NATIONAL UNION OF WORKERS

UNITY IS STRENGTH.

Submission Number: 7
Date Received: 01/02/2013

TN:RB

13A-009

1 February, 2013

Secretary
Standing Committee on Education and Employment
House of Representatives
PO Box 6021
Parliament House
Canberra, ACT 2006

Dear Secretary,

Re: Fair Work (Tackling Job Insecurity) Bill 2012

Please find attached the National Union of Worker's submission into the Standing Committee on Education and Employment's inquiry into the Fair Work (Tackling Job Insecurity) Bill 2012.

The National Union of Workers welcomes an inquiry into the bill and if required will send representatives to further outline the recommendations we have made in our written submission.

Yours faithfully,

CHARLES DONNELLY
GENERAL SECRETARY

nuwassist
1300 275 689
nuw.org.au
FOR WORKPLACE SUPPORT

National PO Box 343, North Melbourne VIC 3051
VIC PO Box 343, North Melbourne VIC 3051
NSW 3-5 Bridge Street, Granville NSW 2142
QLD 1st Floor, 17 Cribb Street, Milton QLD 4064
SA 46 Greenhill Rd, Wayville SA 5034
WA 63 Railway Pde, Mount Lawley WA 6050

NATIONAL UNION OF WORKERS

UNITY IS STRENGTH.

NATIONAL UNION OF WORKERS SUBMISSION TO THE FAIR WORK (TACKLING JOB INSECURITY) BILL 2012

NATIONAL UNION OF WORKERS

Contents

Glossary

Act – Fair Work Act 2009 (Cth)
AEC – Australian Electoral Commission
ACTU – Australian Council of Trade Unions
ASIC – Australian Security and Investment Commission
Bill- Fair Work (Tackling Job Insecurity) Bill 2012
FWC – Fair Work Commission
FWO- Office of the Fair Work Ombudsmen
NUW - National Union of Workers
OECD – Organisation for Economic Coordination and Development
WRA – Workplace Relations Act 1996 (Cth)

NATIONAL UNION OF WORKERS

BACKGROUND

The NUW is a large Australian trade union registered under the Fair Work (Registered Organisation) Act 2005.

We represent both permanent and casual workers in a range of industries including warehousing, logistics, food processing, manufacturing, poultry, defence logistics, dairy, market research and call centres.

In this submission, the NUW has chosen to expand upon the proposals raised in the private members bill to focus on two key areas of concern it has with the current regulation.

NATIONAL UNION OF WORKERS

SUMMARY

Any initiative including a bill to tackle job insecurity is welcomed by the NUW.

The private member's bill's objective; to create opportunities for casual and contract employees, to acquire full time or part time roles with their employer if the workers desire greater job security, is supported by the NUW.

The aims of the bill are commendable. A recent survey of our casual members indicates that 80% would take a permanent role if they were offered one.[1]

This submission, while broadly supportive of the bills objective, aims to offer constructive amendments that will ensure casual employment is only utilised to provide short term flexibility to employers in times of high demand rather than to shift risk onto a vulnerable section of the workforce.

The NUW believes that providing for a mandatory casual conversion clause in all enterprise agreements will achieve one of the objectives of the bill by providing workers with the opportunity to take up permanent work after a period of ongoing employment with the one employer.

Such a clause can be enforced by employees and their representatives and will only require input from the Fair Work Commission in cases of non compliance. The NUW believes this kind of clause is preferable to the Secure Employment Order system outlined in the Bill because it would be easier for employees to enforce and will not require significant engagement with the Fair Work Commission and the commensurate expenditure of resources.

The NUW is concerned that the Bill put forward does not adequately address current legislative gaps that allow third party employment arrangements to erode employment protection, employment conditions and the collective bargaining rights for a growing percentage of the workforce.

Our submission proposes a licensing system for the current unregulated labour hire industry. A licensing system which is monitored by a compliance unit located within either ASIC or the FWO would better ensure companies providing third party labour are adequately capitalised to protect the employment rights of the workers they employ. If properly equipped, a compliance unit can also ensure labour hire agencies are adhering to industrial relations, taxation, and migration legislative instruments and statute.

In line with such a licensing system, the NUW proposes significant amendments to the Act to ensure collective bargaining rights cover and apply to all insecure workers employed under third party arrangements and via outsourced supply chains.

