, which is increasing the use of labour hire workers. Japan is also increasing its use of labour hire in line with the rest of Asia, which is already deregulated and a prime market for labour hire companies to exploit.

Organising on a global level will counteract the tactics employed by multinationals to pit one group of workers against another in a downward race to the bottom on wages. The use of labour hire is a very important tool for employers when trying to counteract the organising abilities of unions and other labour groups and lax labour laws are an essential ingredient in allowing companies to pursue labour hire based "solutions" both in Australia and in other countries connected to multinational supply chains. Forcing regulation around labour hire in Australia will give Australian unions ammunition in our fight to help our comrades overseas to increase their labour standards both at a regulatory level and an enterprise level. Essentially we need to take away the power of business to shift production from one country to another to take advantage of looser labour laws and weaker less organised workforces. Regulating labour hire practices and organising labour hire workers is one piece in a complex puzzle.

7) The need for regulation:

The Fair Work Act 2009 and the Modern Award system do not protect the workplace rights of casual workers. The Act puts no obligations on the employer to transfer casual workers to permanency after a period of continued work with the one company and labour hire companies are not addressed specifically within the act despite an ever growing involvement in Australian workplaces in all sectors of the economy.¹⁰ Some Modern Awards put some obligations on employers to transfer workers to permanent jobs after a set period of time as a casual in the one workplace (usually six months) but such clauses are not included in all awards and even when they are included they are worded in a way that enables employers to work around the system and continue to employ casuals on permanent basis while avoiding providing the protection they are obliged to provide to their permanent employees.

¹⁰ Fair Work Act 2009, (Cth)

The workplace system needs to be amended in order to ensure labour hire companies are acknowledged and licenced so that the industry can be consolidated and remaining companies cannot be used to deny permanent work to workers who are performing ongoing roles inside a single company. As it stands a labour hire company can be established with little capital and used to shield employers from the obligation of providing secure jobs to long term employees. Australia is one of the only a handful of OECD countries with no regulation or licensing of labour hire companies. The upcoming Fair Work Act review offers an opportunity for amendments that properly address the role of labour hire companies in the Australian economy. In the long term the labour hire industry needs to be better regulated and labour hire companies need to be licenced to improve productivity, workplace safety and protect the collective bargaining rights of workers

Part 2

NUW LABOUR HIRE MEMBERS – SURVEY REPORT

In March 2011, the National Union of Workers conducted a survey of 400 NUW members employed through labour hire agencies.

The purpose of the survey was to understand what labour hire workers thought about working through an agency, how they were treated at work and how the Union may better service them. This summary discusses in brief some of the findings of this study and includes comments from members that sum up how many labour hire workers feel about their conditions of employment.

The report below provides the questions and responses from those members surveyed along with some quotes from respondents.

How long have you been employed with your labour hire agency?

How long have you been working in your current position?

Since being employed by your agency, at how many different workplaces have you worked?

56% of those spoken with had been with the agency more than a year of which 32% had been there more than 2 years. When asked how long they had been in their current position the overall figures were very similar with 54% having been there longer than 2 years. 263 of 400 (66%) respondents had been at one placement via the agency and 54 (14%) had been at 2 placements.

Findings indicate that the majority of Agency staff tended to not move site often and that their first placement tended to be where they were currently employed. Many casuals who had worked at a larger quantity of placements were employed through multiple agencies. One worker had been a permanent employee for 28 years was made casual and introduced to an agency.

How many hours to you generally work a week?

- * 30-40 hours per week: 191 (49%)
- * 20-30 hours per week: 71 (18%)
- * 10-20 hours per week: 54 (14%)

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- * 40-50 hours per week: 48 (12%)
- * Less than 10 hours: 22 (6%)
- * 50+ hours per week: 4 (1%)

Almost half those surveyed worked a week equivalent to that of a regular fulltime worker (49%) and 24% working less than 30 hours per week. There were however large fluctuations in the hours worked as certain times of the year were quiet while others were busier. A need to do the hours while they were available negated casual workers flexibility. Of those that worked less hours many were happy with this due to outside commitments such as study but a large quantity would have gladly worked but were not being contacted by the agency.

