

**APPENDIX 1**

**AUSTRALIAN MANUFACTURING WORKERS' UNION**



**SUBMISSION TO THE  
HOUSE OF REPRESENTATIVES EMPLOYMENT, WORKPLACE  
RELATIONS AND WORKFORCE PARTICIPATION COMMITTEE  
INQUIRY INTO INDEPENDENT CONTRACTING AND LABOUR HIRE  
ARRANGEMENTS**

**MARCH 2005**

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## Executive Summary

- Short termism characterises Australian capitalism. Manifestations of this myopia include the skills shortage, the 90 billion dollar infrastructure gap, the current account deficit, the household debt explosion and the housing bubble. Nowhere is this short termism more apparent than in the growth of labour hire and contracting. The growth of these two phenomena (sometimes referred to as out-sourcing) has been driven by short term competitive advantages, to the disadvantage of workers and the long term sustainability of the Australian economy.
- This submission examines the status and range of contracting and labour hire arrangements and concludes that there has been rapid growth in labour hire and contracting in the last ten to fifteen years. The principle motivation for this growth has been attempts by business to cut costs. The most significant cost reductions were in labour costs. The other significant motivation for outsourcing is the transfer of risk. Risk formerly born by business is now born by some of the most economically vulnerable persons in the nation. These people who earn low levels of income from tenuous, spasmodic income are being asked to bear the burden of costs associated with bringing greater ‘flexibility’ and ‘competitiveness’ to the Australian economy.
- The submission then examines the impact of labour hire and contracting arrangements in the Australian economy. The overwhelming weight of evidence points towards a deleterious impact on the wages, conditions and safety of workers as a result of labour hire and contracting.
- Ultimately the negative consequences of outsourcing are not limited to the army of temporary workers created by this phenomenon. The rise of outsourcing has very negative consequences for the entire economy. The sustainability of the Australian economy is dependant upon continuous skill formation. The present skills shortage is evidence of the current imbalance in the economy. Outsourcing is a major factor in this imbalance. The rise of labour hire and contracting is directly related to the down turn in skill formation.
- The long term revenue base of the Commonwealth is also undermined by the rise of outsourcing. Outsourcing is leading to a risk to the taxation base of \$14.38 billion per annum, thereby reducing the ability of the Commonwealth to manage the economy and increase the welfare of the Australian population.
- In response to these largely negative impacts on the Australian economy, the AMWU has put forward a series of recommendations. These recommendations will limit the range of contracting and labour hire arrangements to roles beneficial to the economy in a manner that is consistent across State and Federal jurisdictions, at the same time, ensuring that independent contracting arrangements are legitimate.
- It is incumbent upon the Commonwealth to ensure that the short termism (as exemplified by current outsourcing behaviour) that dominates Australian business is not allowed to reduce the long term living standards of Australians nor diminish our national building capability.

## Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions to the House Of Representatives Employment, Workplace Relations and Workforce Participation Committee inquiry into independent contracting and labour hire arrangements.
2. The four terms of reference of the inquiry required it to inquire into the following:
  - i) the status and range of independent contracting and labour hire arrangements;
  - ii) ways independent contracting can be pursued consistently across state and federal jurisdictions;
  - iii) the role of labour hire arrangements in the modern Australian economy; and
  - iv) strategies to ensure independent contract arrangements are legitimate
3. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 140,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry.
4. This submission begins with a statistical overview of the growth of labour hire and contracting. The reasons for this growth are then examined.
5. It is the AMWU's submission that both labour hire and contracting (especially dependant contracting) are part of the wider trend towards casualisation and intensification of the work effort. The AMWU submits that one cannot examine the issues surrounding independent contracting and labour hire without examining the issue of dependant contracting. Accordingly we examine all issues surrounding the wider phenomenon sometimes referred to as 'out-sourcing'.
6. The role of labour hire and contracting arrangements in the modern Australian economy is then scrutinised. This role can be split into four separate, but related, trends: the impact on wages and conditions, the impact on occupational health and safety, the impact on skill formation and the impact on Commonwealth revenue.
7. The submission concludes that not only does out-sourcing have a deleterious impact on the actual labour hire employees and contractors, it undermines the long term sustainability of the economy by exacerbating the national skills shortage and by reducing the Commonwealth's revenue base.
8. In response to these conclusions, this submission then puts forward 17 recommendations that will limit the range of contracting and labour hire arrangements to roles beneficial to the economy in a manner that is consistent across State and Federal jurisdictions, at the same time, ensuring that independent contracting arrangements are legitimate.

## Section 1 - Status And Range Of Independent Contracting And Labour Hire Arrangements

### CHAPTER 1 - STATISTICAL OVERVIEW

9. The growth of labour hire and self-employed contractors reflects a set of broader trends occurring across advanced economies. In sectors of the Australian economy particularly exposed to global competition such as manufacturing, firms have responded to increased competition by intensifying the division of labour both within and across firms and industries. The nature of the work itself has also intensified. Firms have sought cost advantages through outsourcing, thereby creating a rapidly growing pool of external (or non) employees. The cost advantages sought include:
- A reduction in the core labour of firms and the use of external labour as a numerical supplement allowing labour to be employed only when needed. This is the perceived flexibility advantage of labour hire.
  - Use of labour hire and self-employed contractors to reduce existing labour costs.
  - Reduction of transaction costs by outsourcing the human resources component of firms to labour hire companies, small firms, and independent contractors.
  - Shift in risk management. Firms can use labour hire and contractor arrangements to ‘hire and fire’ without exposing themselves to any unfair dismissal claims.
  - Improvement in apparent performance of a firm by shifting from direct employment to indirect employment through use of labour-hire and contractors. While this is not a direct cost advantage, it does enable the company to claim a productivity increase with less direct employees producing the same or greater output.
10. The AMWU submits that the strategy of outsourcing reflects a form of short-termism whereby contracting out important functions is effectively undermining both the future competitiveness of individual businesses and whole industries. When we explore the economic role of labour hire and contracting we examine this issue in detail by looking at how the strategy of numerical flexibility undermines firms’ willingness and ability to invest in skills and training. This has significant implications for current and future productivity.
11. It is widely accepted that there has been a shift away from traditional employment forms<sup>1</sup>. These increasingly diversified work arrangements are being called forms of non-standard employment<sup>2</sup>. A central feature in the growth of non-standard employment involves the proliferation of casual and part time employment, which is characterised as being ‘precarious’<sup>3</sup> due to temporary (non permanent) work arrangements and absence of leave

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<sup>1</sup> Campbell, I (2001) ‘Casual Employees and the Training Deficit: Exploring Employer Calculations and Choices’, *International Journal of Employment Studies*, 9 (1), p.95; Watson, I., J. Buchanan, I. Campbell and C. Briggs (2003) *Fragmented Futures: New Challenges in Working Life*, Federation Press Sydney, p.65

<sup>2</sup> Non-standard employment is defined in opposition to the historical and cultural norms of post war employment. Where employment involved fixed working periods, extensive leave provisions, and sense of permanency developed from access to these provisions (Hall et al, 2000: 2). Often the absence of entitlement to paid holiday and sick leave is seen as a test of non-standard employment conditions (Creighton and Stewart, 2000).

