The Shadow Economy

A Story of Wage Theft Tax Avoidance & Exploitation

ACTU Submission to the Black Economy Taskforce

14 August 2017

ACTU
australian council of trade unions

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Introduction

Summary

The shadow economy is endemic with wage theft, tax avoidance and the exploitation of workers. It is a significant and growing economic problem. Shadow economy activity undermines the community's trust in the tax system and creates an environment where business' that do the right thing are penalised.

The shadow economy also enables and entrenches the exploitation of vulnerable workers. We have seen hundreds of examples where exploited vulnerable workers are paid under the legal rate of pay and face severe exploitation. Unfortunately this has become an all too common experience. Many of these exploitative activities have become normalised and are a business model for some unscrupulous employers.

When low-wage workers are cheated out of even a small percentage of their income, it can cause major hardships like being unable to pay for rent, child care, or put food on the table. Wage theft from low paid workers is also detrimental to society, as it contributes to widening income inequality, wage stagnation, and low living standards—interrelated problems that drive inequality in our society.

The Australian Council of Trade Unions (ACTU) is concerned that the interim report of the 'Black Economy Taskforce' simply does not address exploitation and wage theft in detail. A total of five lines were devoted to exploitation of workers in the Interim Black Economy report and the taskforce to date has been found to be wanting in its understanding of the importance of this issue.

The ACTU rejects the Taskforces assertion that a key cause of the shadow economy is an overly burdensome high tax and regulatory regime. The real reason is that it is too hard for workers and their representatives to enforce laws and recover stolen wages. The Fair Work Act 2009 (FWA) requires a lengthy and expensive process just to enforce your rights via legalistic court proceedings. This creates a perverse incentive to under pay workers and denies them access to their entitlements safe in the knowledge that the likelihood of being caught and punished is much lower than the potential rewards. Other reasons include the emergence of market forces that drive wages down in an environment where workers have little or no bargaining power and there is little or no compliance activity and little or no chance of either being caught or, if employers are caught, facing serious consequences.

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In summary the key areas our submission addresses are the following;

1. **Systematic wage theft and exploitation in the shadow economy**

2. **It needs to be much easier for workers and their representatives to enforce laws and recover stolen wages**

3. **Business 'getting away with it' is the key main driver of the shadow economy, not over regulation of the labour market or a high tax regime as the Taskforce's interim report suggests.**

    - The statement that in the interim report that "the most important determinants of the size of the black economy are high tax and regulatory burdens and low profit margins which place pressure on supply chain practices" (p.15) is not supported by any evidence and is clearly ideologically driven.

4. **The shadow economy undermines fundamental fairness and disproportionately affects the most vulnerable in our community.**

5. **Tax Avoidance is a key motivation for shadow economy activities.**

    - Business need to be paying their fair share of tax including payroll tax. Clearly paying workers in cash is often motivated by tax avoidance.

6. **Multinational companies who are not paying tax are winning taxpayer-funded contracts worth hundreds of millions of dollars**

    - The Federal Government should send a clear signal to the private sector. Companies must not be awarded government procurement contacts while simultaneously ripping off the tax payer by avoiding their tax obligation.

7. **Government procurement opportunities should not be awarded to firms that have not complied with Australian employment standards**

    - Australian government procurement opportunities should be limited to firms which have a good tax record and a good employment record

Though we have significant reservations with several issues in the Black Economy Taskforce Interim Report there are certain measures we support. They include;

- Multinational companies who are not paying tax are winning taxpayer-funded contracts worth hundreds of millions of dollars. This is unacceptable from a tax justice and fairness perspective. Access to Australian Government procurement opportunities (at all levels of government) should be limited to businesses which have a good tax record and have not engaged in bribery or corruption in the last ten years. However these criteria should be extended to include that only firms that have complied with Australian employment standards should be given access to government procurement opportunities. The Government should exclude businesses that have been involved directly or accessorily in underpaying workers – and thereby reducing Australian Taxation Office (ATO) revenue – from tendering for Government procurement contracts.

- Businesses should not be able to claim deductions on cash wage payments where they did not make or report Pay As You Go (PAYG) payments, issue payment summaries or statements of earnings, or make applicable superannuation contributions. Similarly, businesses should not be able to claim deductions for payments to contractors where a valid Australian Business Number (ABN) is not quoted and the payer has not withheld part of the payment under the 'no-ABN withholding' requirements. These payments should not be included in cost bases for capital gains tax or depreciation purposes.

- The creation of a robust, real-time business identification and verification system in order to generate valuable data for government and business and improve delivery of relevant services.

- The provision of funding to the ATO audit and compliance programs to better target shadow economy activities including by strengthening its use of technology, buttress its ABN monitoring and public education activities.

ACTU Key Recommendations

Our industrial laws are in need of a serious overhaul. Some elements of that overhaul should include the following points below but this is by no means an exhaustive list –

- It needs to be much easier for workers and their representatives to enforce laws and recover stolen wages. The Fair Work Act currently requires a lengthy and expensive process just to enforce your rights via court proceedings.