Workers in third party employment arrangements should automatically be guaranteed dual employment rights to ensure that they receive the same wages and conditions as directly employed workers doing the same work for the same host employer. This would remove the incentive for employers to source employees via labour hire agencies simply to avoid their

employer responsibilities. This would be best achieved by providing for a mandatory job security term in all enterprise agreements.

The NUW also believes workers taking protected industrial action or those locked out by an employer should not be able to be replaced by third party employees. An employer who can source workers from a third party during an industrial dispute has fewer obligations to bargain in good faith and can maintain their operating capacity with an alternative workforce.

The NUW believes collective bargaining should be expanded beyond the enterprise level in order to tackle issues associated with job insecurity such as work organisation, training & skill development, work and family issues and the regularisation of contingent or insecure forms of employment. Comparable collective bargaining systems throughout the OECD promote bargaining at the industry or sectoral level. Through such bargaining, the interests of employers for enhanced productivity and flexibility with those of workers for income and employment security and equal treatment can be best reconciled. Change management and innovative solutions can be developed from here.

RECOMMENDATIONS

1) That the Act requires all enterprise agreements to include a casual employee conversion clause. This would provide for casual workers, whether directly engaged by an employer at an enterprise or not, who are employed on a regular basis for 6 months to be offered permanent employment with a host employer.

2) That a national licensing system be set up for labour hire agencies, where:

   i) ASIC, the FWO or another appropriate regulatory authority should be given powers to establish a compliance unit to:

      a) Create a registration process, which labour hire agencies must complete before commencing business.
      b) Ensure labour hire agencies are adhering to industrial relations, taxation and migration legislative instruments and statute as well as meeting performance standards under occupational health and safety regulations.
      c) Develop and monitor a regular reporting process and capitalisation requirement that labour hire agencies must meet to operate.

3) The following amendments should occur to ensure the Act provides casual workers with genuine collective bargaining rights:

   i) The Act should protect workers in indirect employment relationships by providing a dual employment guarantee, which ensures wages and conditions in a collective agreement apply to all workers employed on the site of a host employer regardless of whether or not they are directly employed.

ii) The bargaining framework should not differentiate between direct and indirect employees. Third party workers should have full voting rights in an agreement that determines their employment standards.

iii) The Act's collective bargaining provisions need to be expanded to better facilitate multi-business, industry and sector-level bargaining. A strict focus on enterprise level bargaining permits irresponsible economic behaviour in which the legal identity of the employer is separated from the real source of economic power and control.

iv) Host companies to be prevented from sourcing outside labour during protected industrial action and lockouts.

v) Protected action provisions to be amended to allow workers to take collective action in support of job security between bargains.

Employee Conversion Clause

1) **That the Act requires all enterprise agreements to include a casual employee conversion clause. This would provide for casual workers, whether directly engaged by an employer at an enterprise or not, who are employed on a regular basis for 6 months to be offered permanent employment with a host employer.**

This could be achieved by the insertion of a new section in Division 5 of Part 2-4 of the Act (Mandatory terms of enterprise agreements) in the following terms:

205A Enterprise agreements to include a casual conversion term etc.

Casual conversion term must be included in an enterprise agreement

*(1) An enterprise agreement must include a term (a **casual conversion term**) that:*

(a) requires the employer or employers to which the agreement applies to offer permanent employment to any casual worker, whether directly employed by the employer or employers or not, who has, on a regular basis for a period of longer than six months, performed work which is work that is performed by employees covered by the agreement.

Model casual conversion term

(2) If an enterprise agreement does not include a casual conversion term, the model casual conversion term is taken to be a term of the agreement.

*(3) The regulations must prescribe the **model casual conversion term** for enterprise agreements.*

The following casual conversion clause is an adaption of that which is currently used by the NUW as a model agreement clause. It is our view that this should be included in the Act.

1.1.1. In order to enhance job security, it is an objective of this Agreement to maximise the use of permanent employment at the enterprise. Casual workers, whether directly engaged by the Employer or not, who are employed on a regular basis for a period of longer than ***six months*** will be offered permanent employment.

A provision such as this can ensure that casual conversion clauses can be policed by employees and their representatives and would only require input from the Fair Work Commission in cases of non compliance.

