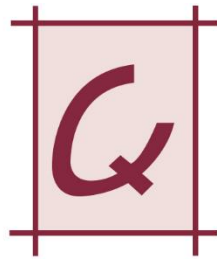


Submission to the Select Committee on Secure Work



**Queensland
Council of Unions**

Terms of Reference

That a select committee, to be known as the Select Committee on Job Security, be established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

- a. the extent and nature of insecure or precarious employment in Australia;
- b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- c. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- d. the aspirations of Australians including income and housing security, and dignity in retirement;
- e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
- f. accident compensation schemes, payroll, federal and state and territory taxes;
- g. the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
- h. any related matters.

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Introduction

The Queensland Council of Unions (QCU) is the peak union organisation in Queensland representing twenty-six affiliated unions and around 360,000 members.

The issue of job security is of fundamental concern to the QCU. Members of QCU affiliates are impacted in various ways by insecure work, including through an increased casualisation of the Queensland workforce in the private sector, and a downward spiral of workers' wages due to the increased usage of labour hire arrangements, ranging from the age care sector to manufacturing to mining communities across Queensland communities.

The Covid-19 pandemic has also highlighted the impact that insecure work has had in Australia, in particular in the aged care and security sectors, where insecure work resulted in workers feeling compelled to work when they were sick, and across multiple job sites. Many workers in insecure work, and many young people and women workers were also unduly affected by the pandemic by being the first to lose their jobs, and often found themselves without access to federal Government support through JobKeeper. These same workers have found it difficult to maintain security of housing and are continuing to be affected by the shortage of affordable social housing. Finally, many of those low paid and insecure workers also applied for early access to their superannuation meaning they will be disproportionately worse off in their retirement.

The QCU is committed to the principle that every worker has the right to be safe and respected at work, and every worker has the right to secure employment. The QCU defines secure employment as decent pay and fair conditions, for example, the same pay for the same job. For example, a coal mine worker at a coal mine who is engaged by a labour hire provider should receive the same remuneration as the permanent worker that works next to them.

The right to be safe at work is also a fundamental right but is often undermined by insecure employment where labour hire employees and others in insecure jobs are reluctant to speak up about safety issues for fear of losing their jobs.

The QCU also believes that every worker has the right to a reliable job. Reliable jobs mean that individuals and their families can plan their lives without their hours of work constantly changing, knowing in advance when they can take leave, and without their pay being determined at the whim of an algorithm for a ride share or delivery.

Safe and secure employment, and the right to a reliable job in the QCU's submission, leads to secure and safe communities. Insecure employment, conversely, creates financial uncertainty which flows on to effect small businesses and local economies, in turn impacting local communities, and creating insecure communities. Highlighting issues that relate to creating secure employment and secure communities is at the core of this submission.

Insecure Work

Overview/statistics of insecure work– who is affected?

In respect of the extent and nature of insecure or precarious employment in Australia,¹ Australia has one of the highest levels of insecure work in the OECD.² Of concern is that, in the Covid recovery, 400,000 jobs classified as casual employment were created from May 2020 to November 2020, which represents the fastest expansion of casual employment in Australia's history.³ Clearly, with such a significant expansion of casual employment, insecure and precarious work has been exacerbated by the COVID-19 crisis.⁴

Notably, this would not have been able to occur except for the flaws within the current *Fair Work Act 2009* (Cth) (Fair Work Act) such as the previous removal of restrictions on numbers of casual workers within awards or prohibitions on bargaining about limiting types of employment such as casuals; the lack of powers to arbitrate on matters such as wage underpayments or flexible work arrangements; and the limited scope of who is an employee, as well as the new definition of casuals – have often enabled and in many cases promoted insecure employment arrangements across industries.

Casual work is insecure work, as casual workers do not have a guarantee of ongoing employment nor entitlements, such as personal and carer's leave. Casual insecure work is most prevalent in low paid areas of the economy, such as accommodation and food, and healthcare and social assistance.⁵ Casual workers, particularly in the aforementioned sectors, are predominantly women and young people who have also been impacted disproportionately and adversely by the Covid pandemic.