- Unions need stronger investigation and compliance rights. There are 12 million workers across Australia yet the Fair Work Ombudsman (FWO) only has 240 inspectors nationwide. Australian unions have thousands of trained officers and staff, yet the Fair Work Act now restricts unions from conducting workplace checks on businesses suspected of underpaying and exploiting workers. The rules need to change so that it is easier for Unions to conduct workplace checks.

- The ACTU would like to see improvements to and the penalties increased for serious contraventions of prescribed workplace rights and worker protections, including for acts of anti-union discrimination and to protect workers from adverse action if they question or enforce a workplace right on behalf of themselves or other employees. Combined with a more easily accessible enforcement mechanism, these measures will act as a greater deterrence for these breaches of workplace laws.

- Stop sham contracting

- There needs to be greater accountability for domestic supply chains by establishing a licensing and regulation scheme for the labour hire industry. Especially given that compared to other employers, labour hire businesses carry a higher risk of being involved in the shadow economy, particularly via activities that breach the Fair Work Act. There must be changes to the laws to prevent employers from outsourcing their labour requirements to labour hire companies or contractors in order to cut the wages of employees and side step the enterprise agreements for the pay and conditions of those employees. This open practice of corporate avoidance of established agreements, by outsourcing to third parties, is driving down wages by locking out employees from being able to negotiate for their fair share of the value they create for the business;

- The FWA should apply to all workers irrespective of their status under the Migration Act 1958 as recommended Senate enquiry report 'A National Disgrace: The Exploitation of Temporary Work Visa Holders'.

- Further changes need to be made to the Migration Act to set out protocols between the Fair Work Ombudsman and the Department of Immigration and Boarder Protection (DIBP) and in effect 'firewall' victims of exploitation from immediate removal from the country so they can have access to natural justice and public services as recommended by the United Nations (UN) Special Rapporteur on Migrant Rights;

- Resource trade unions and existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce both social isolation and the risk of unlawful economic exploitation.

The Shadow Economy is a Significant, Complex and Growing Economic Problem

The Australian Bureau of Statistics estimated in 2012 that the cash economy had grown to 1.5 per cent of GDP $25 billion per year in today's dollars in Australia. This figure can also be expected to grow.

The ATO estimates about 1.6 million businesses (mostly micro and small businesses with an annual turnover up to $15 million) operating across 233 industries are part of the illegal cash economy.

The impacts of the cash economy are wide ranging and long lasting. Tria Investment Partners estimated that in 2012 there was $800 million in unpaid superannuation for workers employed in the cash economy (source: Industry Super Australia submission to the Senate Economic References Committee Inquiry into the Superannuation Guarantee Charge).

New threats and vulnerabilities are emerging, The sharing or 'gig' economy is changing and influencing the domestic labour market and the extent of, and opportunity for, cash activities in the economy.

What is the shadow economy?

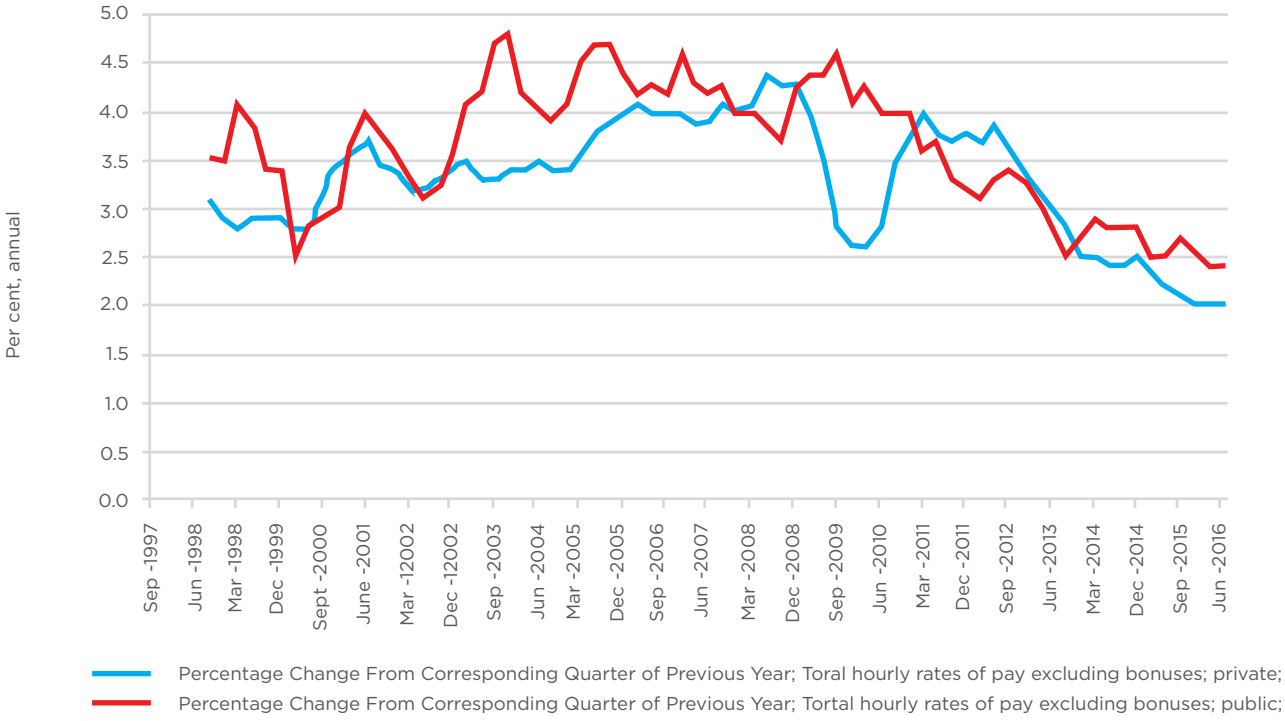
The shadow economy refers to businesses and individuals who operate outside the tax and regulatory environment – it is also referred to the cash economy and underground economy. Some businesses avoid reporting activities and underreport income in order to evade their obligations.