This type of clause is straight forward and easily understood by both employees and employers. It sets a requirement that recognises the right of employers to employ workers casually but also establishes a reasonable standard period of casual employment.

The following should also be included to ensure employers do not deliberately avoid converting workers from casual to permanent status.

An employer shall not dismiss any casual employee in order to avoid the rights of those employees under this clause. Further, it will not take any action (directly or indirectly) in relation to indirectly engaged employees that would seek to avoid compliance with the terms of this clause.

Licensing System

2) That a national licensing system be set up for labour hire agencies, where:

i) ASIC, the FWO or another appropriate regulatory authority should be given powers to establish a compliance unit to:

a) Create a registration process, which labour hire agencies must complete before commencing business.
b) Ensure labour hire agencies are adhering to industrial relations, taxation and migration legislative instruments and statute as well as meeting performance standards under occupational health and safety regulations.
c) Develop and monitor a regular reporting process and capitalisation requirement that labour hire agencies must meet to operate.

Australia has the highest number of workers exempt from employment protection in the OECD.

One of the major reasons for this is that the Act does not specifically acknowledge third party labour hire employers or their role in the industrial relations system. Without a licensing system which regulates the way labour hire and other third party employers can be used, Australia will continue to be home to the highest number of workers employed on casual contracts that exempt them from employment protection in the OECD. [2]

As the workers' statements later in this submission illustrate, many employers in Australia are implementing employment models initially developed in the US to circumvent good faith collective bargaining obligations.[3] These employment models are largely dependent on the lack of employment protection afforded to workers employed by third party employers on a casual basis.[4] The use of these employment models in the United States is particularly relevant because that country has utilised a system of employment law built around enterprise level bargaining for far longer than Australia, with enterprise bargaining in the US dating back to the 1935 National Labor Relations Act.[5]

In a number of countries throughout the OECD, including Canada, Korea, Japan, Germany, Austria, Spain, Luxembourg, the Netherlands, Sweden, Belgium, France, Italy and Portugal, either a licensing system or a code of conduct for labour hire employers enables proper employment protection for not only permanent workers but also labour hire and contract workers.[6]

There are over 2000 labour hire agencies operating in Australia. Outside of a core group of well capitalised operations, the majority of agencies are small operations, which offer little in the way of human resources expertise. These agencies provide an outlet for managers looking to shift risk onto employees rather than investing in their operations. The NUW has witnessed numerous

instances where labour hire agencies obtain work contracts with host employers by exploiting relationships between human resource managers often established via previous employment relationships. In these situations, the agency human resource manager will often work closely with the host company human resource manager to stifle workers rights and employment conditions; utilising the lack of legislative protection for third party casual employees.

Workers become vulnerable to a reduction in work hours and subsequently the equivalent of termination if they attempt to collectively bargain, workers employed by small, poorly capitalised labour hire agencies are at risk of being denied their full pay as agencies exploit their vulnerability by not properly adhering to industry awards and workplace agreements. The lack of any regulation or industry specific statutory reporting requirements for agencies makes it easy for unscrupulous operators to ignore their obligations to workers.

Moreover poorly capitalised operations are more vulnerable to financial shocks and are less likely to have adequate risk mitigation strategies, leaving workers to suffer the consequences if they face bankruptcy and are unable to pay wages and entitlements.

Many labour hire agencies chase small margin work and choose not to apply correct classifications and avoid payment of shift loadings and penalties. The lack of capitalisation requirements makes it very easy to enter the labour hire market and disadvantages those agencies that adhere to legislative requirements. This leaves vulnerable labour hire agency workers out of pocket.

A licensing system which is monitored by a compliance unit within a statutory body will better ensure companies providing third party labour are adequately capitalised to protect the employment rights of the workers they employ. If properly equipped, a compliance unit can also ensure labour hire agencies are adhering to industrial relations, taxation, and migration legislative instruments and statute.

Case study of a licensing system- Labour hire agency obligation in France

In France a labour hire agency must be authorised by the regional labour inspectorate and must provide financial guarantees as well as monthly information on host employers and temporary agency workers as well as quarterly information on social security contributions. Labour hire contracts run for a minimum of 18 months and temporary labour hire workers are provided with training that allows them to gain permanent work in the future.[7] Host employers are responsible for the employment conditions of labour hire workers and a fixed term contract between an agency worker and an agency provides that worker with unfair dismissal protection equivalent to that of a permanently employed worker.