<sup>3</sup> ACIRRT (1999) *Australia at Work. Just Managing?* Prentice Hall

entitlements. The expansion of labour hire and outsourcing form important components in the broader drive toward rising casualisation intensities, because labour hire workers and own-account workers predominantly supply their labour on a casual basis.

12. The porous legal boundary between employee and non-employee has assisted this casualisation trend by providing a method that allows firms to reduce the numbers of directly employed workers and utilising a pool of casual contract workers via labour hire and sub-contracting arrangements.
13. Figure 1 provides a conceptual framework to understand this shift from direct to indirect (external) forms of employment. It shows the growth of external labour, particularly the function of outsourcing in that process, where labour hire firms and self-employed contractors form part of the broader casual employment pool. In other words, casualisation is not simply taking place within the direct employment relation. Taking into account the widely recognised legal ambiguities between direct employees and non-employees, the indirect or ‘concealed’ employees<sup>4</sup> located externally in labour hire firms and self-employed are a significant institutional development.

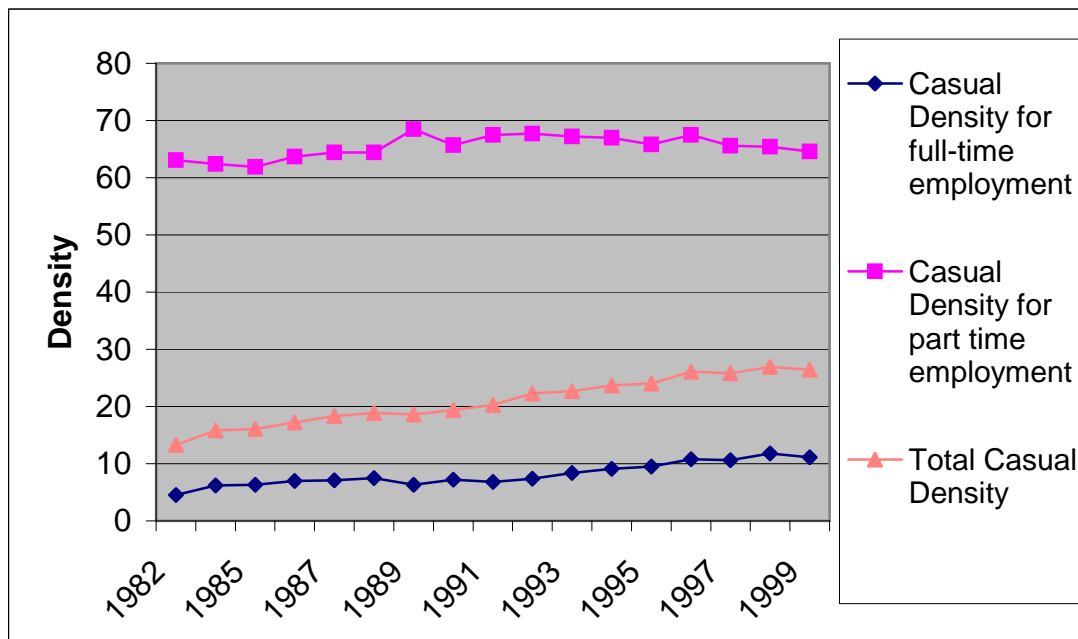
**Figure 1: Different Forms of Employment from a Workplace Perspective<sup>5</sup>**

	Direct Employment Relation				External Sourcing of Labour				
	Direct Employees				Labour Hire Firms			Self employed individuals	
	Permanent	Fixed-term	Trainees, Apprentices	Casual	Permanent	Casual	Dependant Contractor	Dependant Contractor	Independent Contractor
Full-time					X	X	X	X	X
Part-time					X	X	X	X	X

<sup>4</sup> Campbell, I (2001) ‘Casual Employees and the Training Deficit: Exploring Employer Calculations and Choices’, *International Journal of Employment Studies*, 9 (1)

<sup>5</sup> Source: (Hall, R., Bretherton, T. and Buchanan, J. (2000) ‘It’s Not My Problem’: The growth of non-standard work and its impact on vocational education and training in Australia, Leabrook SA, National Centre for Vocational Education Research., p.3; see also Campbell, I (2001) Op.cit, p.65; and, Watson et al, Op.cit, p.65)