The shadow economy contributes to widening income inequality and wage stagnation

Inequality is the challenge of our time. Neoliberalism has created a deep concentration of power, income and wealth, in which unparalleled prosperity for the wealthy few coexists with poverty and exclusion for the many. A consequence of the implementation of the neoliberal agenda is allowing business to exploit workers through wage theft and denial of entitlements. This has devastating impacts on our society and the Australian economy.

Australia has record low wage growth. Economic decisions which normalise large numbers of workers being paid below the legal minimums will drag down wage growth in the rest of the labour market. The RBA and other respected institutions have noted our low wage crisis is a significant economic problem facing Australia. Addressing the shadow economy must form part of the response.

Australia has the lowest wage growth on record



The shadow economy results in less funding for our essential public services

The estimate of 1.5 per cent of GDP in 2012 suggests a substantial reduction of income and consumption tax revenues because of tax avoidance. To maintain our public services and our living standards, the Federal Government urgently needs increased revenue. The Government cannot, and must not, ignore ways to quickly redress the revenue shortfall – that is, to simply collect the taxation revenue that is presently due.

Authorised by S McManus, ACTU Secretary, 365 Queen St, Melbourne, 3000. ACTU D No: 80/2017

Shadow economy activities undermine the basic concept of fairness and disproportionately affect the most vulnerable in our community

This is a whole of society problem and all levels of government have a vital interest in combating it. Shadow economy activities undermine the basic concept of fairness and the level playing field and disproportionately affect the most vulnerable in our community. Unfortunately, to date there has been a lack of focus and inadequate action on these issues by government.

Drivers of the shadow economy

The ACTU rejects the notion put forward by the Taskforce that the most important determinant of the size of the shadow economy is high tax and regulatory burdens.

Indeed the ACTU would argue it is too hard for workers and their representatives to enforce laws and recover stolen wages and that gaps in the regulatory environment are far more important determinants. The risk of detection and penalties are low in many cases. The normalisation of the shadow economy as standard business practice shows the lack of concern about detection. Indeed, as the ABS has highlighted, 1.5% of GDP is the size of the shadow economy – this is significant and cannot be ignored.

Where workers have little bargaining power and regulatory intervention is ineffective and where workers cannot easily withdraw from participation the result is that the market drives wages down. This ensures a continuing power imbalance between workers and employers. If Unions had better compliance and enforcement rights, not only would exploited workers get the assistance they need, the size of the shadow economy would no doubt be a smaller part of the Australian economy.

Cash wages is often accompanied by tax avoidance and exploitation of workers

There have been many examples of where business paying cash in hand wages is accompanied by not reporting all its income and not paying its fair share of tax. There are extensive examples of business not paying its fair share of income tax, GST and payroll tax. Under these examples the business does not pay PAYGW, superannuation, or payroll tax for those off the books. Similarly the business may also pay a lower workers compensation premium by having fewer employees on the books.

The exploitation of workers has become a business model

Workers in particular low paid sectors are susceptible to exploitation by employers who are active in the shadow economy. Many low paid workers are presently in poorly regulated industries; agriculture, meat processing, hospitality, retail and accommodation all of which have a particularly high incidence of exploitation. The ACTU fears that exploitation has become systemic in many sectors and noncompliance of workplace laws has become long standing.

Unfortunately, examples of exploitation are no longer rare. Rather, these practices have become normalized and are particularly prevalent in some sectors. An example was the widespread exploitation of workers in 7-Eleven stores across Australia. We need to examine the structural factors that create the vulnerability of some workers and predispose them to exploitation.

