



12 September, 2022

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Committee Secretary,

Re: Inquiry into Fair Work Amendment (Equal Pay for Equal Work) Bill 2022.

The Australian Manufacturing Workers' Union ("AMWU")<sup>1</sup> is a registered organisation of employees who represent tens of thousands of workers employed across major sectors of the Australian economy. Our members work:

- in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food production;
- across a range of industries and sectors, including building and construction, resources and energy, defence, transport, health and education;
- across numerous classifications and skill levels, from entry level to supervisory and managerial roles; across trades, technical qualifications and professions.

We exist to fight for a better deal for Australian workers and their families. At its core is fair and equitable pay and working conditions that recognise the skills and contributions of workers. Our Union has a proud history of campaigning for entitlements that are now keystone features of Australian workplaces including work health and safety protections, annual leave and leave loading and superannuation.

### **Executive Summary**

The AMWU endorses the underlying principle of the Bill – that workers who perform the same work at a particular site should receive the same pay and conditions regardless of whether they are directly hired by the host employer or are employed by labour hire or some other contractual arrangement.

The changes proposed by the Bill, however, are too narrow to be of benefit to the majority of workers employed by labour hire companies and therefore should not be adopted in its current form.

---

<sup>1</sup> The registered name of the AMWU is "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers Union.

Australian Manufacturing  
Workers' Union  
Registered as AFMEPKIU  
**National Office**  
Level 4  
133 Parramatta Road  
Granville NSW 2142  
Telephone: 02 8868 1500  
Facsimile: 02 9897 9274  
[amwu@amwu.asn.au](mailto:amwu@amwu.asn.au)

The AMWU supports broader measures to increase secure and permanent employment opportunities and reduce the use of labour hire as merely a cost cutting measure. The proposed amendment will do nothing other than provide a limited number of workers a pay increase without increasing the incentive for employers to engage more permanent employees to fill ongoing workplace needs.

The AMWU urges Senator Roberts to work with the Government on measures to extend beneficial pay and conditions to all labour hire employees, not just those covered by this proposed Amendment.

### **ACTU Submission**

The AMWU has seen a copy of the draft ACTU Submission to the Committee. The AMWU supports and endorses the ACTU's submission. In particular the AMWU echoes the submissions concerning the limitations of the definition of labour hire, so that other forms of labour engagement, such as contracting out, are excluded from coverage of the proposed Amendment.

The AMWU also endorses the comments of the ACTU submission noting a limitation of the proposed Amendment is the focus on the monetary compensation for workers. There are other benefits that should be extended to all workers on a site, including but not limited to access to training, consultation about significant changes on the site and changes to rosters and other benefits.

### **Labour hire and AMWU membership**

Anecdotally, a significant proportion of AMWU members have, at some point, been engaged by labour hire or other contracting companies in the performance of their work.

The AMWU is not opposed to the idea of labour hire companies on principle, particularly when it provides a supplementary workforce for companies to use for a discrete period or project. For example, annual maintenance of large scale facilities during an annual production shut down is often performed by workers engaged by labour hire companies. In these circumstances employers can have access to more skilled maintenance workers than they would ordinarily need to perform the ongoing maintenance on the site.

The AMWU often engages with large labour hire companies, particularly in the maintenance trades and construction, and negotiates enterprise agreements on behalf of its members and other labour hire employees. In doing so, the AMWU ensures workers who are employed by these labour hire companies enjoy pay and conditions equivalent to a permanently employed workforce.

The experience of the AMWU is increasingly that more employers across a range of industries prefer to engage labour hire companies to provide cheaper workers, regardless of the nature of the work or the duration of the expected vacancies. This includes the setting up of labour hire companies by large employers and project joint venture partners to provide a cheaper source of labour at their own workplace, sometimes in competition with or instead of their own directly hired employees.

The AMWU has sought to negotiate clauses in enterprise agreements that place the onus on employers to ensure that contract labour, which includes labour hire employees, are paid the same rates, loadings and allowances as those directly hired employees. Such clauses provide benefits to both labour hire employees, in terms of the conditions they should receive, as well as protecting the job security of permanent employees. The implementation of the *Code for the Tendering and Performance of Building Work*, however, prohibited the inclusion of such clauses in enterprise agreements made with entities in both the building and construction industry, as well as entities who were otherwise captured by the Code because of their receipt of Commonwealth capital funding<sup>2</sup>.

### **Right Principle, Wrong Implementation**

The AMWU believes that workers who are performing the same work at the same site, working the same roster, under the supervision of the same company should not be covered by different industrial arrangements merely because some employees are directly hired by the host employer and others are employed by labour hire companies – including labour hire companies owned by the host employer. Payment for work performed should reflect workers' skills and competency. The identity of the employer should not be the differential factor between the pay and conditions of workers in the same workplace, when all other factors are otherwise identical. The identity of the employer should not be the differential factor between the pay and conditions of workers when all other factors are identical.

