

Recommendations

Recommendation 1

4.78 The committee recommends section 226 of the Act should be amended to prevent the FWC from terminating an agreement where workers would be worse off as a result of the termination.

Recommendation 2

5.59 The committee recommends that federal and state governments work together to establish labour hire licensing authorities in each state and territory, and that licensed labour hire operators be required to provide data on the numbers of workers engaged.

Recommendation 3

5.60 The committee recommends that the government legislate to require that a person or organisation supplying a worker to another person or organisation must:

- a) be a licenced labour hire operator; and
- b) only engage in such activity through a registered business.

Recommendation 4

5.61 The committee recommends that, upon establishment of labour hire licensing schemes (Recommendation 2), the government impose a legal obligation for hosts to use only licensed labour hire providers.

Recommendation 5

5.62 The committee recommends that the National Employment Standards be amended to provide casual employees, whether directly or indirectly engaged, the right to elect to become a permanent employee after twelve months regular and systematic service with the same employer.

Recommendation 6

5.63 The committee recommends that labour hire workers be covered by, be able to participate in and negotiate collective agreements directly with the host employer.

Recommendation 7

5.64 Consistent with Recommendation 6, the committee recommends that host employers have responsibility for ensuring all labour standards provided in the *Fair Work Act* are afforded to labour hire workers. Such provisions could draw on the concept of the Person in Control of a Business or Undertaking (PCBU) definition found in the Model OHSWHS laws.

Recommendation 8

6.70 The committee recommends that the *Fair Work Act* be amended to allow unions greater access to workplaces and workers in order to address the need for increased monitoring and random checks to ensure compliance.

Recommendation 9

6.71 The committee recommends that the penalties for wage and superannuation theft be substantially increased in order to provide a more effective deterrence. A combination of more likely discovery and higher penalties for offending companies would be beneficial to the community as it would create a level playing field and remove the current competitive disadvantage that complying employers suffer in industries where wage theft is widespread.

Recommendation 10

6.72 The committee recommends that the *Fair Work Act* be amended to provide a reverse onus of proof so that, where employers are alleged to have underpaid staff, the employer is required to disprove the allegation.

Recommendation 11

6.73 The committee recommends that employers' obligations regarding record-keeping be reviewed.

Recommendation 12

6.74 The committee recommends that the *Fair Work Act* be amended to require employers to provide a written statement to every employee, before any work is performed, setting out the wages and conditions they are being employed under.

Recommendation 13

6.75 The committee recommends that the *Fair Work Act* be amended to empower the Fair Work Ombudsman to display infringement notices on the premises of businesses found to be underpaying staff, and that display of such

notices be mandatory where an employer has twice been found to be in breach of relevant laws.

Recommendation 14

6.76 The committee recommends that the government introduce a program in Australian secondary schools educating young people on their workplace rights and responsibilities.

Recommendation 15

6.77 The committee recommends that the government work with unions, migrant and community organisations, employer groups and employers to address growing exploitation of migrant workers in Australia.

Recommendation 16

6.78 The committee recommends that freedom of association provisions within the *Fair Work Act* be strengthened to recognise the role of unions in providing protection and advice to workers and ensure that all workers are informed of their industrial rights on commencement of their employment.

Recommendation 17

6.79 The committee recommends that the *Fair Work Act* and *Migration Act* be amended to:

- state that a visa breach does not necessarily void a contract of employment;
- provide that the protections of the *Fair Work Act* can be enforced even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

Recommendation 18

6.80 The committee recommends that there be an onus of proof placed on employers that they have genuinely tested the domestic labour market for available workers before being able to engage temporary visa workers.

Recommendation 19

6.81 The committee recommends that employers pay a training levy for any and all temporary visa workers that are engaged. The proceeds from the training levy should be directly invested to close the skills gaps identified in the domestic labour market.

Recommendation 20

7.37 The committee recommends that the *Fair Work Act* be amended to ensure that all workers have the protections of the Act and access to the labour standards, minimum wages and conditions established under the Act.

Recommendation 21

7.38 The committee recommends that the government review taxation law, including 'alienation of personal services income' provisions, with a view to addressing unintended incentives for sham contracting.

Recommendation 22

7.39 The committee recommends that the *Fair Work Act 2009* be amended to make sham contracting a strict liability offence.

Recommendation 23

7.40 The committee recommends that the existing penalty regime for sham contracting be reviewed with a view to increasing penalties to create a more effective disincentive.

Recommendation 24

7.41 The committee recommends that, where the legal status of a worker is in dispute, the party asserting that the worker is an independent contractor be required to establish this by demonstrating that the worker is operating a business and not working under that employer's control.

Recommendation 25

8.76 The committee recommends that the *Fair Work Act* be amended to ensure that all workers have the protections of the Act and access to the labour standards, minimum wages and conditions established under the Act, so that these rights accrue to dependent and on demand contracting, preventing those arrangements from being disguised as independent contracting. These amendments should capture the dependant contractor who is dependent upon a labour hire company, a company using a work allocation platform or a major corporation using a relationship power imbalance to exercise control over the worker.

Recommendation 26

8.77 The committee recommends that the government initiate a review to determine the tax implications of the gig economy and examine legislative and

regulatory mechanisms to minimise the avoidance of legitimate Commonwealth tax arrangements.

Recommendation 27

8.78 8.1 The committee recommends that the government, as a matter of priority, bolster the employment conditions of workers engaged in the gig economy by requiring platform providers to verify all platform users comply with minimum standards.

Recommendation 28

8.79 The committee recommends that the government legislate to ensure that workers in the gig economy are protected by a minimum wage by requiring platform providers to provide clear minimum labour price guidelines aligned to the relevant award for different categories of work, along with information about the relevant union for the category of work (where multiple unions would have coverage the ACTU should be provided as a point of referral).

Recommendation 29

8.80 The committee recommends that the federal government work with state and territory safety regulators to review health and safety and workers' compensation legislation to ensure that companies operating in the gig economy are responsible for the safety of workers engaged in the gig economy.