Businesses like 7 Eleven, Caltex, Pizza Hut and others must take responsibility for their flawed business models. Similarly, the Government must ensure rampant exploitation of workers through the underpayment of wages and the recouping of a portion of worker wages in off the books cash kickbacks cannot be normal practice any longer. What is clear from these recent wage scandals is that business size is not a guarantee against widespread breaches of workplace laws, neither is commercial success, nor is being a common household name or a brand that is present on many high streets.

The normalisation and prevalence of wage theft

In some sections of the workforce underpayment of wages has become routine. Employers are unashamedly advertising below Award rates for vacant positions.

This seedy underbelly of exploitation and wage theft has been exposed through high profile public exposés of worker exploitation. Workers have been threatened against making complaints, with employers taking advantage of workers who are in vulnerable postions.

A recent Unions NSW audit of job advertisements with particular language criteria found 78% of businesses advertised rates of pay below the minimum Award wage.

The current approach to redressing worker underpayment and Fair Work Act protections are not working. The system relies heavily on individuals reporting underpayments. There is no recognition of how difficult and dangerous it is to take this first step. Many workers are scared to come forward with a complaint.

Some industry and legal structures normalise and perpetuate underpayment. The FWO website points to a convoluted and intimidating process including mediation and “self help”as the typical response to a report on underpayment. Compare this to ATO practices where tax avoidance is reported.

There is a flourishing culture of underpayments in some sections of the workforce where businesses ignore Awards and instead defer to unregulated ‘local wage markets’ to determine the rates of pay for their staff. Unions have been restricted from accessing these workplaces to investigate and rectify underpayments.

A new approach to uncovering and investigating underpayment is required. Unions need access to workplaces suspected of underpayments in order to investigate contraventions and represent and organise workers to collectively enforce their rights. Penalties for employers found to have knowingly or intentionally underpaid their staff should be significantly increased.

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Wage theft is endemic across australia

Wage theft is endemic in Australia. In recent public exposés many businesses were shown to have engaged in chronic underpayment of their workers. Some workers have had tens of thousands of dollars stolen from their pay-checks. Other workers have been forced to physically hand back cash to employers who insisted that the wage theft must remain secret. Some of the examples we've seen recently are;

- **George Calombaris** – The Master Chef celebrity was recently caught underpaying staff $2.6 million in overtime across his restaurant empire. Calombaris and his business partners were putting employees on low salaries and then pressuring them to work long hours with no overtime so that their pay would be less than a casual worker being paid on an hourly basis. Calombaris also failed to pay superannuation to workers. By the time he was caught, Calombaris had stolen $2.6 million in wages from his employees.
- **7- Eleven** – Caught systematically underpaying thousands of workers and then, once caught, pretending to pay workers full wages but committing wage theft through requiring employees to pay back a portion of their wages in cash. A 7- Eleven internal survey taken in July and August 2015 indicated that 69% of franchisees had payroll issues including fraud. It was remarked at the time that 'the business model will only work for the franchisee if they underpay or overwork employees'. Some franchise owners were accused of physically threatening workers who complained. In June 2017 the amount of stolen wages in 7-Eleven was estimated at over $110 million.
- **Dominos** – Systematically underpaid workers by hundreds of thousands of dollars over years.
- **Pizza Hut** – Deliberate underpaying, misclassification and denial of entitlements for delivery drivers. Of the 34 franchisees audited by the FWO, 24 were found to be breaching workplace laws while only two were meeting all of their legal obligations to delivery staff. Some staff were being paid as low as $5.70 an hour.
- **Caltex petrol stations** – An audit of franchise stations found that almost 80% were underpaying their staff. Caltex was required to establish a $20 million fund for repayment of workers, but didn't admit to any wrong-doing.
- **Bakers Delight** – by using an outdated EBA, Bakers Delight was paying some staff as little as $8 an hour.
- **Wollongong Businesses** - a Fairfax Investigation aided by a young local unionist in Wollongong discovered dozens of businesses within a couple of kilometres of each other, all of which were stealing wages from employees through underpayment.
- **Cleaners in Victoria** - Our affiliate United Voice Victoria has found that 81% of cleaners in Victorian government schools are underpaid, many by half the legal minimum. Sham contracting in Victorian school cleaning is rife, resulting in effective rates of as little as $6.07 an hour, with one extreme case being uncovered.

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Unions need to be empowered to inspect pay records and enforce laws

The FWA now restricts unions from conducting workplace checks on businesses suspected of underpaying and exploiting workers.