"It depends on the production. Sometimes its 25 hours, sometimes it's 40 hours. I can't say exactly how many per week."

"Full timers complained about casual's hours so hours were cut"

"Permanent casual", company doesn't want to put permanents on

"It varies .First started very busy 35-40 per week .In the last few months very quiet could be doing 8 hours a week."

"None. Today was my first work since January."

Are your work hours consistent from week to week?

Yes: 202 (50%)

No: 199 (50%)

On looking into members comments there seemed to be a wide variation in hours among those who felt their hours were consistent. Further to this many members felt lucky to be getting hours and were aware of other casuals on site who were not so fortunate.

"Consistent for a while and then for a while might not be working very much. Just around the holiday times I work more."

While this can't be considered regular working hours, the member was used to having quiet and busy times of the year and felt this to be consistent. This indicates a culture of acceptance from casual workers to the irregularity of their hours.

On a scale of 1 to 10, where 1 is very insecure and 10 is completely secure, how would you rate your job security?

56% of those surveyed answered 5 or below of which 14% gave an answer of 1 (the least secure) and 18% answered 5.

“No job security - I'm a casual!”

“Versa cold has just lost the contract and casuals are getting fired in April now”

“A couple of times I have been promised an ongoing position but it didn't happen.”

“They make you feel 1 but I go along with it because that's how the environment is. I've gone through being treated good, then crap, then good. Right now the way things are going they're trying to make us feel like a 1 because they extend the days to 16 hour days. Everyone is having to come in earlier because there's no work left in the afternoon.”

How do the duties of casual employees at your workplace differ to the duties performed by the permanent employees?

The major difference between duties was that casuals in many cases were not trained or allowed to perform better tasks such as operating machines which always seemed to go to permanent workers. There were a large number of casuals saying there was no difference in the roles performed but how they were treated varied greatly:

“Similar roles are undertaken by casuals and permanent employees. If a casual makes a mistake or something goes wrong, you could be out the door the next day. If a permanent makes a mistake it's no big deal .casuals have to watch what they do more”.

“Assigned duties are the same but casuals are more 'under the pump' .casuals are watched far more closely.”

What do you consider the benefits of being a casual employee in your workplace?

Pay was the only mention of a benefit other than a few comments about flexibility of when they worked. Members also commented taking days off meant that they would be offered less shifts or they were concerned that this would occur.

What do you consider are the drawbacks of being a casual in your workplace?

Many of the 400 workers mentioned lack of security, lack of any leave entitlements and never knowing if they were getting their hours the following week as their major issues.



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“At the end of the day if I take off a few sick days, then they might get someone else in my place. I might not have a job when I go back .There's sick workers amongst healthy workers and I'm just too worried about my job security to take the sick time off. I have no financial security to buy a house. There is no advantage of being a casual. The labour agencies are making a killing”.

“Insecurity, it's really stressful I don't know whether I'm going to be able to pay the bills the following week”.

If a permanent position became available to you at your workplace, would you take the permanent position or remain a casual employee?

80% of those spoken with would convert to permanent given the chance. The higher pay rate did not compensate the lack of security for most.

Are you aware of other casual employees who are Union members? If so, how many?

29% of casuals were not aware of other Union members in their workplaces. This figure is not an indicator that there are no other members on site but points to a number of possible factors such as feeling excluded by permanents, not feeling confident to talk union and being moved to other workplaces when asked by the agency.

“At least 14-15 people at Cadbury had union hats”

Why and how did you join the Union?

Other than NSW members recruited via Advance who were strongly encouraged to join, the top responses were that they asked to join or were recommended to, had formerly been a union member and/or wanted back up.

“A few of the casuals didn't want to sign up because they were scared they would get fired”

“Believe in the cause - fight for the worker but its hard with casuals”

Are you satisfied with the services the Union provides to casual workers?

56% were satisfied or very satisfied with the Union. Many members made comment that the Union was not always able to help them and were understanding of this .Those who were not happy were mostly based around Casuals having fewer rights than full timers.