While the proposed Amendment seeks to address this disparity, it is flawed. It is too narrow, does not recognise existing market failures across the economy and ultimately does nothing for improving job security or training and development opportunities across the broader workforce.

Firstly, the proposed Amendment focuses on two industries as examples of “market failure” – mining and aircraft cabin crew. The AMWU does not disagree with the description of market failure within these segments of the economy; however the AMWU would argue that the market failure extends beyond the scope of these two Awards; even within the broader industries in which these Awards cover.

There are also limitations by tying the benefits of the proposed Amendment to the scope of the *Black Coal Mining Award 2020* (“Black Coal Award”). Workers on mines sites may be covered by other Awards than the Black Coal Award. In particular, mines rely on a number of trades to keep equipment operating so that workers can get to and from the coal seam and extract the coal. Such mechanical and engineering trades work is often performed by AMWU members who are employed by labour hire companies. These workers are often based at the mine site, are obliged to pass mining industry medical checks and are rostered on shifts and given direction by the mining company as to what work to perform.

---

<sup>2</sup> “Construction” for the purposes of the Code was broadly defined and included maintenance and repair work to infrastructure that may not automatically be considered as part of the construction industry, such as railways and docks. In theory (and practice) this resulted in associated entities of companies in receipt of Commonwealth funding having their industrial rights determined by the contents of the Code, regardless of whether they were a traditional construction company or site.

The labour hire companies who employ such AMWU members, however, are covered by the *Manufacturing and Associated Industries and Occupations Award 2020* (“Manufacturing Award”). As such, these workers would be nominally classified under the Manufacturing Award and paid accordingly. Even though the Black Coal Award’s classifications are broad enough to encompass trades workers, there is no guarantee that AMWU members engaged in such work will be recognised as being covered by the proposed Amendment. This means that the benefit of the proposed Amendment would not necessarily extend to all labour hire workers employed on a mine site.

The proposed Amendment, in what has been framed as a precautionary measure, will also apply to a number of Modern Awards that do not contain provisions allowing the employment of casuals. One such Award is the Nuclear Science and Technology Organisation (ANSTO) Enterprise Award 2016 (“ANSTO Award”).

As the union that represents technicians and maintenance staff employed by ANSTO, the AMWU agrees with the Senator that the safety needs of the industry requires “settled, trained staff”<sup>3</sup>. We support measures to ensure the ongoing training and development of workers at ANSTO. However there is no guarantee that the proposed Amendment will ensure that more training and development will be provided to existing staff. In addition, the AMWU notes that ANSTO has a history of being covered by enterprise agreements, with pay and conditions currently being determined by the *Australian Nuclear Science and Technology Organisation (ANSTO) Enterprise Agreement 2020 – 2023* (“ANSTO Agreement”). The ANSTO Agreement does allow for casual employment in limited circumstances.

Further, the AMWU is sceptical that the ability to employ casuals will automatically prevent the use of labour hire workers by employers who are seeking to reduce their labour costs. An employer who directly hires a casual employee is required to provide pay and conditions to that employee in accordance with any relevant industrial instrument – which includes casual loadings and various penalty rates. The base rates of pay offered to casuals may already be higher than that contained in a relevant Award. As well as the remuneration of the casual employee, employers may have other related employment costs – such as superannuation, workers compensation insurance, training and licencing – that apply to both permanent and casual workers. If an employer is seeking flexibility and lower labour costs, the use of labour hire is a more financially beneficial option for an employer, rather than hiring casuals.

As such, the proposed Amendment does not address any issues about job security of permanent workers, nor does it encourage the direct hire of casual workers.

## Conclusion

The AMWU believes that, while labour hire may serve a useful purpose in some industries at certain times, the use of labour hire as a source of cheap labour alongside directly hired workers is a practice that should be discouraged. As such, we strongly support the principle for Equal Pay and Conditions for workers performing the same job.

The proposed Amendment only provides some Equal Pay benefits to a limited number of workers in industries. As such, it is of limited benefit to members of the AMWU who are employed by labour hire companies.

---

<sup>3</sup> Explanatory Memorandum at Item 4, Second Reading Speech

The AMWU notes that the Government has indicated that it will legislate to improve conditions for labour hire workers. Rather than seeking to further amend Senator Roberts' proposed Amendment, the AMWU suggests that Senator Roberts should work with the Government to ensure that any forthcoming legislation addresses the needs of all workers for improved pay and conditions and job security.

Yours sincerely,

STEVE MURPHY  
NATIONAL SECRETARY