French law also obliges labour hire companies to set up their own staff and health and safety committees additional to those set up by host companies, which labour hire employees can be represented on if they wish. Labour hire employees also have the right to collectively bargain alongside employees directly employed by host companies and participate in health and safety committees set up in these host companies.

While there is a place for casual employment in the industrial relations system, adequate protection of employee rights needs to be developed to ensure all Australians have the right to collectively

bargain regardless of their employment status. Despite its stated objective, the current Act does not provide such protection.

In workplaces throughout Australia short-term productivity gains are being extracted from expendable casual employees who the host companies do not directly employ. While such intensity driven productivity gains may benefit companies in the short term, the workers' statements which appear later in this submission illustrate that such an employment model contradicts the objectives of the Act by failing to provide fairness and equity in the workplace.

An employment model dependent on the extraction of short-term productivity gains from casual employees also allows employers to neglect sustainable long term productivity enhancing investment. Legitimate productivity is driven by efficiency gains that are beneficial for employers and employees as well as the overall Australian economy. It is widely accepted by economists that true productivity is achieved through investment by employers in skills training, facilities and equipment and by governments in infrastructure.[8] In contrast, any intensity driven productivity gains that depend on an indirect employment model come at a cost to employees who don't share in productivity gains and the overall economy, which could be left with a less skilled and more transient and under skilled workforce.

Dual Employment and Expanded Bargaining Rights

3) The following amendments should occur to ensure the Act provides casual workers with genuine collective bargaining rights:

- **i) The Act should protect workers in indirect employment relationships by providing a dual employment guarantee, which ensures wages and conditions in a collective agreement apply to all workers employed on the site of a host employer regardless of whether or not they are directly employed.**
- **ii) The bargaining framework should not differentiate between direct and indirect employees. Third party workers should have full voting rights in an agreement that determines their employment standards.**
- **iii) The Act's collective bargaining provisions need to be expanded to better facilitate multi-business, industry and sector-level bargaining. A strict focus on enterprise level bargaining permits irresponsible economic behaviour in which the legal identity of the employer is separated from the real source of economic power and control.**
- **iv) Host companies to be prevented from sourcing outside labour during protected industrial action and lockouts.**
- **v) Protected action provisions to be amended to allow workers to take collective action in support of job security between bargains.**

If the Job Security term outlined below was included in the Act, it would ensure employees hired by a third party receive the same entitlements as workers employed directly. Such a clause would improve the ability of insecure works to bargain collectively with the real source of economic power in their employment relationship.

This could be achieved by the insertion of a new section in Division 5 of Part 2-4 of the Act (Mandatory terms of enterprise agreements) in the following terms:

205AA Enterprise agreements to include a job security term etc.

Job security term must be included in an enterprise agreement

*(1) An enterprise agreement must include a term (a **job security term**) that:*

(a) requires direct, permanent engagement to be the principle and preferred method of employment of the employer or employers to which the agreement applies;

(b) requires the employer or employers to which the agreement applies to employ no less than ten permanent employees for every casual worker, whether directly engaged or not, who performs work which is work that is performed by employees covered by the agreement;

(c) requires the employer or employers to which the agreement applies to ensure that workers who perform work that is performed by employees covered by the agreement receive wages and conditions which are no less favourable than the wages and conditions of employees covered by the agreement.

Model job security term

(2) If an enterprise agreement does not include a job security term, the model job security term is taken to be a term of the agreement.

*(3) The regulations must prescribe the **model job security term** for enterprise agreements.*

Model Job Security Term

In order to:

- enhance job security,
- ensure a high standard of occupational health and safety, and
- and encourage career development,

direct, permanent engagement shall be the principle and preferred method of employment.

In the event casual employees are required direct engagement will be the preferred method of employment.

Supplementary labour (labour hire) may be utilised as a last resort to meet the extraordinary and/or short-term operational requirements of the Employer.

The Employer agrees that it is highly important that work is performed effectively, efficiently and without undue pressure or bullying, and in a way that promotes OHS, equal opportunity and freedom of association principles and practices in the workplace. The Employer will ensure that its employment practices are consistent with these principles.

There shall be not less than ten permanent employees for every one casual employee, whether directly engaged by the employer or not.