Labour hire is also a form of insecure work, given that often workers engaged as labour hire are not paid at the same rate as the permanent workers whom they work alongside of, and who often work on a casual basis with limited recourse compared to permanent employees if their employment comes to an end. The use of labour hire in Queensland to drive down wages and conditions is a workplace trend that has an associated impact on employment arrangements such as in the mining sector of the Queensland economy.⁶

Independent contractors often have their true employment status mis-represented to them, and, in turn, do not accrue paid annual leave or personal and carer's leave, and in some cases superannuation, in circumstances where they should properly be engaged as employees. In terms of independent contractors, the construction sector has the highest proportion of workers that are engaged on this basis.⁷

Fixed term contracts are another form of insecure work. Fixed term contracts are predominant in the education and training sector, particularly in the tertiary education sector. Education and training, as a sector, had the largest proportion of fixed term contracts that are less than 12 months in duration.⁸

Given the significant role that the construction, agriculture, age care, and the mining sectors have in Queensland, there is a large proportion of workers impacted in various insecure types of employment.

¹ Term of reference (a).

² 'Australia has a high rate of casual work and many jobs face automation threats: OECD' ABC, 2019 <https://www.abc.net.au/news/2019-04-25/australia-sees-increase-in-casual-workers-ai-job-threats/11043772>.

³ ACTU "Submission to the Senate Select Committee on Job security: Inquiry into the impact of insecure or precarious employment" 30 April 2021 at page 3; and, Centre for Future Work, 'Submission to the Senate Select Committee on Job Security', March 2020 ('ACTU Senate Submission').

⁴ Term of reference (b).

⁵ Ibid 12.

⁶ Term of reference (c).

⁷ ACTU Senate Submission (n 3) 12.

⁸ Ibid 17

And because much of the workforce and industry is spread out across regional areas in Queensland, and a significant proportion of the workforce is employed in insecure work arrangements with predominantly low wages, this has and continues to contribute to low wage growth and stagnating local Queensland economies, particularly in the regions.

The QCU submission is that insecure work, whether it be casual employment, labour hire, independent contracting arrangements, or fixed term contracts, should be reduced in Queensland.

IR Omnibus Bill – entrenchment of Casual Work

In relation to the effectiveness, application and enforcement of existing laws and regulations in the industrial relations system,⁹ the Omnibus Bill, properly known as the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021* (Cth) in its first iteration, proposed a significant number of reforms to the Fair Work Act. While the Omnibus Bill, as passed, was significantly reduced in scope, the Omnibus Bill did introduce a definition of a 'casual employee' at section 15A of the Fair Work Act.

Prior to these amendments, there was no definition of a casual employee in the Fair Work Act, other than the now repealed 'long term casual employee'. The introduction of a casual definition was a direct response (as stated by the Minister for Industrial Relations in his second reading speech) to the decisions in *WorkPac Pty Ltd v Skene* [2002] FCAFC 84 ('Skene') and *WorkPac Pty Ltd v Rossato* [2018] FCAFC 131 ('Rossato'). Rossato is currently on appeal to the High Court of Australia.

Skene and Rossato confirmed that employees who work a regular pattern of hours with a firm advance commitment of work were incorrectly described as casuals, and are able to accrue and access entitlements such as annual leave and personal and carer's leave, pursuant to the Fair Work Act, like any other permanent employee. However, far from clarifying their employment status, the casual definition has further entrenched casual employment arrangements in Australia and thereby further entrenching insecure work for those workers in Queensland covered by the Fair Work Act.

The Omnibus Bill also seeks to reduce entitlements that casual workers can recover if they had been misclassified as a casual in circumstances where they were not. The QCU's submission is that the amendments in relation to casual employment introduced by the Omnibus Bill should be repealed, as the amendments entrench insecure work in the federal jurisdiction of the Australian economy.