**Figure 2: Estimated rate of casual employment growth, 1990 to 2002<sup>6</sup>**

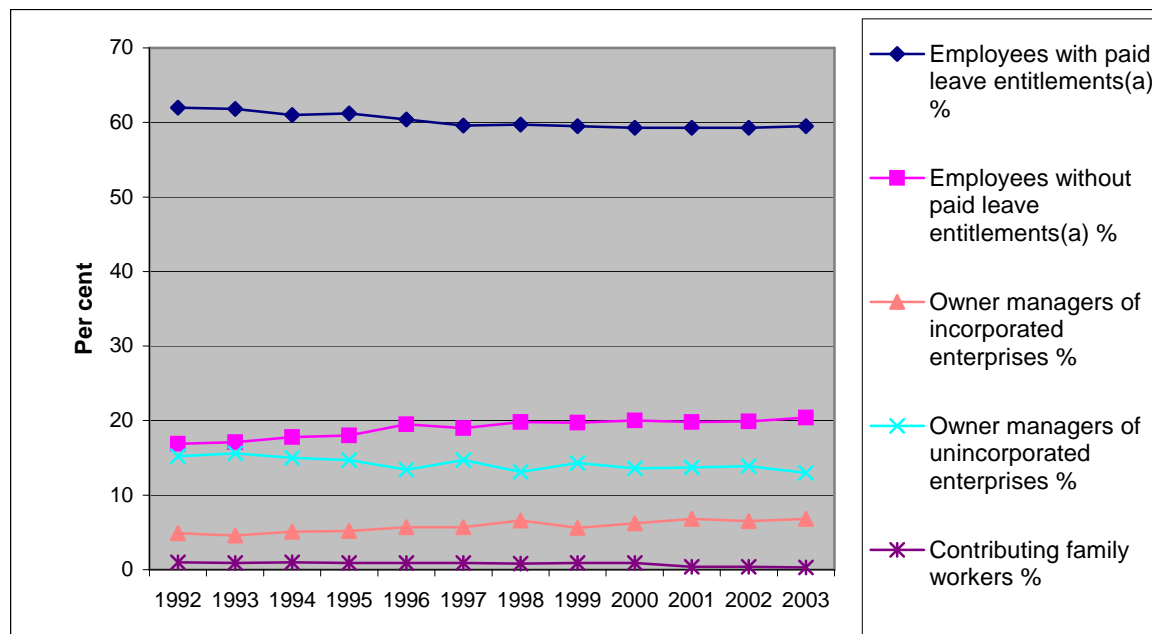


14. The overall growth of casual employment has been dramatic. Iain Campbell, a recognised specialist on casual employment data, has estimated casual employment densities from various ABS series to compile a casual density ratio for 1982-1999 (Figure 2). Casual density ratios measure the percentage of casuals of all employees in that group. Overall the levels of casual density have increased dramatically, from 13.3 per cent in 1982 to 26.4 per cent in 1999. Not surprisingly, the levels of casualisation are highest for part time employees and have remained reasonably stable if slightly anti-cyclical – increasing from 63.1 per cent in 1982 to 64.6 per cent in 1999. But the biggest increase in casuals has come with full time employees, more than doubling over this period and increasing from 4.5 per cent in 1982 to 11.1 per cent in 1999. This trend is significant because it also captures the use of labour hire firms and contractors.

<sup>6</sup> Campbell, I (2001) Op.cit, p.63



**Figure 3: Types of Employment, proportion employed – 1992-2003<sup>7</sup>**



Source: ABS Cat 6105.0; data source 6359.0

15. ABS data revisions also show the growth of non-standard employment arrangements. Figure 3 illustrates the decline in traditional employment where employees have access to leave entitlements from 62 per cent in 1992 to 59.5 per cent of employed persons in 2003. Employees without leave entitlements (i.e. associated with precarious employment) have increased from around 17 per cent in 1992 to over 20 per cent in 2002.

### Labour Hire

16. Labour hire<sup>8</sup> is defined by a ‘triangular employment relationship’ between a hire company, a worker and a host organisation. Hall describes the labour hire relationship in the following way:

*“A labour hire company or agency provides individual workers to a client or host with a labour hire company being ultimately responsible for the worker’s remuneration. The essential quality of a labour hire arrangement is the splitting of contractual and control relationships: the worker works at the site and under the practical day-to-day direction of the host or client organisation; the worker is paid by the labour hire firm and has a direct (contractual or employment) relationship with them; the client pays a contractual fee to the labour hire firm for the provision of that labour and thus also has a contractual relationship with the labour hire firm.”<sup>9</sup>*

17. Because the triangular employment relationship splits control and contractual functions gaps appear between the boundary between employee and non-employee. How the labour

<sup>7</sup> Notes: (a) employees without leave excludes owner managers of incorporated enterprises. Figures are for August.

<sup>8</sup> Also called on-hire, temp or agency employment (Laplagne et al, 2005; Parliament of Victoria, 2004).

<sup>9</sup> Hall, R. (2002), Labour Hire in Australia: Motivation, Dynamics and Prospects, ACIRRT Working Paper 76, April, p.4; see also Hall 2000 et al, Op.cit, p.26

hire company arranges the engagement of workers is particularly relevant here. Workers can be on-hired on a casual, part time or fixed-term basis. Importantly, labour hire firms can also take workers onto their books as contractors (i.e. act as principal contractors to a series of self-employed workers) - further blurring the nature of the true relationship between the parties<sup>10</sup>. The use of independent contractor agreements by labour hire companies is particularly problematic; these workers will not be eligible for any employment protections or entitlements provided by the hire company.

18. Importantly casual employment arrangements dominate labour hire, with 96.7 per cent of labour hire workers classified as casuals<sup>11</sup>. Indeed, Table 1 from a 1998 ANTA survey of labour hire companies shows that 81 per cent of all labour hire contracts have a concluding time span of less than 3 weeks. This means the growth of labour hire is an institutional example of the broader trend of casualisation.
19. Despite the dominance of casual employment in labour hire, many labour hire employees are placed in a single workplace for considerable lengths of time. Three of the largest labour hire agencies reported that in the six months to May 2000 around half of their engagements in the metal and engineering areas ran for between three and twelve months.<sup>12</sup> This is inconsistent with the use of labour hire as a means for substituting for absent employees or even providing flexibility to meet short term variations in production needs by the host client; the two most common justifications put forward for the growth of labour hire. There must be some other reason for this growth. This is addressed in Chapter 2.

**Table 1: Proportion of labour hire workers by contract length<sup>13</sup>**

<b>Contract length</b>	<b>Total workers</b>	<b>Percentage</b>
Less than one day	548	8
1-6 days	1569	24
1-3 weeks	3183	49
1-3 months	635	10
4 months or more	595	9
<b>Total</b>	<b>6529</b>	<b>100</b>

20. In 2002, the ABS Employment Services 2003 Survey (ABS Cat, 8558.0) estimated that there were 290 115 persons who were on-hired through a labour hire firm, which accounted for just under 3.1 per cent of all employed persons. While HILDA survey data places the use of agency workers at 3.7 per cent of all employed persons<sup>14</sup>.

<sup>10</sup> ODCO Judgement

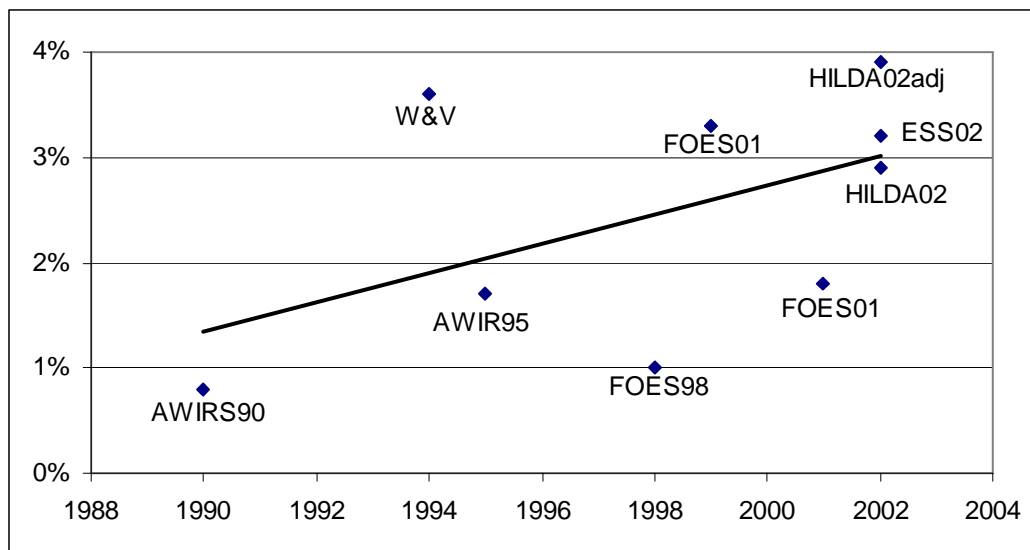
<sup>11</sup> Australian National Training Authority (1998) Impact of the Growth of Labour Hire Companies on the Apprenticeship System, Brisbane, p.16