Supplementary labour (labour hire)

The Employer agrees that work that is performed by persons who are not directly employed by the employer and that would otherwise be covered by this Agreement will only be accepted by the Employer if those persons who perform the work receive wages and conditions that are no less favourable than that provided for in this Agreement.

Where the employer makes a definite decision that it intends to engage labour hire companies to perform work covered by the Agreement, the Employer will consult with the employees and the Union prior to engaging a Labour Hire Provider or a new Labour Hire Provider as the case may be. For the purpose of the consultation, the Employer must inform the employees and their representatives of:

(A) the name of the proposed labour hire company;

(B) the type of work proposed to be given to the labour hire company;

(C) the number of persons and qualifications of the persons the proposed labour hire company may engage to perform the work;

(D) the likely duration of engagement of the labour hire employees; and

(E) inductions and facilities for labour hire employees.

In the normal course, it is expected that consultation will occur within the 14 days leading up to the commencement of the work by the contractors / labour hire employees. If for any reason this does not occur, or if the Employer has less than 14 days' notice of the need to commence the work, consultation will occur as soon as reasonably practicable – and in any case not more than 14 days after the contractors / labour hire employees commence work.

If any concerns are raised about the Labour Hire Provider during the life of the Agreement, the Employer, employees and the Union will confer with the aim of resolving these concerns, including reviewing the engagement of the Labour Hire Provider.

No employee shall be made redundant whilst labour hire employees, contractors and/or employees of contractors, engaged by the Employer, are performing work that is or has been performed by the Employees on the particular site or project.

The Limitations of Enterprise Level Bargaining

With the noted exception of the market research and call centre industries, employers in nearly all industries covered by the NUW employ a significant percentage of their workforce indirectly either through labour hire companies or as dependent contractors.

An enterprise level bargaining system with no proper legislative framework to deal with indirect and casual employment and no regulation of the labour hire industry encourages companies to shift risk onto casual employees.

Under the current enterprise bargaining framework, a company that commits to employing its workers part time or full time is obliged to pay sick pay, annual leave entitlements and bargain collectively with its workers. While a company that chooses to employ a large majority of casuals through a third party and utilise labour hire providers can ensure it keeps wages low by avoiding having to collectively bargain with the workers employed to produce its commodities or provide its services.

This has flow on effects for the overall economy because casual workers are less likely to receive adequate training and host employers are less likely to invest in upskilling workers that are employed indirectly. This creates industry wide skills shortages and creates an environment where cut throat competition around labour costs removes the incentive for companies to invest. Companies that do commit to secure jobs are at a comparative disadvantage and cannot attract investment or credit to compete with competitors shifting risk onto employers.

In several industries represented by the NUW outsourcing has extended beyond third party labour agencies to supply chain solution operations on contracts.

The Growing Trend of Outsourcing to Third Party Logistics Companies

Many of the NUW's members work for third party logistics providers (for example Toll, Linfox and DHL).

The use of an indirect employment models has increased as more companies have chosen to outsource part of their overall production to specialist third party logistics companies. These third party logistics companies generally operate an arm of a host company's business on a contract basis for a set period of time. This encourages the widespread use of labour hire workers and enables third party logistics operators to use Greenfield agreements, which in turn allows them to access an unorganised workforce and places no obligations on them to hire workers permanently or directly.

Companies that use this kind of business model are far less likely to invest in skills training for temporarily employed workers, which is likely to have a negative impact on productivity in the overall economy as a larger group of workers partake in transient unskilled work. The often relatively short-term nature of logistics contracts makes it harder for workers to organise industrially, and places them in the precarious position of depending on the logistics company being able to renew their contract with the host company to ensure their employment. Any intensity based productivity gains extracted from these workers by third party logistics companies only benefit the "bottom line" of both the host company and the third party logistics provider.