Union investigation powers were, until 1996, governed by the provisions of the Industrial Relations Act and supplemented by Federal Awards. These provisions recognised and expressed the policy merit providing such rights on the basis of "ensuring the observance of an award or order of the Commission"[1]. From 1996, changes to relevant statutory provisions as well as the requirements of "award simplification" resulted in a far reduced capacity for Unions to perform this valuable role. Instead, the emphasis of the system has shifted toward union officials needing to have a prima facie case of non-compliance before exercising such rights, and needing to prove their own character as pre-condition of being able to access those rights at all. Moreover, unions are placed in the ridiculous position of being required to give advance notice to enter a premises where they know the relevant records are not stored, and then physically enter that premises, before they can legally require that the records they know to be held off site be made available for inspection. It is not possible for all of those requirements to be satisfied and the records provided even inside of two working weeks. Even if all relevant requirements are satisfied, it is not possible to require production of records that relate to former employees. In practice, this means that the worker who is the subject of the prima facie case can be dismissed in order to defeat the Union's legal right to investigate.

Recent scandals and work by Unions NSW has demonstrated rampant underpayments in the many businesses. Despite this, unions are now only able to check the pay records of union members.

The FWO undertakes audits of businesses to ensure compliance with workplace laws. These audits have recovered underpaid wages for workers, and have uncovered a number of repeat offenders, who despite being caught and fined, continue to underpay workers.

Unfortunately though the FWO cherry picks easier cases and they drive small cases away with convoluted and intimidating processes. It's own compliance policy provides enormous discretion on which cases to take up and those discretions have little to do with seeking widespread compliance.

Empowering unions is an efficient and cost effective way of achieving better compliance. If employers know they could be caught as unions are empowered to inspect records and recover stolen wages, this becomes a deterrent itself. At the moment employers know the chances of being caught are low so it is worth the risk.

Why wage theft has become so normalised

Employers know the chances of being caught are low because unions do not have sufficient powers to check breaches of workplace laws and there are few inspectors. Additionally many workers are in a weak position to ask for decent wages (i.e, they are casual or temporary visa workers, labour hire or sham contracts) and therefore will 'accept' a wage that is under the legal minimums for their industry. Furthermore, the protections for workers from adverse action is weak because the onus of proof is on the worker.

If a worker does complain about a breach of workplace law they face significant costs and risks. Despite popular misconceptions, workers cannot go to the FWC to rectify their underpayments. The only authority that can issue a binding order in this respect is a Court. This means an up-front filing fee in the range of $615 (Federal Circuit Court) to $1,290 (Federal Court), plus a setting down and daily hearing fee of $735 (Federal Circuit Court) to $2,570 (setting down) or $1,020 (daily) (Federal Court).

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1. Industrial Relations Act 1988, s. 286(1).

The minimum weekly wage for a full time worker is $694.90. These proceedings are complex, and require the worker not only to understand court forms but also the material filed by their employer and the rules of evidence, alternately they can hire lawyer – which is barely affordable for most. Mediation is generally compulsory and attracts further fees. A worker with claim valued less than $10,000 can choose the "small claims procedure", in which case the up-front fee will be $215 but will come with the consequences that no penalties can be ordered against the employer and the worker is unable to be represented either by a lawyer or a union official. The time from lodgment to hearing is variable depending on Court location, but periods of more than six months are not unusual.

The worker may settle the grievance but not receive the full compensation they are owed. At the end of the legal process if the employer is found guilty they are unlikely to face a sufficient fine to act as a deterrence. Therefore the system encourages wage theft as the cost/benefit analysis of exploitation becomes financially attractive and there is little disincentive for the employer to carry out exploitative activities.

It should also be remembered that at all times the worker carries the risk of dismissal for raising the issue in the first place. Once again, their only remedy is a court process. Whilst the Fair Work Commission does require a conciliation before such matters are referred to Court, these conciliations are often approached by employers as a means to delay and run up the worker's legal costs to discourage or prevent them from proceeding further.

More is needed to ensure business compliance with workplace laws

Not enough is done to proactively ensure business compliance with workplace laws or to ensure ongoing compliance. There are 12 million workers across Australia yet the FWO only has 240 inspectors nationwide. More resources are needed to ensure workplaces are systematically audited, encourage reports of wage theft and commit to properly investigate each report.

The right for unions to audit records in businesses suspected of underpaying workers must be reinstated so they can proactively assist in redressing the systematic underpayment of workers.

Licensing and regulation scheme for the labour hire industry

There needs to be greater accountability for domestic supply chains by establishing a licensing and regulation scheme for the labour hire industry.

Labour hire is a component of Australia's insecure workforce. Whilst the use of labour hire fell 8 per cent between 2001 and 2008, the industry had grown at over 30 per cent.

Whilst data on the prevalence of labour hire is patchy, the ABS estimated that 576,700 workers or 5 per cent of employed people in 2008, had found their current job through a labour hire agency.

Some 97 per cent of these were estimated to be employees and 3 per cent were estimated to be independent contractors.

An enterprise that chooses to engage some or all of its workers through labour hire has very few obligations to those workers and, accordingly, those workers have very few rights to influence their relationship with that enterprise. This occurs notwithstanding that those workers are under a contractual obligation to abide by the direction of their 'host employer'.

