Fair Work Amendment (Equal Pay for Equal Work) Bill 2022

TWU Submission to Senate Education and Employment Legislation Committee

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30 September 2022

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TWU BACKGROUND

The Transport Workers' Union of Australia (TWU) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries. With over one hundred years' experience, the TWU has been proactive in establishing industry standards that improve the lives and safety of transport workers, their families and the community. The TWU covers all workers in the aviation industry, including in ground handling, fleet presentation, cabin crew, airline catering, security and pilots.

EXECUTIVE SUMMARY

The ability to pay people less to do the same job should be outlawed. The TWU welcomes the focus from both the crossbench and ALP in addressing this critical issue. This submission seeks to demonstrate the many ways in which some employers engage in underhanded methods to rip off some workers at the expense of others. Abolishing this practice will only be possible through a regulatory solution as robust and agile as the complexities of wage suppression tactics that go far beyond labour hire rates of pay.

Pockets of insufficient regulation risks legitimising and fostering other forms of abuse of power to achieve the same result. Obligating certain rates for just some workers would see a rise in outsourcing, sham contracting, misclassification of job roles and contracting labels, and exploitation of outside hire.

TRANSPORT INDUSTRY STATE OF PLAY

Across the transport industry, standards are dragged down by a deliberate splintering of the workforce. Road transport and aviation are industries marked by outsourcing, unfair contracting practices, the gig economy, the introduction of an underclass of workers on “B rates”, the setting up of lower-paying subsidiaries, and a surge in the use of labour hire and outside hire. Through these tactics, businesses are able to create their own supply chain, deploying different groups of workers under the guise of flexibility to suppress wages and conditions.

In 2021, thousands of workers at major road transport companies were forced to pursue or take protected industrial action to fight for their job security. Supply chain pressures were culminating in attempts by employers to introduce an underclass of workers on ‘B rates’ of pay and conditions, while a push to increase the use of outside hire and labour hire left employees exposed to losing overtime income or indeed their jobs in the future.

The gig economy has raged through the transport industry, dragging down standards in supply chains and ripping off food delivery riders, rideshare drivers and couriers from minimum wage and basic rights, with deadly consequences. As laws have failed to keep pace, these workers have been pushed outside of the system with little to no legal protection.

The ‘AmazonFlex’ gig model has spread to other traditional transport operators, with FedEx bringing in drivers using their own vans on unilateral piece rates. This move undercuts FedEx employees and tied owner driver contractors, who were previously paid in accordance with the employee agreement to avoid one group of workers losing out to the other.

Aviation is a particularly fragmented industry, exacerbated by illegal outsourcing and the creation of subsidiaries at Qantas and Jetstar under Alan Joyce's leadership. Cabin crew are far from the only group of aviation workers subjected to vastly different rates of pay and conditions, as highlighted in this submission through the example of six different employment entities at Qantas Freight in Sydney.

In addition, as is demonstrated through Qantas and Swissport examples below, base rates of pay are rarely where the entrenched inequity occurs between labour hire and directly employed airport workers. The payment of penalties, job security, roster certainty, treatment of staff by management, and safety at work are all areas which decline significantly with low-cost contracts in aviation supply chains.

THE JOYCE MODEL

Since Alan Joyce's tenure as CEO of Jetstar and then of the Qantas Group, several steps have been taken to push workers further from the business in order to avoid collective bargaining and squeeze wages and conditions through low-cost contracts.

Timeline of fragmentation

2004 - SUBSIDIARY
As CEO of Jetstar, Alan Joyce sets up 'Express Ground Handling' to employ workers on lower pay and conditions for ground handling on Jetstar aircraft.

2008 - SUBSIDIARY
As CEO of Qantas Group, Alan Joyce sets up 'Qantas Ground Services' (QGS) to employ part-time workers on lower pay and conditions to perform the same duties on Qantas aircraft as Qantas Airways Limited (QAL) workers.

Qantas vows never to hire another worker under the QAL enterprise agreement.

2011 – GROUNDING OF FLEET
By grounding the fleet, Alan Joyce successfully puts a stop to protected industrial action over job security from QAL ground handling workers.

CIRCA 2015 – OUTSOURCING
Qantas outsources ground handling at some of its smaller regional ports to Swissport (roughly 10% of the business)

2020 - OUTSOURCING
On 30 November 2020, Qantas announces its rejection of workers' EY-supported in-house bid and outsources all ground handling and fleet presentation operations, except QLink regional work in Sydney (roughly 90% of the business)

2021 AND 2022– OUTSOURCING RULED ILLEGAL
Four Federal Court judges unanimously agree that the 2020 outsourcing of almost 1700 workers was unlawful for its motivations to avoid collective bargaining and protected industrial action.