Australian Council of Trade Unions Assistant Secretary Tim Lyons pointed out in a recent speech given to the Macquarie University's Centre for Workplace Futures that "Multi-employer bargaining systems recognise the basic logic that in many cases nation-wide challenges are best dealt with through negotiations at the national level, and that industry wide issues are best addressed on an industry basis."[9]

Lyons points out that OECD countries are largely moving towards expanding collective bargaining rather than restricting it to the enterprise. "Issues such as work organisation, training & skill development, work and family issues and the regularisation of contingent or insecure forms of employment are increasingly being recognised by unions and employers as areas well-suited to bargaining at the industry or sectoral level. Through bargaining, the interests of employers for enhanced productivity and flexibility with those of workers for income and employment security and equal treatment can be best reconciled, change best managed, and innovative solutions developed."[10]

In Australia, the shift of risk onto vulnerable insecure workers is allowing companies to remain profitable without the overall productivity improving. The increased use of labour hire workers on short term consignments has paralysed the forward planning capabilities of a growing number of managers contributing to reduced overall productivity. The number of workers who are under employed is on the rise and Australia's workforce is operating well below its capacity.

The legislative loophole, which allows companies to outsource their employment obligations to third parties, either through labour hire engagement or a supply chain solution model stifles the possibility of a co-operative approach to investment in the workforce to bring about greater productivity. It is only through bargaining at an industry level that we will see cut throat competition between employers over labour costs removed.

Protected action provisions and outsourcing to a third party

A system that retains enterprise bargaining as its core aim will encourage companies to use third party supply chain solutions and third party operators that can access Greenfield agreements.

Protected action provisions need to be amended so that workers who have their work outsourced to a third party supplier in a new location can take collective action to support job security between bargains.

A company should not have the right to terminate an entire workforce just because it has outsourced its operation to a third party.

Third party labour and industrial disputes

The role third parties can play in undermining collective bargaining rights if they are not properly regulated extends to the role they play in industrial disputes. The Act enables, subject to the appropriate prerequisites, workers to take protected industrial action during bargaining negotiations for a new agreement. This enables employees to withdraw their labour to strengthen their bargaining power in pursuit of legitimate claims for improved wages and employment conditions. The Act however places no restrictions on employers sourcing third party labour to replace their existing workforce during the bargaining phase. As a result the effectiveness of collective industrial action is somewhat diminished, particularly in low skilled occupations.

The NUW believes employers should be prevented from deploying third party employees during an industrial dispute. Such a restriction is likely to reduce the number of days lost to industrial disputes as employers and employees in all probability will be likely to resolve a dispute much faster than they are at present.

For example, in February 2012, Schweppes locked 150 workers out of its production facility in Tullamarine for eight weeks in response to legally protected overtime bans during bargaining. Schweppes kept the facility running throughout the eight week period using third party labour. This essentially enabled the company to avoid bargaining and prolonged the dispute by allowing the company to avoid bargaining with its workforce.[11]

Restrictions on the use of labour hire to prolong industrial action – the Canadian experience

Canada has an enterprise bargaining based employment law model similar to the one used in Australia. Canada, much like the United States of America has a long history of enterprise bargaining, which dates back to the 1940s.[12] In some but not all Canadian provinces, if a majority group of workers choose to utilise their freedom of association by electing a union to represent them in a workplace, all workers in that workplace are then obliged to respect the union as their bargaining agent for that site.[13] What this means in practice is that if workers choose to take industrial action during a bargaining period, the employer cannot replace them with labour hire or other casual workers sourced from outside the workplace. This also stands during employer lockouts.[14] This aspect of Canadian law respects the ILO's Committee on Freedom of Association guidelines in this regard.[15]

In Australia in 2011-12 there was a noted increase in the number of employer lockouts.[16] The Canadian provision used to restrict the use of labour hire workers as a replacement workforce during industrial disputes has been effective in reducing the length of industrial disputes and forcing employers to bargain in good faith rather than try to force arbitration through extended lockouts.[17]

Lack of bargaining rights for casual workers

An indirectly employed labour hire worker can lose their job in a host company without being dismissed by simply having their hours of work removed. Workers' statements later in this portion of the submission show that casual labour hire workers are often working without the proper employment protection rights enjoyed by directly employed part-time and full-time workers and can have their hours reduced or taken away all together for questioning unfair treatment or work procedures.

The current Act enables employers to adopt an employment model which leaves indirectly employed workers open to complete loss of hours, the equivalent of dismissal, if they take time off when sick, to care for sick children or family members or to attend funerals. This not only leaves workers open to unfair treatment and discrimination, but also damages the work-life balance of indirectly employed workers and our ability to function as a community. The Act does not provide casual workers with anything akin to the unfair dismissal protection, which permanent workers receive.