“What services do I get? I don't think I've had any since I worked there. Obviously they work on the EBA - so in that respect I think they do a good job and we get the benefits of that. Casual workers don't really have a say in anything that goes on through the union. Whatever the permanents get it flows on to us but we don't get a say in what happens. We



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just accept the benefits. After 8 years of working there if I got put off tomorrow what would the union do”?

How do you believe the Union can improve its services to casual workers?

Many members made mention of issues specific to their site but mentioned more information provided to casuals , more meetings and visits, giving them a voice and helping them to become permanent employees.

“I don't think there should be casuals. If you need someone for a day or two then that's where casuals should come in. Not for 3 months or 6 months or years”.

“We want to change our hours. The hours are too long, people are too tired. We've had near misses when we drive home after work from being so tired. Get us a pay increase - we only get \$16.43 per hour.”

“Represent casuals better as a matter of priority. No-one looks out for casuals not the company or the union. We do exactly the same job and come and early and stay back and have the same company loyalty. Especially long serving casuals.”

Are there more casuals working at your workplace now compared to when you started working at this workplace?

There was a fairly even split either way (Yes 41%, no 44%) and varied greatly at different times of the year.

As a casual are you given the same level of training as permanent employees?

While 61% felt they were receiving the same level of training a number of comments were made in regard to not being able to use machinery or forklifts as the permanents tended to do this.

Casual members were more than happy to assist the Union with the study and were forthcoming with their opinions. The impression the team got was that they were glad that the Union was asking them what they thought.

To summarise labour hire workers lacked confidence in terms of acting Union, even on sites where Advance recruitment were present. The team felt that their was a large recruitment opportunity among casuals as they were in genuine need of protection but they lacked confidence and access to information on site.

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Part 3

QDOS FOCUS GROUP STUDY ON NUW MEMBERS VIEWS ON THEIR OWN ROLES AND THE ROLES OF LABOUR HIRE WORKERS

Methodology

The National Union of Workers commissioned QDOS to conduct Eight focus groups between May 12, and June 1, 2011. A summary of the findings pertinent to the ACTU inquiry has been included in this submission. The groups were recruited by the National Union of Workers and consisted of seven groups of members and one of non members. Their composition was as follows:

Group 1	Dandenong	Delegates
Group 2	Footscray	No exposure to Labour Hire
Group 3	Footscray	NESB
Group 4	Forest Hill	Young Members
Group 5	Frankston	Older members
Group 6	Coburg	Female
Group 7	Brisbane	Non-Vic
Group 8	Dandenong	Non Members

Participants were asked general questions about their jobs and the positive and negatives aspects of their work. They were then asked about attitudes to their employer and how secure they felt their own job was and probed about how they felt about various types of precarious employment. A number of ideas were tested including the resonance of messages about the difficulties faced by the precariously employed to real examples of the worst practices of labour hire companies and the likelihood of their own jobs becoming insecure.

Casual or Labour Hire Work is Very Insecure

All workers understood that a casual position is almost always highly insecure.

They are well aware that at any time, “You could be straight off the roster.” Casuals could lose their job at any time with little or no explanation, warning or notice. Casuals employed via a labour hire company were considered to be even more vulnerable.

Workers had little or no experience (either personally or in their workplace) of permanent employment via a labour hire company. So the three grades of job security are permanent, then casual, then labour hire casual with labour hire permanent not in the mix. However, when asked how they would feel if their employment was transferred to a labour hire company (assuming all pay and conditions stay the same under the same EBA) they immediately understood that their job was significantly less secure, “The only reason they’d do it is to get rid of you.” They would also take it as an insulting rejection of their value to the company.

All of the messages tested about the unfairness of casual jobs were readily accepted by workers. The principal theme is uncertainty of employment which means in the short term you can’t plan the week ahead (or perhaps even the hour ahead) and over the longer term you can’t plan holidays and have little or no ability to financially plan.