Unlike outsourcing, where accusations of avoidance behaviour are often met with denials by business referring to the external service offerings and industry expertise that outsourcing is claimed to provide, labour hire involves the provision by a third party of labour only, generally without provision of any

particular kind of expertise beyond that already held by employees of the host organisation. Hence, the raison d'etre of labour hire is purely and simply to permit industry to avoid industrial relations laws and consequently shift risk to workers, so business can take the benefit of labour without the burden of complying with laws that are premised on workers being protected in the labour market and given a fair share of the profits generated. It is purely reactionary, a rejection of the basic policy intent that underlies the industrial relations system. This manifests in a number of ways as follows:

- The common law does not see an employment relationship between the host employer that directs the work and the worker. Further, it has generally rejected the idea that there could be more than one employer;

- Labour hire workers cannot bargain for a collective agreement with the host employer, or participate in bargaining for such an agreement. Whilst labour hire workers can make a collective agreement with the labour hire agency (subject to the practical barriers which attach to their predominantly casual form of engagement), the agency is not the entity that on a day to day basis controls the work that they perform and the conditions under which and location where it will be performed;

- Labour hire workers cannot make an unfair dismissal claim against a host employer, even where the host employer is the decision maker as to whether the worker will have a continuing job at the workplace or not;

- The "General Protections" contained in the Fair Work Act 2009 (Cth) adapt poorly to the work situations of labour hire workers because in the main any "adverse action" suffered by the workers will be perpetrated by the host employer who is beyond the reach of the current provisions and;

- Workers in labour hire arrangements are less inclined to speak up about matters of concern to them as they understand that the decision to request that they no longer be supplied to the workplace can be made by the host employer at any time, and may mean they have an uncertain period of time before another host engagement becomes available.

It has been estimated that there are between 2000 and 3500 temporary agencies operating in Australia. The top ten agencies combined have a market share of less than 20 percent and fewer than 2 per cent of agencies employee more than 100 workers. The industry is largely directed by the largest firms such as Skilled, Manpower, Spotless, Programmed Maintenance Services and Chandler Macleod. The dominant organisations also subcontract to preferred panels of labour-hire subcontractors and a multitude of smaller players. Hence, a labour hire employee may be legally situated deep within complex layers of inter-corporate subcontracting arrangements as well as the commercial arrangements between the labour hire comapny and host. The case reported in Matthew Reid v Broadspectrum Australia Pty Ltd identifies some of the practical difficulties that this can present; namely, complying with the practice and procedure at one's workplace can lead to one being terminated by one's employer – who is not at one's workplace.

The Howe Inquiry heard many personal accounts from workers engaged in labour hire arrangements. The

inquiry's report relevantly contains the following:

> ..... *"The weight of evidence we heard about the effects this has on workers was overwhelming. We heard of cases of:*
>
> *Workplaces where the entire workforce was employed as casuals through a labour hire firm. Employees were expected to be available for a full-working week, and were notified by text message around 4pm each day of whether and when they were required to turn up the next day – but without any information about how long their shift would be;*
>
> *Employers using labour hire in the workplace to foster divisions among their ongoing staff and temporary workers, weakening workers' bargaining power and leading to lower rates of pay and lesser entitlements;*
>
> *Indirect discrimination on the basis of union activity, age and other grounds being tacitly applied by simply not offering certain workers any more shifts;*
>
> *Labour hire workers feeling unable to report bullying, injuries suffered in the workplace, or occupational health and safety risks for the fear that exercising their rights would lead to censure, the loss of shifts or the loss of a job altogether; and Labour hire workers finding themselves unable to secure a home loan or a car loan because of their lack of job security*

Gabrielle's Labour Hire Story: Casual Employment and No income Security

Gabrielle was employed part time as an administration assistant for the University of Ballarat TAFE but was desperately looking for full-time work when she decided to apply for a role through a national labour hire company. The job turned out to be 38 hours a week, but was a casual position with no sick leave or annual leave entitlements. The labour hire company would assign her to different host employers to fill temporary positions. She worked through labour hire for a year, before returning to her old workplace on a fixed- term contract which she hopes to turn into permanent full-time employment.

The experience of casual employment through labour hire has left a bitter taste in her mouth;

> "Trying to find a job today that is permanent is like trying to get blood out of a stone," she says. " .....
>
> "We can't go on a holiday. I am scared to get a cold or get sick because I can't take time off work. During a forced period of leave at [the labour hire company], I found two weeks of work at my old job because I couldn't survive without the pay. We always have to pay bills in instalments. We have done this for so long now I forget what it's like to get a bill and just pay it."

While the labour hire job provided 38 hours of work a week, it came with no entitlements such as sick leave or paid annual leave. The labour hire firm stipulated that she take 22 days unpaid annual leave each year, the real purpose she believes was to avoid requirements that after a period of time employees should be transferred to regular, full- time employment. Casual employment provided no income security.

