

Queensland Council of Unions

Submission

Inquiry into the exploitation of general
and specialist cleaners working in retail
chains for contracting or subcontracting
cleaning companies



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Introduction

The Queensland Council of Unions is the peak union body in Queensland. This submission is made in support of United Voice the union that covers contract cleaners. The submission provides an explanation of the contract cleaning industry with a particular emphasis on the lot of workers within that industry. This explanation is drawn from contemporary literature.

This submission also briefly addresses the terms of reference the Senate Standing Committee on Education and Employment has established.

The short time between the notification of this inquiry and the deadline for submission is noted. This has prevented the inclusion on specific case studies for this submission. The submission has therefore need to rely upon literature and submissions to previous inquiries in order to justify the brief answers we provide to the inquiry.

Nature of Contract Cleaning Industry

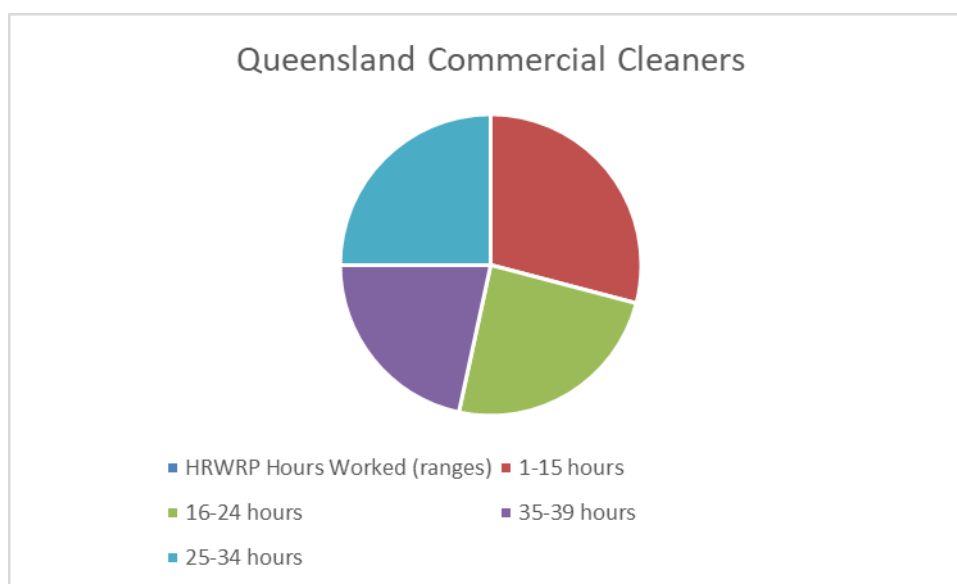
The Queensland Council of Unions has been involved in a number of inquiries that have been undertaken by the Queensland Government and/or Queensland Parliament that have been motivated by disturbing trends within the labour market over recent years. Of relevance to this line of inquiry has been inquiries into the labour hire industry (QCU 2016); a best practice review of Workplace Health and Safety Queensland (QCU 2017b); and most recently an inquiry into wage theft¹ (Queensland Parliament 2018). The QCU also participated in the Education and Employment References Committee into the incidence of, and trends in, corporate avoidance of the *Fair Work Act 2009* (QCU 2017a). The contract cleaning industry, along with a range of other industries were the subject of case studies referred to Education and Employment References Committee as examples of avoidance of the federal legislation intended to regulate employment (QCU 2017a:16).

¹ Submissions for the Wage Theft Inquiry are due 30 July 2018.

A number of the problems that have been identified in relation to these inquiries will intersect with the nature of the contract cleaning industry. The features of the contract cleaning industry, that will be described later in this submission, lend themselves to abuse of workers by contractors and their clients. As such contract cleaning provides a prime example of how labour market deregulation and the restriction on the activities of unions has resulted in deleterious results for workers (Campbell and Peeters 2008:39; Ryan and Herod 2006). In other words, contract cleaning has become associated with a race to the bottom (Barnes 2006:389; Howe and Landau 2009:579).

The extent of contract cleaning as an area of employment is not insubstantial (Campbell and Peeters 2008:29). Elsewhere it has been noted that much of the growth of employment has been in part time employment and that this in turn has contributed to a growth in underemployment in Australia. The following graphic demonstrates the hours worked by Commercial Cleaners in Queensland according to the 2016 Census (ABS 2016)

Figure 1 Hours of Work Queensland Commercial Cleaners



The nature of employment in contract cleaning, that will be discussed in this submission has contributed to that growth in part time employment and underemployment. In 2006 there were 112,607 persons working in the industry classification “commercial cleaning” of whom 95,270 (or 84.per cent) were employees (Campbell and Peeters 2008:31). This figure has increased by 12 per cent over the ten years to 2016 as 126,153 persons worked in commercial cleaning of whom 107,523 (or 85.2 per cent) were employees (ABS 2016). According to the 2016

Census, 23, 329 persons worked in commercial cleaning in Queensland. 1,056 persons worked in commercial cleaning in the retail trade whose place of usual residence is Queensland (ABS 2016).