Casual & Labour Hire Workers are in a Very Weak Position

Casuals are second rate employees:

- The bosses know it and make use of it. If a casual is asked to do something unreasonable it is very hard for them to complain for fear of being “off the roster”. This can include everything from unpaid overtime, dirty jobs that no-one else wants to do, very short notice to start or finish a shift and perhaps even unsafe practices. The latter was less likely to be raised by participants. Most (but not all) of whom spoke of a strong safety culture in their workplace.
- The permanents know it and in many ways don’t mind that the casuals can be used to do the tasks no-one else wants to do.
- The casuals themselves don’t just know it they live it and feel in deep in their bones. While some casuals positions are operating very well for the worker there is certainly a significant category for whom it is disheartening and demeaning. Being valued at work is a very important part of the self-identity of many people. By definition being casual means you are not valued and that can be a serious blow to their sense of self. “The boss will say hello to everyone except the casuals”, “People say, ‘You’re only a casual’ ”, “if no-one wants to do it they’ll say, ‘Get one of the casuals to do it.’ ”

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The Divide Between Casuals and Permanents

There are two ways sources of potential negative division between casuals and permanents.

1. **Casuals can be a threat to permanents shifts or overtime.** Permanents want and expect to be given first dibs on extra hours and can resent it if casuals are brought in to do ‘their’ work. Most understand that the casual loading is only to cover the absence of permanent benefits like holiday pay and sick leave but for some there can be a degree of resentment that a casual – who may be less skilled or experienced – being paid more to do the same job.
2. **At times permanents can have an almost smug superiority over casuals.** For then it’s not all bad having a pool of second class workers around to do the jobs you don’t want to do. And once another person is a second class person it becomes that bit easier not to care about their predicament.

Barriers

It Won’t Happen To Me

Workers don’t want to believe that they’ll be casualised, farmed out to a labour hire company or sacked. So they tend to find reasons why it won’t happen to them individually or apply in their workplace generally.

From a NUW communications perspective there is another difficulty. In addition to simply not wanting this sort of threat to be real it is also necessary for the worker – whose self identity is tied up in their belief that they are a valuable contributor – to believe that the company doesn’t really value them.

There’s No Hands on Evidence

When permanents asked how they’d feel about being made casual they often responded, “They can’t do that.” They don’t think the boss has the power to make them casual and this is partly reinforced by their confidence in the EBA system and their union. **In their experience permanent workers don’t get directly downgraded to casual.**

When asked how they’d feel about being outsourced to a labour hire company workers certainly weren’t happy about the idea. They knew it would make their job less secure and saw it as a demotion and perhaps a step towards them to be sacked. But they weren’t aware of that sort of thing happening – it doesn’t exist inside their existing frame of experience.

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When asked to consider the worst of shonky, illegal practices by dodgy labour hire companies workers could academically assess it as bad but it seemed so far from their experience of industrial conflict as to be aberrant rather than a new and real threat to them.

Labour Hire Companies Have a Positive Image

Despite the negatives that workers associate with employment via a labour hire company these companies themselves aren't poorly regarded.

The primary association with labour hire companies is the people who help you get work when you need it.

The Role of Government

When it came to who people thought was responsible to police the worst of shonky labour hire practices workers drew a blank.

When prompted they see a role for Government (or its' agencies) but as it is an unfamiliar problem solutions aren't top of mind.

Site Rates and Other Solutions

When testing with members the value of solutions to over casualisation and the misuse of labour hire workers were vaguely supportive. They were held back from enthusiastic support by two things; the problem isn't well defined in their minds, and; the slight complexity of the offered solutions.

It is worth noting however, that if the union thinks it's a good idea then workers tend to think it's a good idea until otherwise proven.

Power Grab

Workers see casualisation and outsourcing as a growing reality. They consider it a bad direction for Australian society but not necessarily an urgent problem nor has it been put to them that something can be done about it.

In the early stages of any campaign sowing seeds of concern is important because for many workers neither the problem nor the solution are well defined.

There may be an opportunity to present the growth of precarious work as the managers 'way around' the defeat of Work Choices.



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Part 4

Cash Contracting and subcontracting- Poultry Processing an example

The highly concentrated poultry processing industry is currently facing a job security and safety crisis. Major poultry processors are employing an increasing number of workers as contractors. Companies are also employing head contractors who are employing cash contractors who are being paid cash in hand at levels below the minimum award standard. This employment model is not only shifting financial risk to a majority migrant workforce it is also increasing workplace injuries and increasing the number of indirectly employed workers engaged inside poultry processing facilities without proper food handling training.