Moreover a casualised workforce that requests for an employer to collectively bargain in good faith are also open to complete loss of hours. Good faith bargaining orders are limited when the entire workforce is employed casually.

From the mouth of indirectly employed workers who have no employment protection

The following statements given by third party labour hire workers illustrate the effect that third party employment models are having on the transient workforce, and are being used by employers to undermine one of the key objectives of the Act, the right of workers to collectively bargain.

At their site inductions, labour hire employees are often told that they will win conversion to direct full time employment if they meet the expectations of the host company. Labour hire employees are then ranked in terms of their speed and any worker who takes time off because they are sick, has had issues outside of work or even takes an unscheduled toilet break is quickly moved on. Workers who have been injured at work have had their hours cut afterwards. These labour hire workers are being stripped of any ability to bargain with the employer for fairness, safety and equity in the workplace.

The following statements were made by labour hire workers employed on National Union of Workers sites[18]:

1. *I've never worked for someone like that. They have different ideas of how to treat people. The turnover of staff is unbelievable. 5 weeks ago there were 18 in my [induction] group and only 3 are left. Everyone comes and goes there are different people everyday. They shorten the hours and send people home. We are not allowed to listen to the radio or to wear singlets that show arms even though it's really hot. We are not allowed to chew gum and have to leave phones in the car. There is a lot of pressure to work hard because people are always getting fired.*

2 *I didn't feel secure there. Each morning there was a tool box meeting, only supervisors were allowed to talk at these meetings and they talked about targets and acted intimidating to anyone who spoke up. People who did speak up were not seen again after that shift. There was a pick rate some people would do well and pick more than most and then supervisors raised the bar setting new targets. We were on the clock with the pick rates and there was no conversation allowed.*

3. *That was a harassment driven kind of environment, it was too rough, the work was very hard for the pay, I see the OH&S and I don't feel safe.*

4. *They stopped giving me shifts. I took a few days off sick and they stopped calling.*

5. *I could just tell from previous experience, that it would have a constantly high turnover off staff, and that you would be worked to the bone and I knew I wouldn't get full-time. I've since spoken to guys who still work there and they are all looking for new jobs.*

6. *I had an urgent personal situation so could not attend the first shift. I was not able to get a shift after that.*

7. *I went to get a panadol out of the car for my headache. They sacked me for doing it on their time. Wages have dropped for a casual. I heard before I started that they would go through their staff chronically.*

8. *It was slave labour and they talked to you like it was nothing. Come Friday they just keep you on standby for Monday. I called them Sunday and they wouldn't confirm anything, they call you at 4:30 or 5 in the morning. They were paying peanuts and the rates were really high.*

9. *I was injured and then they didn't give me shifts after that. I hurt my ankle and I didn't take time off, I had one sick day to recover but they didn't put me back on again.*

10. *I hurt my back. I agreed with the supervisor that I should go home. I called my labour hire agency and told them I needed a week off. They put me on standby and never called me back.*

11. *I had a family emergency i.e.: my sister had her tonsils swell up and she couldn't breath, she nearly died she couldn't breath and was going blue, I took her to emergency room, I had no choice I had to help or let her die. I had paper work to confirm this but they wouldn't even look at it, and they just told me to not bother coming back.*

12. *They let me go because I had to take time off as my son was hit by a car.*

13. *The agency told me I was no longer employed as I had too many toilet breaks.*

14. *They stopped calling me after I took a day off for a funeral. The agency said they don't know what happened.*

15. *It's like being a slave.*

16. *Once I finish up, I won't be working there after Christmas. I'm working in lay-buys. The way they run the place lacks organisational skills; they put pressure on you to work faster. They want you to do it fast and rush you they said if you don't want to keep the pace up there is always someone ready to come in and fill your shoes*

17. *I felt like a number. I had a serious issue with my family and I went home, the day shift supervisor didn't want me to and he had it in for me after that. His attitude generally was bad both before and after the incident but I only have one family that was the thing*

The indirect employment model used on sites enables host companies to stifle attempts by the workforce to build collective strength in order to effectively collectively bargain. As indirectly employed casuals, the majority of workers don't need to be dismissed to lose their jobs. The company can simply choose not to give work to anyone who demands fairness and equity in the workplace. Not only have elected union delegates had their hours reduced, others have also had their hours cut for questioning unfair treatment or work systems.