The cleaning contract industry is well known for its cut-throat competition (Campbell and Peeters 2008:34; Watson et al 2003:128). Easy entry into the industry for employers (or principals) is ensured through a relatively small capital outlay (Campbell and Peeters 2008:29). Similarly, entry into the industry is easy for employees as there are no mandatory qualifications and language barriers are not an immediate problem (Campbell and Peeters 2008:30). This low entry point for workers has implications for the type of employee who finds themselves in contract cleaning. Traditionally associated with large numbers of women and mature-aged workers (Watson et al 2003:127), contract cleaning has also been a source of employment for workers from non-English speaking backgrounds (Campbell and Peeters 2008:30; Holley 2014:675). Contract cleaning therefore has been the source of employment to some of the more vulnerable workers in labour market (Campbell and Peeters 2008:42; Holley 2014:674). More recently the use of guest workers and workers on student visas has been a feature of employment within contract cleaning, evoking the description of “layers of vulnerability” that have been associated with guest workers (Holley 2014:679; Parliament of Australia 2016; QCU 2016; QCU 2017a; QCU 2017b).

Regulation of the contract cleaning industry is through contract for service. This use of contracts makes the enforcement of labour standards difficult (Campbell and Peeters 2008:39; Holley 2014:674). There is minimal monitoring of labour standards and it is rare that there is enforcement of labour standards. This combination leads to a high likelihood of non-compliance with minimum standards (Holley 2014:678).

Non-compliance, where it exists takes many forms. The most egregious forms of non-compliance will be a deliberate disregard of the relevant industrial instrument including a flat dollar cash-in-hand payment that avoids payment of any allowance or penalty rate; no superannuation contribution, no taxation deduction and entitlement to leave (Holley 2014:680). Unpaid overtime is also associated with the intensification of work that will be described further on in this submission (Holley 2014:678).

In some cases, this type of non-compliance is dressed up as the individual cleaners being independent contractors rather than employees in order to provide a legal basis for the non-compliance, no matter how spurious (Campbell and Peeters 2008:41). A recent reported case

of the use of purported independent contractors by a contractor providing cleaning services to Myer was found in a Fair Work Ombudsman prosecution of Pioneer Personnel Pty Ltd².

The incidence of contract cleaning has grown over time (Campbell and Peeters 2008:29). The outsourcing of functions, particularly by Government, has led to significant areas of cleaning that was once undertaken directly now be performed by contractors (Campbell and Peeters 2008; Holley 2014; Howe and Landau 2009). Those areas of directly employed cleaning (for example school cleaners) were usually associated with high levels of union membership (Holley 2014:675). Restraints on union activity and membership that were introduced by *Workplace Relations Act 1996* and similar state legislation have resulted in a substantially lower level of unionisation within cleaning (Campbell and Peeters 2008:32; Holley 2014:675; Howe and Landau 2009:576).

Prior to the WorkChoices takeover of private sector industrial relations by the Commonwealth, the contract cleaning industry was largely regulated by state awards (Campbell and Peeters 2008:32; Howe and Landau 2009:576). There has also been the use of statutory individual contracts and various forms of non-union agreements within the contract cleaning industry (Barnes 2006:389; Campbell and Peeters 2008; Watson et al 2003). Originating in Western Australia the use of non-union agreements has resulted in disastrous outcomes for workers in contract cleaning which is easily explained by the nature of the industry. In Western Australia under individual agreements, hourly rates of were reduced to a flat \$9 to \$11 per hour in the year 2000 where the award rate for Saturdays, Sundays and Public Holidays ranged from \$16.76 to \$27.93. There was a substantial decrease to the hours worked for cleaners and the formulas that had previously been established for school cleaners was abolished (Watson et al 2003:129).

The high level of competition has a series of implications. Profit margins are said to be in the order of five per cent which places constant pressure on contractors to keep costs, in particular labour costs to a minimum (Campbell and Peeters 2008:29; Jeff 2001). Labour costs are estimated to be in the order of 70 per cent of the total cost for a contractor (Holley 2014:679). In order to become and remain competitive, contractors will rely on strategies to undercut their market competitors (Campbell and Peeters 2008:39; Watson et al 2003:128). Contractor will bid low during the tender process to get the work and then figure out a way to “make it work” after being awarded the contract (Campbell and Peeters 2008:39). This will take the form of

² Fair Work Ombudsman v Pioneer Personnel Pty Ltd [2017] FCCA 3223 (19 December 2017)

either undercutting labour costs or intensifying work. In either case the price of competition is borne by the worker. Intensification of work will be manifested in:

- a reduction of hours in which the same amount of cleaning is to be done;
- adding further work to be included in the same number of hours; or
- a combination of both (Campbell and Peeters 2008:40).