The National Union of Workers has recently managed to break contractor employment models at an enterprise level.¹¹ However contracting is still rife in the poultry industry and the union is running the *Better Jobs for Better Chicken* industry campaign to crack down on contracting across the industry. The Union will release a poultry industry discussion paper in late February and this report includes a small extract from that report, which details the employment methods being pursued and a couple of statements from workers who have been led into indirect employment despite being employed to work inside the poultry facility of Australia's largest poultry producer. Statements in italics have been given anonymously and names have been changed to protect these workers.

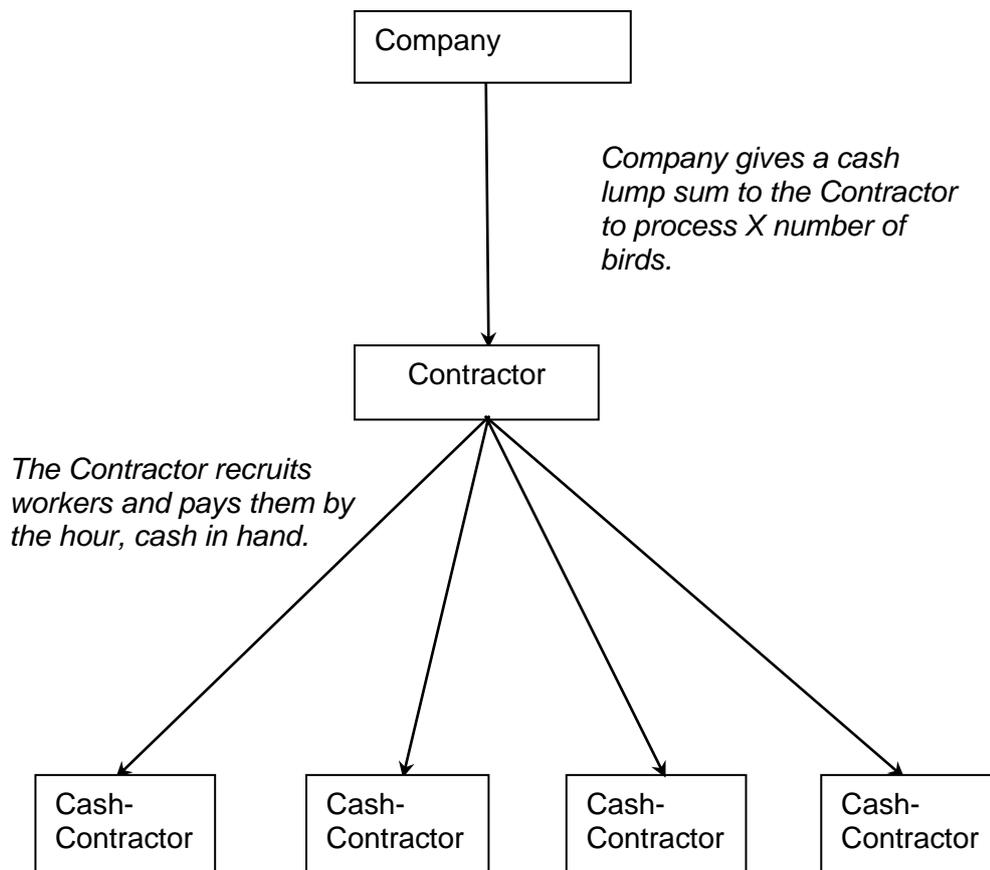
Unethical and Illegal Employment Methods

Cash Contractors

Poultry processors are gradually increasing the number of workers they engages through non standard means such as contractor arrangements. The number of workers being employed by head contractors as cash contractors is gradually increasing. In a cash contractor scenario, a company engages contractors to carry out work for them. The contractors then recruit individual workers to help complete the work for the poultry company. The workers go through an induction process with the parent company and the contractor but they are directly employed by the contractor.¹²

¹¹ David Whyte, *Rare Victory for workers whose dignity was cut to the bone*, the Age online, November 25, 2011

¹² National Union of Workers, *Poultry Site Audit*, Completed in 2010-11



The contractor pays the individual workers a set hourly rate. Statements from workers at major processing facilities report wage rates that are well below the legislated minimum; approximately \$9-15 per hour. Often, the money is given to workers in cash or deposited into a nominated bank account. The worker does not receive any of their statutory rights or entitlements such as personal/carer's leave; annual leave; long service leave; or workers compensation insurance.¹³

Workers employed in this manner are not adequately trained to ensure they are handling food safely, following strict food hygiene procedures and avoiding cross contamination of the poultry they are processing. This poultry is being sold in major supermarkets across the southern seaboard.