Qantas tells the Federal Court it would retrench workers again if ordered to reinstate them.

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A splintered workforce

Illegally outsourced ground handling and fleet presentation work for Qantas and Jetstar across Australia is now performed by predominantly part-time or casual workers under eight different labour providers, all with different pay and conditions:

- Swissport
- Dnata
- Menzies
- Star Aviation
- Oceania
- Cabin Services Australia
- Northwest Aviation Services
- Qantas Ground Services (QLink Sydney only)

Pay inequity

To understand the disparity in pay and conditions across these enterprise agreements and compared with former QAL workers, we must look beyond base rates of pay.

Qantas outsourced the work to labour providers based on lowest cost contracts achieved by squeezing pay and conditions. These cost savings are achieved less so by slashing base rates of pay, but through insecure work, minimal guaranteed hours, manipulation and understaffing of rosters, and tactics to avoid overtime and shift penalties.

In 2017, Swissport (formerly Aerocare) failed to get an agreement through the Fair Work Commission because, despite its base rates of pay being higher than other ground handlers, its split shifts, definition of 'ordinary hours', and avoidance of overtime and shift penalties meant workers' pay would fall below Award levels. The agreement also excluded casuals, who made up a large portion of the workforce.

The Commission heard through evidence from Aerocare's Head of HR Gregory Shelley that the company used an algorithm to avoid paying overtime or shift penalties to workers. The decision states:

> *Rostering is done by Aeronet in such a way as to ensure employees work in the most cost-effective way of providing the services for which Aerocare is contracted by its clients…*
>
> *Mr Shelley gave evidence to the effect that Aerocare's rostering is done in such a way as to avoid any unnecessary "abnormal" costs meaning that if an employee could be rostered in such a way as to avoid overtime being paid either to them or to another employee then that is how Aerocare's requirement to provide labour at the airport or on the tarmac would be met.*

CASE STUDY 1: SWISSPORT

Swissport operates a low-cost model to win contracts from airlines over competitors. Until severe airport chaos and understaffing pressured Swissport to advertise some full-time positions, workers were engaged on a 'permanent part-time' basis or as casuals.

The company's downward pressure on the industry arises out of an enterprise agreement, approved in 2012 despite union objections, and in place until 2020 when it was quashed by the Fair Work Commission. This enterprise agreement allowed for:

- Just 60 hours guaranteed a month (no weekly guarantee);
- Shift lengths of only three hours;
- Split shifts which were prohibited by the Award;
- Below award rates for weekends, Good Friday, Christmas and public holidays; and
- Absence of payment for overtime, night work and relevant aviation allowances per the minimum standards in the Airline Operations – Ground Staff Award.

These conditions meant many Swissport workers have struggled with daily life, unable to earn enough money and continually desperate to pick up extra hours.

In 2017, an exposé by the media revealed low paid Swissport workers were sleeping at the airports between split shifts[1], often at the airport for 12 hours but paid for only six. Media also revealed that the working conditions had compromised safety with high injury rates among workers[2]. Failures at Swissport on security and safety were also exposed[3].

The 2012 enterprise agreement was in place paying thousands of workers below award rates for over seven years before it was terminated by the Fair Work Commission in 2019, with its final days of operation in early 2020[4]. By then Swissport had failed already to get its 2017 enterprise agreement approved[5] and had lost a Federal Court case seeking approval for its split shifts[6].

A 2018 enterprise agreement also had a long saga at the Fair Work Commission, suffering two rejections and requiring several undertakings for it to pass in 2021. The TWU maintains that it leaves workers worse off than the Award and is now too complicated for workers to understand their entitlements.

Despite all of this, plus a dreadful safety record including 134 injuries of a Sydney staff of 324 in just one year, Qantas awarded Swissport the majority of its outsourced jobs at the largest ports - Sydney and Melbourne domestic, and Canberra.

<u>Unsafe working conditions</u>

Since outsourcing ground handling, Qantas has experienced a steep decline in service standards most notably at Sydney and Melbourne domestic airports.