1. *They dismissed me for lack of integrity. This occurred after they found out I was going to be a union delegate.*

2. *They gave me the flick because they found out that I worked at the old site that closed down. I was a full time worker for ten years there, and when we were worried that the site was closing down, I was involved with the NUW, and wrote a letter protesting the way we were being treated and I got 160 out of 200 employees to sign it. When I got the casual job through the labour hire company, they told me I had the job, but soon after starting one of the guys who was a manager at the old site saw me and the next day I got a phone call telling me not to come in tomorrow as I didn't fit the bill and they no longer wanted to employ me.*

3. *Should be able to alternate tasks at work. There is no rotation, which is unfair. Pickers and Checkers are unfairly differentiated.*

4. *They are not fair. They are rude and abrupt and very strict. The number of safety issues people are having is too high and if they question things they lose their jobs. You have an accident on the forklift and then you lose your job. 10 minutes is not enough training*

5. *They have a lot of discrimination, they favour people, I wont say it's exactly racism but they have their favourites. Also because of who is friends with who.*

6. *There is no job rotation and it's so monotonous.*

7. *I've been working everyday since I started there in April and worked at their other site too. I thought after 3 months they were going to have a talk to me about my performance and I'd go to full time. That's what it said on my application and its way past 3 months. If they are not going to offer me full-time, be open and let me know where I stand. Communicate with me.*

8. *It's hard on the people, you open your mouth and there are consequences.*

9. *There is unrest in the pick area. It has unsettled many workers. One guy got the sack over KPIs according to rumours. Safety issues also led to another sacking. Casuals are easy to flick, and that's exactly what's been happening. You can't actually have your say without worrying about coming in tomorrow.*

10. *I have worked at better places. They use and then let go casuals*

11. *The morale of workers is really bad. They treat workers like statistics not people.*

12. *One of the team leaders would get angry and put us on standby if we were one minute late back from a break. That happened at the time we were having the election for the delegates. He was absolutely coming down on us for stupid reasons.*

Conclusion

The NUW welcomes this legislative attempt to tackle job insecurity. This submission aims to simplify pathways to secure employment for casual and contract workers and address legislative gaps around third party employment which contribute to job insecurity.

NATIONAL UNION OF WORKERS

ENDNOTES

[1] NUW Assist Outbound Phone Survey, Completed with 400 Casual Members of the Union, February 2011
[2] Danielle Venn, *Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators, www.oecd.org/els/workingpapers, 2009, p26*
[3] Dave Jamieson, *The New Blue Collar: Temporary Work, Lasting Poverty and the American Warehouse*, The Huffington Post Business, December 20 2011 (Cited February 2012)
[4] Spencer Soper, Inside Amazon's Warehouse , The Morning Call, September 18 2011 (Cited February 2012)
[5] Bob Russell & Nils Timo, *Enterprise Bargaining and Union Recognition: Australian Canadian and American paths*, Griffith University, 2007, p292-293
[6] ibid
[7] ,Parliament of Victoria Economic Development Committee, *Inquiry into Labour Hire Employment in Victoria*, June 2005, Government Printer for the State of Victoria, p165
[8] Saul Eslake & Marcus Walsh, *Australia's Productivity Challenge*, Grattan Institute 2011, p8
[9] Tim Lyons, The Challenge of Workplace Productivity Symposium- Macquarie University Centre for Workplace Futures, Sydney, November 29 2012
[10] ibid
[11] Government won't intervene in Schweppes dispute, the Australian, December 16 2011
[12] Bob Russell & Nils Timo, *Enterprise Bargaining and Union Recognition: Australian Canadian and American paths*, Griffith University, 2007, p295
[13] Ibid, p295
[14] ibid
[15] Bernard Gernigon, Alberto Odero & Horacio Guido, *ILO Principles Concerning the Right To Strike*, International Labour Office, Geneva, p46
[16] Workplace Info: Lockouts show big problem with Fair Work Act: Opposition, December 2011 (Cited February 2011)
[17] Bob Russell & Nils Timo, *Enterprise Bargaining and Union Recognition: Australian Canadian and American paths*, Griffith University, 2007, p295
[18] National Union of Workers Assist Outbound Call Centre, *Conversations with workers employed on sites with third party labour hire present,* November-December 2011