<sup>12</sup> Campbell, I., Watson, I. & Buchanan, J., "Temporary agency work in Australia Part I", in International Perspectives on Temporary Agency Work (eds. Burgess, J. & Connell, J.) Routledge, London, 2004 p.139

<sup>13</sup> Ibid

<sup>14</sup> Hall R. (2004) Temporary Agency Work and the HR Challenge in Australia: 'co-operation, specialization and satisfaction for the good of all'?, p.2

**Figure 4: Growth Rates of Labour Hire<sup>15</sup>**



21. However, the estimates of labour hire usage are subject to some controversy with differences in populations and methodologies. A recent Productivity Commission Staff Paper has surveyed all estimates on the rate of growth of labour hire<sup>16</sup>. The estimates range from 1 to 3.9 per cent growth rates, shown in figure 4<sup>17</sup>.
22. The recent Victorian Parliamentary Inquiry on Labour Hire noted that the aggregate number of workers engaged in labour hire arrangements is perhaps less important compared to the number of placements and their distribution across workplaces<sup>18</sup>. From June 1999 to June 2002 the total number of placements increased from 2.7 million to 3.7 million<sup>19</sup>.
23. The proportion of labour hire use also varies across industries. Table 2, developed by Hall<sup>20</sup> is from the HILDA survey. It shows agency workers – for which labour hire is a significant component – spread throughout each industry with higher densities in communications and utilities (both above 10 per cent). Manufacturing has the largest proportion of agency workers with 19.6 per cent of all agency workers. This is followed by business services with 13.8 per cent, and health and community services (12.3 per cent).

<sup>15</sup> Source: Laplante, P., Glover, M., and Fry T. (2005) The Growth of Labour Hire Employment in Australia, Productivity Commission Staff Working Paper, Melbourne, February, p.8; Notes: trend line regression includes Laplante et al's 'outlier' surveys.

<sup>16</sup> Ibid

<sup>17</sup> The estimation of 3.9 per cent uses HILDA (HILDA02adj in figure X) data that removes workplaces of fewer than 20 employees and those belonging to agriculture, forestry, fisheries and defence industries.

<sup>18</sup> EDC (2004), Inquiry into Labour Hire Employment in Victoria, December, Government Printer, Melbourne, p.9

<sup>19</sup> ABS Cat, 8558.0; see also EDC, Op.cit, p.9

<sup>20</sup> Hall, 2004, Op.cit, p.4

**Table 2: Distribution of Agency Workers in Australia, by Industry<sup>21</sup>**

Industry	Percentage of all Agency Workers	Density
Agriculture	1.6	2.5
Mining	2.8	6.6
Manufacturing	19.6	6.1
Electricity, Gas and Water Supply	3.1	11.7
Construction	3.1	2.4
Wholesale Trade	4.6	4.3
Retail Trade	7.4	1.9
Accomm, Cafes and Restaurants	4.6	2.9
Transport and Storage	5.0	4.2
Communication Services	7.9	10.9
Finance and Insurance	5.6	4.9
Property and Business Services	13.8	5.0
Government Admin and Defence	4.2	3.2
Education	1.2	0.4
Health and Community Services	12.3	3.8
Cultural and Recreational Services	0.7	0.9
Personal and Other Services	2.6	2.6
Total	100	

## Contracting

24. Contracting is another form of non-standard employment that has been growing strongly. Outsourcing involves firms contracting the services of self-employed workers that own their own business. However, as discussed in Chapter 7 of this submission, the distinction between employees and contractors is not easily drawn in practice. There are circumstances where contractors can be deployed in a manner more consistent with being an employee, i.e. where they have a contract with one employer or that employer has significant managerial control over the worker. Campbell and Burgess refer to these workers as disguised wage labourers<sup>22</sup>. They exist because the legal boundary between employee and contractor is the subject of increasing contestation, and are now being resolved on a case-by-case basis with no universal legal test<sup>23</sup>. Certainly, the ambiguity of distinction between employee and contractor has led to the growth of outsourcing. Due to the ambiguities associated with this, distinguishing dependant contractors from employee's estimates must be treated circumspectly. In the late 1990s there were 212,200 dependant contractors or about 2.6 per cent of the workforce<sup>24</sup>.

25. VandenHeuvel and Wooden define independent contractors as:

<sup>21</sup> Source: Hall, forthcoming: using HILDA Wave 1 Confidentialised Unit Record Files, 2002

<sup>22</sup> Campbell, I., and Burgess, J. (2001), A new estimate for casual employment, Australian Bulletin of Labour, 27(2)

<sup>23</sup> Waite, M. and Will, L. (2001) Self-employed contractors in Australia: incidence and characteristics, Productivity Commission Staff Research Paper, AusInfo, Canberra, p.10-12

<sup>24</sup> Waite and Will, Op.cit, p.35; see also Watson et al, Op.cit, p.71

*“As a person who operates his or her own economic enterprises or engages independently in a profession or trade, and is engaged by a firm or organisation for some predetermined “all-inclusive” fee to provide a defined service for a specified period”<sup>25</sup>*

26. There are also difficulties with assessing the size and growth of independent contractors. Often ABS data on own-account workers is used as an estimate for independent contractors or self-employed. But problems with the data arise because not all own-account workers are contractors, some work on a contract basis but are owner managers of incorporated business (drawing a salary) and are therefore classified as employees and some dependent contractors will also be classified as employees<sup>26</sup>. However, as the majority of self-employed fall within the category of own-account worker this is used as a proxy.<sup>27</sup>
27. Table 3 shows the dramatic growth of own account workers from 1978 to 2004. During this period own account workers grew from 9.7 per cent of total employment to 12.4 per cent. Meanwhile, direct employees have fallen from 83.6 per cent to 79.6 per cent.