The following is a statement from Harpreet Singh, Singh was employed as a cash contractor in a major poultry facility in Laverton for 6 months. The treatment he received as a cash contractor made him doubt his decision to move to Australia with his wife for a better life. This is Harpreet's story.

¹³ ibid

Statement from Harpreet Singh, former cash contractor



I moved to Australia in August 2008. I am from Ludhiana in India. Back in India I worked for a bank as a marketing officer. I lived with my mum, dad and brother. My dad is a businessman. My brother is an engineer in Ludhiana. I wanted to move to Australia. I wanted to move to Australia to have a better future. My wife and I moved here and she started studying hospitality. She is now studying management. I first worked at Bills Trailer Building trailers in Berry Road Campbellfield for 5 or 6 months, and then moved to the poultry facility in Laverton, I got the poultry job through friends. I knew they were offering less than the legal minimum wage but this was the only job I could get. The Vietnamese supervisor was always respectful to us but getting paid cash in hand was hard. I was only given 10 minutes of training before commencing work. Chickens were often left on the floor at the processing plant, it was very dirty.

After working at the poultry plant I realised my life had been better in Indian working 9 to 5pm at a bank. I always said to myself that I would go home as soon as my wife finished her course. Now that I have a real job with respect and proper wages (\$17 an hour) I want to stay in Australia and we are very happy here.

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Working those hours made it hard to see any of Australia but since I have a better job I got to see place like Phillip Island. I used to get shifts between 12am and 4am. I had to catch the last bus to Laverton to arrive at 9:30pm and then my cousin and I would wait two and a half hours at the factory before starting our 12 o'clock shift. When we finished at 4am we would have to wait 2 hours for the first bus. I would get home from work just as my wife was leaving, sometimes I would meet her at the train station and say hello and goodbye as she left for school.

While working in Laverton I often had to call home to India and ask my parents for money. My wife didn't like me working at Laverton. We only had 10 minutes of training and chickens were often left on the floor, it was very dirty. I asked Lisa many times to be paid at the legal minimum but she said there wasn't enough money. I really wanted another job so my cousin and I went to all the factories handing out our resumes. We got jobs doing plastics manufacturing. We both worked there for 3 months but he got sacked and had to go back to India. I have a permanent job now.

The following statements were given by cash-in-hand workers employed at poultry sites to NUW delegates and organizers as part of our site audit, all names have been changed to protect those who provided information.

I have worked at a poultry processing facility since December. I work for Lisa but I used to work for Danny. I prefer Danny. I filled out a TFN declaration form but I do not know if I pay tax. I work 20 hours per week and I am paid \$14 per hour with Lisa and it is deposited into my bank account. I have never received a pay slip.

Raj

In packing cash contractors earn \$300 - \$400/week and between \$7-\$10 per hour depending on length of service.

Huong

I have worked at a poultry processing facility since October 2010. I used to work the night shift but now they tell me when I work and let me know the day before. I have to travel across Melbourne to get to work.

I am paid \$9 per hour and receive it in cash each week on Friday. I am not paid superannuation and tax is not withheld from my wages. I work with 50 other people employed by the same guy (Danny) who are all paid cash on a Friday. All I want is a decent job.

Mohammed

My hourly rate of pay is \$9.

I am paid cash each week on a Friday.

I am not paid superannuation and tax is not withheld from my wages.

I work with approximately 50 other people employed by Danny who are paid cash on a Friday.