Where work is increased and the hours permitted to perform the tasks remain the same, the cleaner is left with the choice of performing unpaid overtime to maintain the level of quality expected by the client or to allow standards to slip (Holley 2016:678). The obvious repercussion for the cleaner who opts to allow standards to slip is to face some form of disciplinary sanction including the termination of their employment. Fear of reprisal is a common reason for the under-reporting of non-compliance with industrial instruments as well as injuries (Holley 2014:678). Cleaners will fail to report injuries as they have seen the results where their colleagues report an injury and end up having to retire or otherwise leave the workforce (Holley 2014:678).

Contract cleaning is associated with low pay. Low pay is not only as a result of the low hourly rate of pay for workers but also the shortage of hours available for the worker exacerbates low rates of pay (Campbell and Peeters 2008:34; LHMU 2006; Watson et al 2003:128). A product of the intensification of work described elsewhere, the part time nature of contract cleaning enables the extraction of maximum effort from workers in short periods of time. Another by-product of work intensification is the high incidence of unpaid overtime associated with contract cleaning.

Teams of workers are assembled by successful contractors to perform work at a particular work site. Workers may be drawn from the contractors existing workforce or may recruited for the purpose of that contract. This structure of employment is in itself precarious as the worker's employment is likely to be contingent upon the success of the contractor winning and holding on to the contract (Campbell and Peeters 2008:35). In addition, the cleaner is faced with the triangulated relationship that has been associated with labour hire in which the cleaner is performing work for the client whilst technically being an employee of the contractor. The existence of two bosses has the capacity for capricious treatment of workers where the client is immune from any legal repercussions and the contractor will be more than willing to sacrifice a worker in order to keep the contract (QCU 2016).

The use of subcontractors and labour hire have been associated with some of the less savoury employment practices that have arisen over recent years. The complexity of relationships between individual workers, their employers at law and the organisations for whom the work is performed has clouded the capacity of workers, unions and regulators to be able to pursue workers' legal entitlements let alone improve matters by collective bargaining (QCU 2016; 2017a). The use of subcontracting and labour hire is also prevalent in the contract cleaning industry and generally associated with attempts to illegally undercut workers' conditions of employment (Campbell and Peeters 2008:29; Holley 2014:674). The following quotes summarises one example that reported in the media in 2003:

Subcontracting is often mentioned as an indirect mechanism for bypassing award standards. Subcontracting can be fully above-board, but its survival and spread seems to derive from the opportunities it provides for fostering illegal practices. Thus, the chain of subcontracting at ever-reduced prices trails away into a shadowy realm of small firms and individuals, where illegal practices can be pursued without much risk of detection or protest. Wynhausen (2003)³ cites an example of a supermarket chain (Woolworths), which organises its tenders through a procurement company (Cyberlynx), which grants tenders to a company (Jae My), which subcontracts to other companies (unnamed), which then pay their workers below the award rate. In this way subcontracting clearly becomes a vehicle for illegal practices (Campbell and Peeters 2008:42).

A further and more recent example was provided to an inquiry to the Education and Employment References Committee into the incidence of, and trends in, corporate avoidance of *the Fair Work Act 2009*. At the Brisbane hearing on 20 April 2017, the story of Fiona and Brian was related to the committee wherein the couple worked side by side cleaning the Peninsula Fair Shopping Centre at Kippa Ring north of Brisbane. Fiona was performing identical work to Brian but was being paid about \$100 per week less than the award rate because she had been engaged through a labour hire company that had been applying the terms of a WorkChoices era agreement that provided a flat hourly rate of pay.

³ "Dirty Deeds Done Dirt Cheap" Weekend Australian 19 November 2003

Terms of Reference

The following comments are made in relation to the terms of reference and are based on the general understanding of the contract cleaning industry derived from the previous discussion in the submission.

- (a) *frameworks at both Commonwealth and industry level to protect workers from harm, including exploitation, wage theft, underpayment, wage stagnation and workplace injury;*

It is apparent that the current regulatory framework has been insufficient to protect workers in the contract cleaning industry. Where statutory individual contracts (such as AWAs) have been used in contract cleaning they have been disastrous for workers. Restrictions on unions introduced in previous legislation, much of which remains today, prevents unions from effectively organising this industry.

- (b) *measures designed to ensure workers have adequate representation and knowledge of their rights;*

Anecdotally we have been told of United Voice officials being denied entry to shopping centres to prevent contact with workers in this industry. It would therefore appear that there are deliberate efforts to prevent workers in this industry from obtaining adequate representation and knowledge of their rights.

- (c) *compliance with relevant workplace and taxation laws, including the effectiveness and adequacy of agencies such as the Fair Work Ombudsman and the Australian Taxation Office;*

There has been little attention paid to contract cleaning by commonwealth agencies. We are unaware of current campaigns by the FWO or the ATO towards ensuring compliance in contracting cleaning generally or within the retail trade by these agencies.

(d) *practices including 'phoenixing' and pyramid subcontracting; and*

As mentioned above, subcontracting and labour hire is also prevalent in the contract cleaning industry and generally associated with attempts to illegally undercut workers' conditions of employment.

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