**Table 3: Growth of Own-account workers as share of total employment<sup>28</sup>**

	<b>Feb 1978</b>	<b>Aug 1998</b>	<b>Aug 2004</b>
	<b>Per cent</b>	<b>Per cent</b>	<b>Per cent</b>
<b>Employers</b>	6.7	8.6	8.0
<b>Own-account Workers</b>	9.7	11.8	12.4
<b>Employees</b>	83.6	79.6	79.6

<sup>25</sup> VandenHeuvel, A., and Wooden, M. (1995), Self employed contractors in Australia: how many and who are they? *Journal of Industrial Relations*, Vol. 37, no. 2pp 263-80, p.4-5; see also Waite and Will, 2001:2

<sup>26</sup> VandenHeuvel, A., and Wooden, M. (1995) estimate that 50 per cent of own-account workers are self-employed, 11 per cent employers and 2 per cent employees.

<sup>27</sup> Waite and Will, Op.cit

<sup>28</sup> Source: 1978 and 1998 (Waite and Will, Op.cit); 2004 from ABS Cat 2203.0 and 6359.0. Notes: Owner-managers of incorporated enterprises have been redistributed from the employee category to own-account workers and employees.

28. Table 4 compares the growth of own account workers and employees on an industry basis.

**Table 4: Comparison of Own Account Workers(OAW) and Employees (EEE), August 1985 and August 1997, Selected Industries and All Industries, Number ('000) and Percentage Change<sup>29</sup>**

Industry	Own Account Workers		Employees		OAWs	EEEs
	1985	1997	1985	1997	1985-1997	1985-1997
	no.	no.	no.	no.	%	%
Agriculture, Forestry and Fishing	217.9	185.5	129.8	159.0	-15	22
Manufacturing	34.5	63.0	1,043.3	1,044.1	83	0
Construction	120.7	171.0	310.4	349.3	42	13
Wholesale Trade	27.3	25.3	376.0	430.2	-7	14
Retail Trade	119.4	104.7	676.8	986.5	-12	46
Accommodation, Cafes & Restaurants	10.3	18.1	185.2	344.4	76	86
Transport and Storage	53.5	56.8	298.1	318.9	6	7
Finance and Insurance	8.2	9.8	271.9	298.3	20	10
Property and Business Services	49.6	117.0	351.1	713.9	136	103
Education	9.6	17.0	446.0	565.0	77	27
Health and Community Services	10.4	30.6	511.0	730.0	194	43
Cultural and Recreation Services	14.2	28.9	100.5	160.7	104	60
Personal and Other Services	31.1	50.6	169.0	264.3	63	56
All Industries	713.5	878.3	5,792.3	6,364.6	23	10

<sup>29</sup> Buchanan, J., 1998, Op.cit, p.25

29. Table 5 shows that in the late 1990s almost a quarter of all self-employed contractors worked in construction. Just under 20 per cent were working in property and business services, and in manufacturing, along with retail trade accounted for 8.6 per cent respectively of self-employed contractors.

**Table 5: Percentage distribution of self- employed Contractors by industry<sup>30</sup>**

<b>Industry</b>	<b>All (%)</b>	<b>Dependent Contractors (%)</b>	<b>Independent Contractors (%)</b>
Primary Industries	6.3	4.1	7.1
Mining	0.6	N/A	0.3
Manufacturing	8.6	9.3	8.4
Utilities	0.3	N/A	N/A
Construction	24.7	11.7	29.1
Wholesale trade	3.3	4.8	2.8
Retail trade	8.6	10.9	7.8
Accom, Cafes and Restaurants	1.8	5.4	N/A
Transport and storage	5.4	6.8	4.9
Communication and services	2.3	4.3	1.7
Finance and insurance	1.0	2.8	N/A
Property and business services	19.7	12.1	22.3
Government	0.9	3	0.2
Education	2.8	5.7	1.8
Health and community services	5.3	9.4	3.8
Cultural and Recreation	2.8	2.5	3.0
Personal and other	5.7	4.7	6.0

Notes: N/A – data not available to unreliable estimation results. Self-identified casuals are not included as self-employed contractors leading to a possible underestimation of self-employed.

30. We have seen in the last decade very strong growth in the use of labour hire and contracting. Nowhere is this more apparent than in the manufacturing sector, where nearly 20% of all agency workers are employed and 8.6% of all contractors. Chapter 2 examines the reasons for this growth.

31. As is evident from this chapter, there are difficulties analysing the growth of labour hire and contracting based on the existing data. To understand the issues surrounding labour hire and contracting, and to develop an appropriate policy response, it is essential that we have an accurate estimation of the size of the labour hire industry and contracting. The Australia Workplace Industrial Relations Survey offers one of the most comprehensive tools to measure this phenomenon.

<sup>30</sup> Source: Waite and Will, Op.cit

## **RECOMMENDATION 1**

That the Federal Department of Employment and Workplace Relations commission a new Australian Workplace Industrial Relations Survey as a matter of urgency for the purpose of determining:

- The exact nature of the growth in labour hire and contracting.
- The exact numbers of dependant contractors.
- An up to date figure for the length of the average labour hire placement.
- What is the average difference between labour hire wage rates and direct employees wage rates' for comparative tasks.



## CHAPTER 2 - REASONS FOR GROWTH IN LABOUR HIRE AND CONTRACTING

32. The growth of labour hire and self-employment are part of larger trends in advanced economies towards the intensification of the division of labour within and across firms, industries, and indeed, national economies. This growth also involves the intensification of work itself. These trends underpin the growth of outsourcing. Outsourcing is a key element in the search by firms for enhanced competitiveness through increased flexibility in the deployment of both labour and capital. Outsourcing entails the concentration by a firm on its 'core' competitive strengths and the contracting with other firms and individuals for the supply of 'non-core' goods and services. This results in the 'downsizing' of firms to a smaller core full-time workforce and the growth of a 'contingent' or 'peripheral' workforce comprised of labour hire employees, contractors, part time or casual employees<sup>31</sup>.