An

I worked in the cutting area of a poultry processing facility for one year from February 2010 until February 2011. I got paid \$12.50 per hour. Sometimes I was paid cash in hand and sometimes I got paid into my bank account. I never got a payslip

Juliet

Cash Contractors are often International Students

An NUW audit indicates that many of the workers employed as cash contractors are international students on student visas (Subclass 570-576) which restrict them to working a maximum of 20 hours per week during semester. Often, they are too scared to speak up about any concerns for fear they will lose their jobs. Many of them cannot afford to go without work. Sadly, this maltreatment of international students is not exclusive to the poultry industry. Many of those spoken to by the NUW described similar experiences in other jobs throughout Australia.¹⁴

The following statements were given by International students working in the poultry industry to NUW delegates and organizers as part of a site audit all names have been changed and company names have been withheld.

I am an international student. I have issues at the factory but I am too scared to say anything because I don't want to lose my job. I work with 30-40 international students in my area. They have started to make people lose their job but it is unfair because it is mostly Indian people I think. It looks racist.

I moved to Australia in March 2009 to study. I am studying Hairdressing. I feel really bad about working in poultry. When I came to Australia, I was expecting to get my rights but it's the same exploitation as in India. I think India is better. I thought Australia is different.

Abhaya

¹⁴ ibid

The cash contractors are mostly international students who can only work 20 hours per week and get stuck in the position.

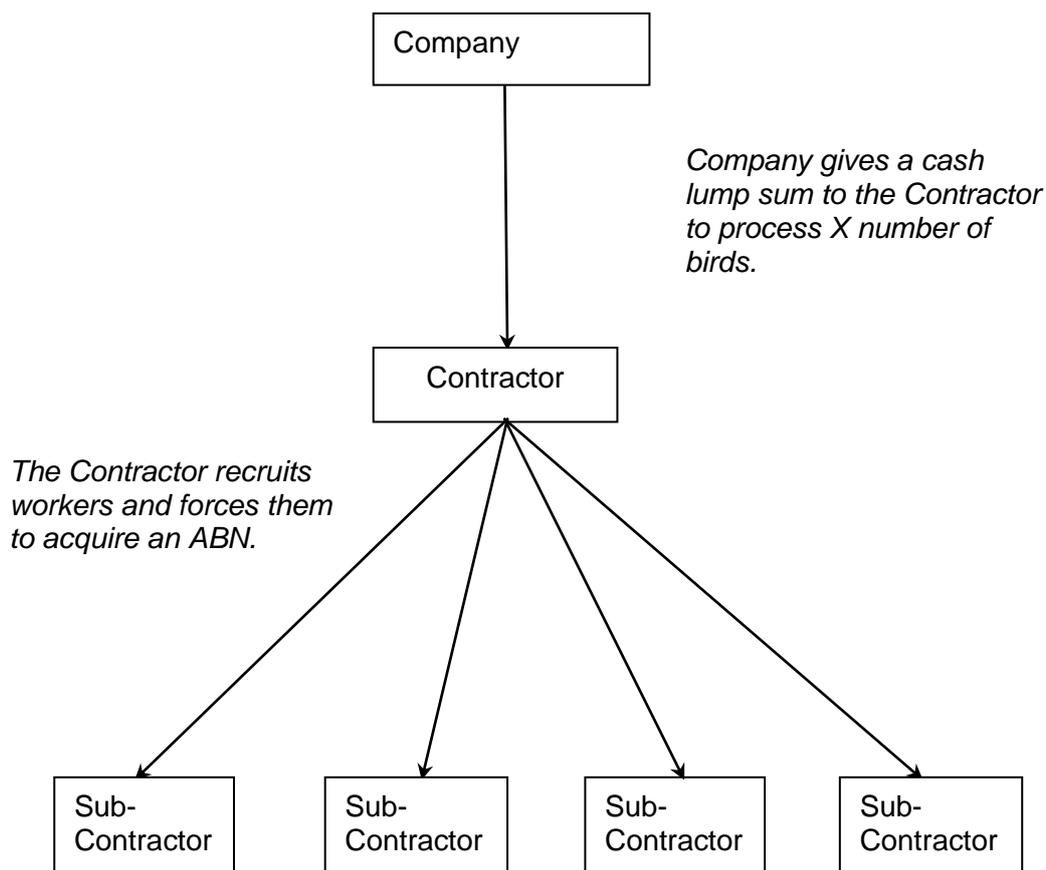
Garry

Danny is a Vietnamese labour contractor – he finds workers for the poultry company and pays them \$9 or \$10 per hour. Most of these workers were in packing.