Businesses needs to be paying their fair share of tax

Shell companies

Beneficial ownership disclosure

The ATO had publicly stated "Over a hundred Australians have already been identified involving tens of millions of dollars in suspected tax evasion through the use of 'shell companies' and 'trusts' around the world." In October 2013, the Australian Federal Police charged three men with tax and money laundering offences involving $30 million[2]. It is alleged they used a complicated network of offshore companies to conduct business in Australia while hiding the profits offshore, untaxed. The profits were then transferred back to Australian companies controlled by the offenders and disguised as loans so the interest could be claimed as a tax deduction. The level of alleged criminal benefit was estimated at $4.9 million[3].

The ACTU is concerned at the limited role the Taskforce favours for beneficial ownership disclosure, an on-request regime limited to law enforcement authorities. This means that other businesses dealing with a front company or trust, which may be run by organised criminals, are likely to remain in the dark about who they are dealing with. Public disclosure of beneficial ownership would overcome that problem. An on-request system also means law enforcement agencies already have to have a reason to seek the information and the process of having to make a request is slow and time consuming, which also allows a shell company with front directors to simply dissolve before the law enforcement agency can take action. An example of this happening is the Fair Work Ombudsman investigation into labour hire businesses used by chicken processing giant Baiada. Further, the Black Economy's Taskforce's model does nothing to stop a person acting as a professional front person for dozens of businesses and not being detected as law enforcement will not have a searchable database[4].

2. Tax Justice Network
3. ibid
4. ibid

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Stop sham contracting

Between 2011 and 2016, the percentage of independent contractors estimated to be misclassified employees rose from 40% to 64%. There are now well over half a million people working in sham contracting arrangements in Australia at present. One needs only to look to online job advertisements to find scores of examples that require applicants to have an ABN, including some that are also described as "Full Time" or "Working for a family business"[5].

These workers are being robbed of their legal wages and entitlements, and are paying less than, or none of, the income tax that they would pay if they were correctly classified. When it comes to sham contracting, as in other facets of the shadow economy, workers and the public purse are the dual victims of unscrupulous employers who refuse to operate competitively and who seek unfair advantage. A comprehensive strategy is clearly needed to address sham contracting. The current process, which again requires costly, protracted and complex legal proceedings, is simply not sufficient. More user friendly means of addressing such contracts, such as that which existed in the NSW Industrial Relations system, have been abolished leaving a gaping hole.

Case Study: Michael

When we first heard from Michael (not his real name), he was too scared to reveal his identity to us. Michael phoned us to complain about the conditions that he and other cleaners were working under. The cleaning contractor, who cleans roughly fifty government schools, had been pressuring a group of their cleaners to enter into shamcontracting arrangements and not paying them annual leave, sick leave or superannuation. Michael eventually built up the courage to meet with us at the union offices but was terrified of the consequences should the company or its supervisors find out. When we investigated his claims we found that many of his colleagues were employed through these illegal contracting arrangements and also found some paid as little as $12.50 an hour, cash in hand. Many of the other cleaners were also scared to speak up about their experiences and reported being bullied and harassed by their employer.

United Voice Victoria

5. United Voice

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Case Study: Daniel

We have many members for whom a secure job feels impossibly out of reach and who go to work every day knowing that Australian law is stacked against them, and they have no rights in the Fair Work Act to enforce.

Daniel, who works in a cold storage facility, is one such worker.

The large company that employs Daniel has constructed a perfectly legal system designed to disenfranchise workers. The company almost exclusively employs workers through various agencies the cold storage facility has set up, and excludes these workers from the company's own agreement. The company then shuffles workers like Daniel from sham agency to sham agency, moving workers on to new agencies at around the time the old agency's enterprise agreement is about to expire. These agencies almost always share the same director.

Critically, before workers are moved from one operation to another, a non-union enterprise agreement has already been negotiated. This model coerces workers into accepting wages conditions they are not able to negotiate, and is specifically designed to prevent workers from ever having the chance to bargain collectively.

Daniel has worked for the cold storage facility for 4 years, engaged by 4 separate agencies.

The legal con perpetuated by the company is disgraceful, and is only one case for a change to our laws to give workers enforceable rights and to make it harder for companies to exploit loopholes.

National Union of Workers

Gig economy

The gig economy is a means of avoiding the Fair Work Act. The ACTU consider that the gig economy is effectively facilitating a legitimisation of sham contracting and is posing a significant threat to decent work and revenue collection in many respects.

Enacting legislative changes is necessary in order to ensure that platform workers in the gig economy derive fair payment from their labour, and to ensure that the Australian Government is not missing out on income tax that it would otherwise receive if these workers were in straightforward employment relationships[6].

6. United Voice

Authorised by S McManus, ACTU Secretary, 365 Queen St, Melbourne, 3000. ACTU D No: 80/2017

Access to australian government procurements opportunities should be limited to firms which pay their fair share of tax

The Interim Report signalled an intention to examine procurement and supply chain management in more detail in its final report.