33. The growth of outsourcing reflects:

- Increased competition from developed and developing economies due to globalisation arising from the freeing up of international capital and markets and reduced telecommunications and transport costs which have dramatically increased the capacity of firms to co-ordinate production and distribution across multiple organisations and within and across countries.
- Global production over-capacity in many manufacturing industries has driven the search for cost reduction.<sup>32</sup>
- The corporatisation and privatisation of government utilities and businesses has also created an environment conducive to the growth of outsourcing as large government businesses are broken up into smaller privately owned or commercially oriented enterprises. This operates on both the supply side and the demand side to encourage the growth of outsourcing. On the supply side corporate "downsizing and outsourcing means there has been an increase in the number of skilled workers available to labour hire firms". On the demand side firms are "choosing to meet an increasing proportion of skill requirements by accessing already skilled workers through labour hire rather than recruiting and skilling in-house"<sup>33</sup>. These corporate strategies have created an 'equilibrium of a self-sustaining cycle of dependence' as firms reduce their core work force and the newly released skilled labour finds ready employment in labour hire firms or self employment.<sup>34</sup>
- Work intensification by management strategies that increase worker effort without a fully compensating wage increase. Quiggin has argued that half of the productivity gains achieved in Australia over the last decade are attributable to this increase in worker effort<sup>35</sup>. Work intensification has been achieved for example by strategies to reduce union influence in workplaces; the shift to enterprise 'concession bargaining' and an increase in unpaid overtime. Another strategy is the use of outsourcing as a

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<sup>31</sup> Harrison B (1997) *Lean and Mean: The Changing Landscape of Corporate Power in the Age of Flexibility*. New York: The Guildford Press, p.11-12

<sup>32</sup> ACIRRT (2002) *Renewing the Capacity for Skill Formation: The Challenge for Victorian Manufacturing*, A Report for the Victorian Manufacturing Industry Consultative Council, Melbourne, p.40

<sup>33</sup> Australian National Training Authority (1998) *Impact of the Growth of Labour Hire Companies on the Apprenticeship System*, Brisbane, p.46

<sup>34</sup> *Ibid*, p.47

<sup>35</sup> Quiggin (2000:269)

means of introducing more ‘market discipline’ into a firm<sup>36</sup>. The actual use of retrenchment and outsourcing or the threat of such measures could have a galvanising effect on a firm’s remaining workforce. It has been argued that the dramatic growth of self employment in the UK construction industry reflects the fact that ‘employers have chosen a very limited way of increasing productivity - work intensification- over more thorough-going investments in improving work organisation through capital investment and rationalisation of the production process’<sup>37</sup>.

34. Whilst the growth of outsourcing has been especially rapid in trade-exposed sectors of the economy, notably in manufacturing, similar pressures apply in many industries not directly exposed to import competition, such as construction. Built structures cannot be internationally traded as the service they provide is location specific, nevertheless, as an ever larger share of construction output is funded and supplied by private global capital markets this has increased the pressure to cut costs and equalise the rate of return on construction investments in diverse locations<sup>38</sup>. In the construction industry for example, there has been a very substantial increase in the share of employment and output from small specialist subcontractors. Over the seven years to 1996–97 the share of total employment in firms employing fewer than five persons increased from 42.6 to 68.6 per cent. All of the employment growth over the period occurred in businesses with fewer than five employees<sup>39</sup>.

35. Outsourcing has led to a rapid growth of employment amongst the self-employed and small firms supplying goods and services formally sourced in-house. “It is the strategic downsizing of the big firms that is responsible for driving down average firm size in the current era, not some spectacular growth of the small firm sector, per se”.<sup>40</sup> Cutting back the core labour force involves ‘delaying’ the firm and moving to lean staff profiles supplemented by casuals, contractors, and labour hire workers<sup>41</sup>. As will be demonstrated later, the large growth in the share of employment in small firms is a major constraint on the capacity of the economy to invest in skills formation.

36. Faced with this competitive context employers use outsourcing for the range of reasons. Namely to achieve:

- Numerical flexibility
- Direct cost reductions
- Transaction cost reductions
- Reductions of apparent (financial accounting) costs
- Risk management

We comment on each of these briefly in turn.

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<sup>36</sup> Hall, et al, Op.cit, p.20

<sup>37</sup> Winch G. M. (1998), The Growth of Self-Employment in British Construction, Construction Management and Economics 16 5, p.540

<sup>38</sup> International Labour Organisation (2001) The construction industry in the Twenty-first century: Its image, employment prospects and skill requirements, TMCIT/2001, Geneva, p.25

<sup>39</sup> Toner P. (2000) Changes in industrial structure in the Australian construction industry: causes and implications, *The Economic and Labour Relations Review* 11 (2), 291–307

<sup>40</sup> Harrison, Op.cit, p.18

<sup>41</sup> Hall, 2004, Op.cit, p.7

37. **Numerical Flexibility** - Flexibility is identified as a central reason for outsourcing. Table 6 shows that 30 per cent of employers surveyed identified it as the central reason for outsourcing.
38. **Cutting Immediate Labour Costs** - Businesses are also using outsourcing as a means of cutting immediate labour costs. In Table 6 we can see that almost 37 per cent of employers surveyed identified cost effectiveness as a central reason behind outsourcing. To use outsourcing to lower labour costs involves the use of labour hire or self-employed contractors at effective rates that are below those paid to direct employees and creates a two-tiered workplace.
39. Both the NSW Task Force into Labour Hire and Victorian Inquiry into Labour Hire found wide spread evidence that this practice is widely utilised. This evidence calls into question the assurances made by employer associations that the use of labour hire and self-employed contractors to undermine labour conditions is limited to a small element of 'rogue' agencies. The Victorian Labour Hire Inquiry found that:
- “The committee received evidence that sometimes costs may be reduced where labour hire agencies are able to supply labour to host employers at rates lower than the cost of direct employment, as agencies may not be obliged to provide workers with the same pay and conditions that the host employer’s direct-hire labour enjoy.”<sup>42</sup>*
40. The final report of the NSW Labour Hire Taskforce explored the possible causes of the growth of labour hire. It attributed the growth of labour hire primarily to cost factors. Business can achieve cost reductions by reducing, or in some cases deliberately avoiding, the obligations that arise out of the traditional employment relationship.<sup>43</sup>
41. The NSW Labour Hire Taskforce also found that labour hire businesses could achieve substantial savings through the use of labour hire employees in the area of on-costs such as workers' compensation premiums, leave, training, pay roll tax, administration termination costs.<sup>44</sup>
42. The motivations for labour hire are very similar to the motivations for contracting out functions previously performed by employees. An Australian Business Limited-ACIRRT survey (set out in Table 6) confirms this. 400 employer members of Australian Business Limited were surveyed concerning their perceptions of the outsourcing (use of labour hire and/or contracting). The survey found that 54.1% of all respondents cited cost effectiveness as an advantage of outsourcing. This was by far the most commonly listed advantage. Even more telling is the fact that when asked to nominate the most significant advantage, cost effectiveness was clearly thought of as the most significant advantage of outsourcing.