What happened in Queensland? Lessons Learned for the Federal Jurisdiction

Labour Hire in Queensland

In relation to enforcement of existing laws in the industrial relations system relating to labour hire,¹⁰ in 2017, the Queensland Government introduced the *Labour Hire Licensing Act* (Qld) 2017 ('the Labour Hire Act') as a direct result of concerns held by the Queensland Government in relation to serious allegations of exploitation of workers in labour hire arrangements.¹¹ Another key concern was the reluctance of many labour hire workers to speak up about health and safety issues in their work.

⁹ Term of reference (e).

¹⁰ Term of reference (e).

¹¹ *Labour hire Licensing Bill 2017 - Explanatory Notes*.

In essence, the Labour Hire Act introduced a licensing scheme for all businesses that operate labour hire in Queensland, to ensure, among other things:

- a) that labour hire providers are fit and proper to carry out their business and are financially solvent;
- b) require regular reporting by labour hire providers; and
- c) require persons engaging labour hire providers to only engage a licensed labour hire provider.

At the three-year anniversary of the introduction of the labour hire licensing scheme, compliance action had been taken against 650 labour hire providers, such action ranging from cancelling licenses to placing strict conditions on licenses.¹² The QCU commends the Queensland Government on its steps in relation to labour hire licensing, and recommends that similar schemes be introduced in jurisdictions that do not already have similar schemes.

However, while the labour hire industry is now licensed in Queensland, there are ongoing issues with workers that are hired as labour hire, working at the same worksite, and not receiving the same pay as permanent workers working the same shifts, in the same job, on the same worksite. The QCU supports the principle of the same pay for the same job.

Currently, the Fair Work Act does not contain provisions that require “same pay, same job”. The QCU submits that the Morrison Federal government must take more steps in the federal jurisdiction to stop labour hire being used as a tool by employers to drive down wages in various sectors of the economy.

The QCUs’ submission is that to properly address insecure work in the labour hire sector, the Fair Work Act needs to be amended to provide regulation of, and civil penalties for, employers who use labour hire to reduce wages of its permanent workforce, such as is occurring in Queensland, particularly in the coal mining sector.

Procurement policies in Queensland

In respect of the interaction of government agencies and procurement policies with insecure work,¹³ in 2019, Queensland introduced the Best Practice Principles, incorporated into the Queensland Procurement Policy (‘QPP’). The QPP was updated and reissued on 13 April 2021. The QPP seeks to ensure that Queensland Government procurement practices, and monies expended by the state, are utilised to assist Queenslanders and communities in Queensland. For example, in procurement generally, a local benefit test must be applied, and one factor that that test favours is secure and permanent employment. The QPP also stipulates that employers that have failed to pay or have underpaid wages, failed to pay superannuation, contravened the Fair Work Act or the Industrial Relations Act, will be found to not have satisfied the Ethical Supplier Threshold which will impact on any tender made for procurement by that business.

The QCU commends the Queensland Government for its initiative, and is of the view that other governments around Australia, including the Federal Government, should follow Queensland’s procurement example as a way of managing insecure employment, particularly when spending public money.

¹² Press Release “Qld Labour hire scheme stamps out rogues” The Honourable Grace Grace, 16 April 2021.

¹³ Term of reference (g).

Wage theft and recovery laws in Queensland

In November 2018, the Queensland Parliamentary Education, Employment and Small Business Committee Released an Inquiry Report '*A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*'¹⁴ ('the Wage Theft Report').