[2] https://www.abc.net.au/7.30/airport-workers-speak-out-about-poor-work/8371230
[3] https://www.smh.com.au/national/workers-point-to-security-flaws-at-canberra-and-perth-airports-20170803-gxousf.html
[4] https://www.smh.com.au/business/workplace/wages-agreement-terminated-for-airport-workers-who-slept-atterminal-between-shifts-20190806-p52egw.html
[5] https://www.theguardian.com/australia-news/2017/aug/31/wage-deal-that-union-said-ripped-off-airport-workersrejected-by-fair-work
[6] https://www.smh.com.au/business/workplace/airport-workers-should-not-be-used-and-abused-court-rules-againstairport-split-shifts-20190125-p50trd.html

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Swissport rosters are significantly understaffed, putting more pressure on workers to rush at the risk of injury, safety incidents and fatigue.

In August 2022, a TWU safety inspection discovered a Swissport staff of only three workers covering nine baggage carousels. Prior to outsourcing, each baggage carousel would typically have been manned by three Qantas workers.

The same month, the TWU revealed a dossier of staff memos[7] exposing serious safety incidents at Swissport, Sydney airport in just eight months. The incidents included:

- Firearms unloaded onto baggage carousels
- Passenger stairs removed while doors open
- Cargo doors left open
- Dangerous goods loaded without the pilots' knowledge
- Vehicle collisions with refueling hoses
- Speeding around aircraft
- Workers continuing to work after injury

Several of the memos acknowledge understaffing as a safety issue. One memo says:
"The business is acutely aware that our human resource levels are simply not at a sustainable level to meet the ongoing demand from the airlines."

Alarmingly, the company response to serious incidents was to send an electronic 'Toolbox Talk' to workers. Occasionally this may include updated safety procedures such as workers giving a 'thumbs up' when doors are closed. Workers report receiving only four hours training before driving baggage vehicles airside.

Workers have previously reported being accompanied to doctors' appointments, facing pressure from managers to return to work while still injured, and management deleting incident reports from the system where they were found to be in the wrong.

CASE STUDY 2: QANTAS FREIGHT

Under Sydney's Qantas Freight facility there are six different employers each with different pay and conditions despite workers doing the same jobs. Qantas Freight in other states operates with a similar model, mixing Qantas businesses and labour hire to pay workers different pay and conditions.

In 2012, Qantas acquired Australian Air Express (AaE). The agreement in place at AaE includes clauses that state labour hire workers must be paid the same rates as directly hired employees, and employees must not be made compulsorily redundant as a result of lower-paid QGS or labour hire workers[8].

[7] https://www.twu.com.au/wp-content/uploads/2022/09/Swissport-infographic-3.pdf
[8] https://www.fwc.gov.au/document-search/view/aHR0cHM6Ly9zYXNyY2RhdGFwcmRhdWVhYS5ibG9iLmNvcmUud2luZG93cy5uZXQvZW50ZXJwcmlzZWFncmVlbWVudHMvMjAxOS8zL2FlNTAyNDk4LnBkZg2/3/cdb16822-16bd-4dac-a7d3-54d88110a6fb/AAE

Qantas found a loophole in the labour hire protections in the AaE agreement, by moving the workers into the Qantas Freight facility. In doing so, it was able to introduce its lower-paying subsidiary QGS and labour hire workers on wages comparable to the Award.

Qantas Freight in Sydney now has workers engaged by:

- AAE
- QAL
- QGS
- Blue Collar – labour hire
- Program – labour hire
- Baileys – labour hire

The below base rates of pay refer to a level 2 ground handling worker, as at 1 September 2018:

AAE	QAL	QGS	Award
$23.78	$21.86 - $23.07	$21.60 - $22.15	$20.54

Where AAE has approximately 95% full-time staff on good pay and conditions, QGS is 95% part-time with lower pay and conditions, and insecure workers at the three labour hire companies paid at basic Award rates and conditions, usually as casuals.

CONCLUSION

This submission shines a light on the extensive web of tactics used by employers to pay people less to do the same work.

The workforce is a company's greatest asset. When it is stripped bare, safety and service standards plummet, as has been demonstrated at Qantas.

The tragic deaths of 11 food delivery rider gig workers under enormous pressure with no rights is the manifestation of industrial laws falling behind. It is time to update our system not only to keep pace with the realities of work, but to close the loopholes that are killing, maiming, and pushing workers into poverty.

A regulatory approach to tackle pay inequity and undercutting must cover all workers and should include in its scope the preclusion of:

- Outsourcing;
- Setting up lower-paying subsidiaries;
- Undercutting through insecure work arrangements;
- Avoidance of overtime and penalty rates;
- Misclassification; and
- Exploitation of outside hire or independent contractors.

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