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<sup>42</sup> EDC, Op.cit, p.15

<sup>43</sup> LHTF (Labour Hire Task Force) 2001, Labour Hire Task Force, Final Report, commissioned by NSW Government, [http://www.dir.nsw.gov.au/action/current/labhire\\_report.pdf](http://www.dir.nsw.gov.au/action/current/labhire_report.pdf), p.17

<sup>44</sup> LHTF (Labour Hire Task Force) 2001, Labour Hire Task Force, Final Report, commissioned by NSW Government, [http://www.dir.nsw.gov.au/action/current/labhire\\_report.pdf](http://www.dir.nsw.gov.au/action/current/labhire_report.pdf), p.17

**Table 6 Employer Assessments of the Advantages of Outsourcing<sup>45</sup>**

	<b>% nominating as an advantage</b>	<b>% nominating as the most significant advantage</b>
<b>Cost Effectiveness</b>	54.6	36.9
<b>Flexibility in meeting fluctuations in demand</b>	48.0	30.0
<b>Increased range of skills</b>	31.8	10.5
<b>Quality of production/service</b>	24.2	6.4
<b>Capacity to solve site specific problems</b>	25.4	5.2
<b>Capacity to change supplier</b>	29.8	4.2
<b>Control over labour</b>	17.7	4.1
<b>Lower union influence</b>	8.3	0.6
<b>Other</b>	2.3	2.3
<b>Total</b>		100.0

*Source: Australian Business Limited - ACIRRT Survey 1999*

43. A recent Productivity Commission publication appears to support this thesis. This report concluded that "...increased domestic and international competition may have added to firms' incentives to introduce some labour hire into the workplace and to use it at a higher rate."<sup>46</sup> That is in response to increased competition, companies have introduced labour hire in order to reduce costs and increase their competitiveness:

*"Workplaces that, in the two years prior to the 1995 survey, had decided to introduce measures to reduce costs, were much more likely than others to be using labour hire."*<sup>47</sup>

44. Interestingly, the Productivity Commission found that being a low-wage workplace lowered the probability that a workplace uses labour hire. This indicates that companies that have already reduced their labour costs have no incentive to use labour hire for that purpose.<sup>48</sup> **This supports the conclusion that a significant (if not the most significant) motive for using labour hire is to reduce wage costs.**

45. Similar reasons also explain the growth of contracting. John Buchanan, Deputy Director of the Australian Centre for Industrial Relations Research and Training and one of the most experienced industrial relations researchers in the nation, has concluded that the growth of contracting is mostly attributable to employers attempting to reduce labour costs:

*"These authors subsequently undertook a study of the growth of contractors (1996). On the basis of this work they suspect that much of this growth was of dependent and not independent contractors. Such workers, in reality, are more likely than not employees dressed up in contractor status. As such there is strong evidence to suggest that the trends in ABS data have arisen from the dynamics noted in the above. There is*

<sup>45</sup> Hall, 2002, Op.cit, p.10

<sup>46</sup> Laplagne, P., Glover, M. and Fry, T. 2005, "The Growth of Labour Hire Employment in Australia", Productivity Commission Staff Working Paper, Melbourne, February, p.5

<sup>47</sup> Ibid., p.20

<sup>48</sup> Ibid.

*little or no evidence that they reflect a profound shift in the nature of production to being organised on the basis of a larger number of independent, sole trader enterprises.*<sup>49</sup>

*“In fact these ‘independent contactors’ are better seen as ‘dependant contractors’ i.e. workers who are regarded as self-employed (by themselves, by their employers and perhaps by the courts) but who are heavily ‘dependant’ on just one employer for work and whose conditions are in many ways similar to those of employees. Indeed, they are often ‘fake’ self-employed or ‘disguised wage labourers’.*<sup>50</sup>

46. This view is confirmed by an extensive study into the use of outsourcing in the South Australian power industry that found that:

*“...workplaces made use of sub-contracting firms to access their specialised equipment or skills, and to reduce labour costs...It is therefore not difficult to see why contracting out has grown strongly during the 1990s are not hard to see. For firms, these forms of engaging workers provide the potential to offload the costs of workers compensation, superannuation and payroll tax.”*<sup>51</sup>

47. If cost cutting is central motivation behind outsourcing then it is highly likely that they will force contractors into situations where the terms of their contract are below existing pay rates in that work place. Similarly, labour hire companies will be utilised that provide the lowest cost on-hire labour. Hall argues there is a tendency for even reputable labour hire agencies to offer on-hire workers at low pay levels. In short, due to the competitive nature of contracting and labour hire a structural feature of these industries involves offering labour at lowest possible cost. In Hall’s words:

*“Where the labour hire employer can be compelled to pay award rates it appears that market forces ensure that they are soon undercut by a competing operator who is prepared to avoid paying the award rate.”*<sup>52</sup>

48. **Transaction Costs** - This is closely related to the reasons for implementing numerical flexibility. Here transaction costs savings come from the fact firms using outsourcing particularly to labour hire companies are outsourcing a good deal of their human resource management function. They save on recruitment, induction, payroll administration, and training<sup>53</sup>. The section of the paper dealing with the economic role of labour hire and contracting argues that these sorts of cost reductions, while constituting an immediate saving, are part of a broader short-termism that will ultimately undermine future profitability – especially in regard to training.

49. **Apparent Costs** - Apparent costs relate to the financial reporting of a company and how this affects share price performance. Firms can improve their apparent performance by shifting from direct employment to indirect employment through use of labour-hire and contractors. Performance measures such as output per employee or profit per employee

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<sup>49</sup> Buchanan, J., “Taxation and the Labour Market”, ACIRRT Working paper 55, 1998, p.31

<sup>50</sup> Campbell, I., Watson, I. & Buchanan, J., “Temporary agency work in Australia Part I”, in International Perspectives on Temporary Agency Work (eds. Burgess, J. & Connell, J.) Routledge, London, 2004 p.133

<sup>51</sup> Grist, R., “Contracting Employment - A Case Study of how the use of agency workers in the SA Power Industry is reshaping the employment relationship”, ACIRRT Working Paper 59, 2000, p.8

<sup>52</sup> Hall, 2002, Op.cit, p.6

<sup>53</sup> Brennan, L, Valos, M., Hindle, M. (2003), On-hired Workers in Australia: Motivations and Outcomes, December. Report prepared for the RCSA

can be improved when a firm reduces its direct employment and increases its reliance on outsourcing through labour hire and use of contractors<sup>54</sup>. This is a ‘creative accounting’ technique much favoured by corporatised utilities to improve their apparent performance<sup>55</sup>.