The Wage Theft Report made a number of key findings and recommendations:

- Wage theft disproportionately affects workers in insecure work.
- Wage theft is endemic among international students, backpackers and other temporary workers.¹⁵
- Young workers under the age of 25 account for 15% of the working population but comprise 28% of wage disputes.¹⁶
- Employees of low paid contractors such as security and cleaning are subject to high amounts of wage theft.¹⁷
- For a substantial number of temporary migrants, wage theft is severe.
- There are significant reports of wage theft in regional Queensland. A 2016 FWO investigation found that 30% of businesses in Central Qld were underpaying their employees.¹⁸
- Estimated loss of wages due to wage theft in Qld were \$1.21 billion annually and loss of superannuation at \$1.12 billion annually.¹⁹
- Wage theft impacts on retirement income.²⁰

As a result of the Wage Theft Report, The Queensland Government introduced (and passed) the *Criminal Code and Other Legislation (Wage Theft) Amendment Bill* (Qld) 2020. At a high level, the Bill and subsequent Act:

- (i) enabled the prosecution of wage theft as stealing under the Criminal Code;
- (ii) increased the maximum penalties in the Criminal Code for the offences of stealing and fraud relating to wage theft; and
- (iii) facilitated the Industrial Magistrates Court's jurisdiction for wage recovery matters, including a small claims wage recovery procedure for matters of not more than \$20,000 under section 548 of the Fair Work Act.²¹

While it is early days into the operation of these new laws, it is expected that the criminalisation of wage theft will act as a deterrent to employers continuing to underpay wages and conditions to Queensland employees where there is a disproportionate lack of enforcement from the Fair Work Ombudsman, or other federal laws to enable unions to enter premises and inspect time and wages records and thereby pursue enforcement or prosecution of wider underpayments across workplaces.

This new jurisdiction also enables a prosecution to be brought for the offence of stealing which includes an underpayment of superannuation. Given the disproportionate amount of unpaid superannuation in comparison to unpaid wages identified by the Qld Parliamentary Committee, this issue should also prove to be effective in helping to ensure the long-term economic security of Queensland employees in their retirement.²²

¹⁴ Report No.9, 56th Queensland Parliament, Education, Employment and Small Business Committee.

¹⁵ Ibid 32.

¹⁶ Ibid 36.

¹⁷ Ibid 42.

¹⁸ Ibid 29.

¹⁹ Ibid 56.

²⁰ Ibid 60.

²¹ See Criminal Code and Other Legislation (Wage Theft) Amendment Act (Qld) 2020.

²² Terms of reference (d).

Likewise, the new small claims wage recovery mechanism is expected to make the system for pursuing and collecting underpaid wages and conditions simpler and less costly for Queensland employees and former employees covered under the Fair Work Act. Again, this should also act as a further deterrent for many employers who believe that they will not be pursued for breaches of industrial instruments by a regulator, let alone have a Court order them to repay monies owed.

The criminalisation of wage theft in Queensland has assisted in the enforcement of existing laws, (and) regulations in the industrial relations system.²³

At the federal level, the Omnibus Bill among other things, sought to introduce criminalisation of wage theft and a revised small claims jurisdiction. However, while the amendments for criminalisation were withdrawn, had they been implemented the burden of proof was much higher that required under the Queensland legislation. Further, criminalisation did not extend to superannuation like in the new Queensland jurisdiction. Additionally, the federal criminalisation of wage theft relied upon agencies, such as the Fair Work Ombudsman ('FWO'), to prosecute alleged perpetrators of wage theft.

The QCU is concerned that rely on pre-existing bodies that are civil law specialists, with no additional funding for prosecution, may not lead to the prosecution of wage theft. The QCU's submission is that any investigation and prosecution of wage theft should be undertaken by a specialist prosecutorial body that is funded for that purpose, such as the Wage Inspectorate in Victoria and prosecutions be able to be brought in relation to underpaid wages, conditions and superannuation.

The QCU is also concerned that the improvements included in the Bill which were withdrawn relating to increasing the small claims jurisdiction under Section 548(2) of the Fair Work Act should be reintroduced to increase a small claim amount from \$20,000 to \$50,000.

Portable long service leave in Queensland and the community sector

The Queensland Government has implemented a number of portable long service leave schemes for workers in Queensland. The building and construction industry, contract cleaning and most recently the community sector have access to portable long service leave. Portable leave schemes follow the worker, as opposed to an employee being required to be employed for a specific period of time with one employer before being eligible for their long service leave entitlement.