I know these pay rates are correct because I used to live with one of these cash contractors. Danny pays cash to avoid laws limiting students to 20 hours per week. Some of these workers do up to 60 hours per week. Sometimes they sleep in the canteen and go straight back to work.

Elizabeth

Sub-Contracting



As mentioned, poultry companies are gradually increasing the number of workers they engage through non standard means such as contractor arrangements. In a sub-



contracting scenario, a company engages a contractor to carry out work. The contractor then recruits individual workers to complete the work but employs them as independent contractors. They do this by directing the individual worker to apply for an Australian Business Number (ABN), effectively making each individual worker a business entity.¹⁵

Reports of this practice limit it to the boning sections of the industry. The workers are paid piece rates and work a minimum of 8 hours although reports show shifts are routinely much longer. They supply all their own tools except for their uniforms which are typically provided by the poultry companies. The workers are paid through their ABN into a nominated bank account.

By forcing these workers to operate as contractors, the quality assurance required to ensure poultry is properly handled and hygiene standards are met are bypassed. Additionally, forcing contractors to use their own tools limits the ability of a company to control the hygiene of its processing facilities.

The following statements were given by sham contractors working for companies in the poultry industry to NUW delegates and organizers as part of our site audit.

¹⁵ ibid

Statement from Sokhom Koey, boning contractor



My name is Sokhom Koey and I have worked at a poultry facility in Wingfield South Australia from July 2007 until 2011.

In June 2007, I visited the offices of Global Property Maintenance in Adelaide, SA for a new job. When I arrived, I was met by a woman who arranged to set up a company for me and advised me to go to Adelaide Poultry to start work on 1 July 2007 and report to a man called Sonny Jianping, a Supervisor there. At no stage was I told why I was being set up as a company, I just thought this was the normal way to get work in Australia. On my first day I signed a document but I do not recollect what it was and was not given a copy. I worked in the role of chicken de-boner until February 2009, and worked a minimum of 8 hours per day, but usually more. I was paid the amount of 44 cents per bird into my company bank account. I am not sure who paid me, but assumed it was Jianping.

In February 2009, I was directed by a supervisor called Ken Leeming to sign a contract with SJP Chicken Processor Pty Ltd in the presence of himself and another supervisor

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called Xu. Under the contract, SJP Chicken Processor Pty Ltd paid me 44 cents per chicken deboned.

I bring my own tools to work, consisting of knives, metal cutting gloves, plastic gloves, knife sharpening steel, a knife holder and a belt, but wear a uniform supplied by the poultry processor. I am told what time to start by Jianping or Ken each day by SMS.

Since 2010 when the NUW has been involved, Jianping now gives me by a basic pay slip as proof.

On 28 December 2010 my company was closed due to my missing an ASIC payment. Sonny said that he could not pay me until I set up a new company, despite payment of three weeks pay was due to me at the time. I was finally paid five weeks pay (totalling \$5,558.70) on 13 January 2011 by cheque into my "old" account.

I used to work as a supervisor at the poultry facility but I lost that role when I asked that we be given breaks when doing shifts of longer than 12 hours. I have a family and I want to spend more time with my family but when I have tried to take time off in the past, I have been told that if I take time off there won't be a job for me when I come back.

The following statement was given anonymously by another sham contractors working in the poultry industry. The name has been changed.

I worked in a poultry facility from November 2009 until late November 2010. I have seen contractors in packing and boning.

In boning contractors get paid per kilo getting 40 cents to 50 cents per kilo. In packing contractors earn \$300-\$400 per week and between \$7-\$10 per hour depending on length of service.

Hassan

Conclusion

The legal and illegal use of indirect employment models being regularly utilised in industries covered by the National Union of Workers to shift risk from the employer to the worker is reducing job security and the ability of workers to bargain for better wages. The current Australian workplace laws were not designed to cater for a workforce with such a large percentage of casual and contract workers and if these models are not broken through a combination of greater worker organisation and amendments to the law, the overall standard of living enjoyed by working Australians will be permanently reduced.

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