The Government should send a clear signal to the private sector. Companies must not be awarded Government procurement contacts while simultaneously ripping off the tax payer by avoiding their tax obligations.

Multinational companies who are not paying tax are winning taxpayer-funded contracts worth hundreds of millions of dollars. Computer giant IBM, software company SAP and military arsenal provider Northrop Grumman are among those paying little or no tax in Australia, while scoring hundreds of government contracts. A recent investigation of 20 of the largest tender-winning companies over the past decade has found taxpayers shelled out $6 billion for services ranging from tank maintenance to software3. According to the investigation IBM has a $1 billion contract to overhaul computing at the Department of Human Services but has failed to sign on to the Government's tax transparency reforms. It has won 178 tenders in the past decade but paid 0 per cent tax last year.

Each year, the Australian government awards millions of dollars in contracts to corporations which engage in aggressive tax minimisation. The practice has corrosive effects on the Australian economy:

- It uses taxpayer money to undermine Australian industries, giving multinational corporations a competitive advantage over local companies who pay their fair share of tax;
- It erodes the Australian revenue base;
- It sends mixed messages to multinationals, who are on the one hand being told they will be subject to 'tough laws' on tax avoidance, while on the other being rewarded with major government contracts.

It is in the strong public interest that where governments procure goods and services from the private sector, they only strike contracts with companies that pay their fair share of tax.

It should be mandatory for procurement contractors to adhere to the ATO's Tax Transparency Code ('TTC') and to Tier 1 Australian Accounting Standards. The TTC only applies to companies with an aggregate income over $100 million, so this measure will have no impact on small business. For companies over the $100 million threshold, TTC compliance should be a mandatory pre-qualification requirement for all procurement contracts, regardless of size, in all State and Federal Departments.

The TTC was recommended by the Australian Board of Taxation in May 2016, after a year of detailed consultation with businesses, Treasury and the ATO. It was formulated as a framework that strikes an appropriate balance between 'promoting community confidence in the tax regime through the release of appropriate information and the commercial sensitivity of some taxpayer information.' http://taxboard.gov.au/consultation/voluntary-tax- transparency-code/

It is Federal overnment policy to encourage businesses to adopt the TTC.

The TTC sets two levels of disclosure, depending on the size of the company. Part A applies to medium businesses (with aggregate Australian turnover of $100-500m), and requires:

- A reconciliation of accounting profit to tax expense and to income tax paid or income tax payable;
- Identification of material temporary and non-temporary differences;
- Accounting effective company tax rates for Australian and global operations (pursuant to AASB guidance).

Part B is for large businesses' (defined as those with an aggregate turnover of $500m or more) who are also required to disclose the following in addition to Part A:

- Approach to tax strategy and governance;
- Tax contribution summary for corporate taxes paid;
- Information about international related party dealings. (Australian Government Board of Taxation, A Tax Transparency Code: A report to the Treasurer, February 2016, p.2. http://taxboard.gov.au/files/2016/05/BoT_TransparencyCode_Final-report.pdf)

Mandatory TCC compliance should not be an administratively onerous process for business, procurement agencies, or the ATO.

Businesses above the $100m threshold would simply be required to include a link to the publicly-available documents containing the relevant information as part of the pre- qualification process, and affirm that the information is true and accurate. Once they have pre-qualified, no further disclosure would be required from them for the duration of the period in which their pre-qualification was valid, and they could apply for as many contracts as they wished in that time.

Procurement agencies would be required to liaise with the ATO to verify the substance of the business' self-disclosure, and to confirm that the business complies with Tier 1 Australian Accounting Standards. The decision-maker in the procurement agency would be required to exclude any company over the $100m threshold from procurement pre-qualification if they failed to meet TTC disclosure requirements. If the company was found to have provided inaccurate information or to have breached Australian taxation law, then these matters would need to be considered as relevant considerations in the exercise of the decision- maker's discretion to grant pre-qualification status to the company.

The ATO would be required to liaise with procurement agencies to confirm the accuracy of the business' self-disclosure. For large companies who have done business in Australia in the past, this information should be readily available, as the ATO is required to undertake substantively similar enquiries as part of processes required by the Foreign Investment Review Board. Any occasions of non-compliance in relation to Australian Accounting Standards or Australian tax law in the last two years should be communicated back to the procurement agency.

Conclusions

Turning a blind eye to systemic wage theft, tax avoidance and exploitation of insecure workers is no longer an option. While the ACTU supports some of the measures in the interim report it is clear a more comprehensive strategy is needed.

We need a serious overhaul of Australia's industrial relations framework rather than a band aid approach. Playing at the edges is not appropriate given the extent of the rampant wage theft, tax avoidance and exploitation that has occurred in Australia. Only a serious overhaul will address the power imbalance between workers and employers and address the growing inequality that Australia faces.

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Address
ACTU
365 Queen Street
Melbourne VIC 3000
PHONE 1300 486 466
WEB: actu.org.au

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