The *Community Services Industry (Portable Long Service Leave) Act 2020* (Qld) is a new initiative introduced in Queensland which requires industry employers to register with QLeave, a Queensland Government Statutory Authority by 1 January 2021, with levies to fund portable long service leave payments for eligible employees commencing from 14 April 2021. This means employers no longer accrue long service leave liability in the same manner as annual leave, but instead they will pay a levy to QLeave to enable a worker to access their entitlement once they accrue the entitlement, regardless of if they have changed employer, as long as they stay within the sector.

The importance of introducing initiatives such as portable long service leave into sectors with high rates of insecure work such as the construction industry and the community services sector, helps to ensure that workers are not disadvantaged or that employers don't seek to casualise jobs as a cost-savings initiative. For example, currently an employer may decide to rely on insecure work with a regular turnover of its workforce to seek to reduce costs thus ensuring that its workers do not remain employed for a period that would entitle them to long service leave. Relevantly, many workers across

²³ Term of reference (e).

these sectors also work interstate and many employees when transferring jobs interstate also lose their rights to long service leave, even if they are working within the same industry.

The QCU's submission is therefore that portable long service leave schemes should be expanded nationally, and that the Federal Government is best placed to co-ordinate the expansion of this across the nation and recommends to the Committee that it makes recommendations in this regard.

Conversion of 3,200 plus casual and temporary employees in the Queensland Public Service

In 2018, the Queensland Government engaged Peter Bridgeman to undertake a review of the *Public Service Act 2008* (Qld) ('the PS Act'). The report is entitled "*Review of public sector employment laws – A Fair and Responsive Public Service for All, May 2019*". A number of recommendations were made in the report, including regarding temporary and casual employment.²⁴ On 9 September 2020, the Queensland Government passed the *Public Service and Other Legislation Amendment Act 2020* (Qld) ('the Act'). The QCU commends the Queensland Government for undertaking a wholesale review of the effectiveness, application and enforcement of existing laws, (and) regulations in the Queensland industrial relations system.²⁵

One of the main changes is the amendment to the PS Act to ensure more effective and consistent application of the Government's commitment to maximising employment security. The Act contains amendments in order to clarify that permanent employment is the default in public sector employment. Non-permanent forms of employment are only to be used where the alternative is not viable or appropriate. The amendments to the PS Act are consistent with the recommendations made in the Bridgeman Report.

Significantly, on 3 June 2021, it was reported that 3,200 casual and temporary employees had been converted to permanent status since the amendment of the PS Act, equating to 73% of all temporary (fixed term) and casual employees.²⁶ The QCU commends this step taken by the Queensland Government in furthering its commitment to greater levels of permanent employment in the Queensland Public Service and reducing insecure employment.

Conclusion

The QCU is committed to the principle that every worker has the right to be safe and respected at work, and, every worker has the right to secure employment and a reliable job.

The QCU has highlighted key areas where the Queensland Government has implemented a number of positive policies and enacted legislative reform that reduces insecure work. For example, in procurement where permanent employment is preferred in tendering for public work; the introduction of wage theft and wage recovery laws; the expansion of portable long service leave; and the introduction of conversion rights for temporary and casual public sector workers to permanent employment. Advancements have also been made through the introduction of a labour hire licensing scheme, although further protections for labour hire employees should be introduced through the adoption of the 'same job, same pay' principle under the Fair Work Act.

²⁴ *Review of public sector employment laws – A Fair and Responsive Public Service for All, May 2019*, Peter Bridgeman, p 14.

²⁵ Term of reference (e).

²⁶ "Queensland makes public sector employment more secure" *Workplace Express*, Thursday, 3 June 2021.

The QCU encourages the Senate Inquiry to implement the recommendations made above in relation to insecure work, to ensure the safety and dignity of workers across Australia, and reduce instances of insecure work.