50. **Risk Management** - As a risk management device, use of labour hire and contracting out often occurs to transfer risks associated with direct employment onto another party. Firms can use labour hire and contractor arrangements to be able to ‘hire and fire’ without exposing themselves to any unfair dismissal claims. If the client is unhappy with the contractor or on-hired worker they either cancel the contract or call the labour hire firm and have the worker replace. John Buchanan, of ACIRRT has argued that this is particularly the case with small businesses, where the risk of leave entitlements, unfair dismissals, accidents, and other potential labour costs are devolved onto a labour hire company or the independent contractor<sup>56</sup>.
51. A study authored by researchers from the Centre for Applied Social research (CASR), RMIT University, and ACIRRT found that just “...as temporary agency work involves a redistribution of obligations so too does it involve a redistribution of risk. In particular, many of the risks associated with business fluctuations are transferred to the agency which in turn is able to shift many of these risks onto the shoulders of its workers. Indeed, the intercession of an agency can amplify the risk. The structure of temporary agency work presumes and encourages under employment, as the agencies seek to organize workers into a pool that is sufficiently large to meet unpredictable demands.”<sup>57</sup>
52. As a consequence of the growth of non-standard employment, risk is born by some of the most economically vulnerable persons in the nation. These people who earn low levels of income from tenuous, spasmodic income are being asked to bear the burden of costs associated with bring greater ‘flexibility’ and ‘competitiveness’ to the Australian economy. Later sections of this submission examine the impact of this on particular segments of the Australian economy.
53. In conclusion, reduction in costs, particularly wage costs, is the main motivation for outsourcing. This is part of the myopia that plagues Australian business. Not only does this short-termism have a deleterious effect on the wages, conditions and safety of workers, it seriously undermines the long term foundations of the Australian economy. This submission examines these issues in Section 2.

## RECOMMENDATION 1

That legislative requirements be placed on the use of labour hire and dependant contractors. These requirements would specify the permissible purposes for labour hire and dependant contracting as including: temporary replacement of absent employees or in the interim prior to a new permanent engagement, the performance of a special, fixed term task or role or for the performance of inherently temporary or seasonal work.

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<sup>54</sup> Australian National Training Authority (1998) Impact of the Growth of Labour Hire Companies on the Apprenticeship System, Brisbane, p.13

<sup>55</sup> Toner P. (2000) Changes in industrial structure in the Australian construction industry: causes and implications, *The Economic and Labour Relations Review* 11 (2), 291–307 1998

<sup>56</sup> DIR, Op.cit

<sup>57</sup> Campbell, I., Watson, I. & Buchanon, J., “Temporary agency work in Australia Part I”, in *International Perspectives on Temporary Agency Work* (eds. Burgess, J. & Connell, J.) Routledge, London, 2004 p.139

**RECOMMENDATION 2**

That the Commonwealth establish a licensing scheme for labour hire agencies, with penalties for conducting labour hire services unlicensed.

## Section 2 - Role Of Labour Hire Arrangements And Contracting In The Modern Australian Economy

### CHAPTER 3 - IMPACT ON WAGES AND CONDITIONS

*“Confusion over lines of responsibility in exercising the employer role are evident, with serious consequences for workers conditions and entitlements. These workers lack any effective bargaining power over wages and conditions.”*<sup>58</sup>

*“Labour hire companies use their employees like commodities – once their usefulness has been exhausted they are cast aside without due consideration”*<sup>59</sup>

#### Introduction

54. The rising incidence of labour hire and other forms of contract employment is transforming the labour market into a commodity market – irrespective of the human component.<sup>60</sup>

55. Labour hire is proliferating, not as a short-term solution to meet seasonal demands and flexibility requirements, but as an alternative to the employer/employee relationship, around which our award safety net of minimum wages and conditions is structured.

56. The overwhelming majority of labour hire workers, estimated at more than 95%<sup>61</sup>, are casuals. As the level of precariousness attached to a job increases, there is a proportional decline in job quality and reward. Research and the experience of casual labour hire workers have identified the attributes attached to casual work. These traits, combined with employer practice, combine to drive down wages and conditions.

57. Casual and dependent contractors, particularly those sourced through labour hire agencies are more likely than permanent workers:

- to be paid at the minimum award rate rather than the enterprise rate paid to permanent workers;
- to be paid at the lowest classification or skill level even though they are equally qualified and perform work of equal value alongside permanent employees paid at the appropriate higher paid classification;
- to be denied access to training and advancement through skill based award classification structures;
- to be denied opportunities to increase their earnings through overtime as permanent workers are given preference; and
- are less likely to receive appropriate allowances.

58. This section of the AMWU’s submission focuses, through case studies and analysis, on the wages and conditions of labour hire workers. The case studies highlight the negative consequences of having no “effective bargaining power.”

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<sup>58</sup> Senate Committee Report on Poverty and Financial Hardship, p.90, Community Affairs References Committee, March 2004. See also Watson et al Fragmented Futures; Federation Press, Sydney, 2003, p.72

<sup>59</sup> Former Forstaff Aviation employee, February 2005

<sup>60</sup> Gryst R – Contracting Employment; ACCIRT Working Paper 59, Sydney 2000

<sup>61</sup> AIG Survey quoted in NSW Government – Labour Hire Task Force Final Report, Sydney, 2001, p.24. The 1998 ANTA study put the figure at 96.7% (see page 10)



### **Casualisation, Labour Hire And Manufacturing**

59. Historically the metals manufacturing sector has been characterised by secure, long term, permanent employment. The incursion of casualisation, labour hire and other precarious employment types into metals manufacturing is noted in the AMWU's submission at Chapter 1.
60. Previously within the metals sector labour hire companies provided labour on a short term basis for example, shut down or leave. Labour market changes, driven by employer demand,<sup>62</sup> have created an environment where "...labour hire employees are increasingly employed for longer periods and some are employed on an ongoing basis as an organisation's function is outsourced."<sup>63</sup>
61. The Senate Report on poverty noted that "...workers in vulnerable labour market circumstances will be increasingly disadvantaged by further labour market deregulations."<sup>64</sup> The experience of manufacturing labour hire workers warns against further deregulation and is evidence of the need for further regulation to protect workers as labour market structural change drives wages and conditions down.

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<sup>62</sup> The Growth of Labour Hire in Employment in Australia, Productivity Commission, Melbourne, February 2005

<sup>63</sup> Statement of Malcolm Jackman, CEO Manpower, para 19 tendered in AIRC, matter C22704/1999

<sup>64</sup> Ibid @ 95

**CASE STUDY 1**  
**WORKS LIKE A PERMANENT, LABELLED A CASUAL - BUTTERCUP**

In 1993, Alan Barker, a mechanical fitter was employed by Perth labour hire agency Steelweld Personnel. Steelweld immediately placed Mr Barker at Buttercup Bakeries. Barker remained at Buttercup for 11 years working regular hours (in excess of 40 per week), between Monday and Saturday on rotating shifts.

In June 2004, without notice, Mr Barker who supports a wife and two school age children, had his hours cut by one day per week. In September 2004, again without warning, consultation or explanation, Barker, who was then aged 64, had his hours further reduced to only two days per week.

Twice during his 11 years at Buttercup, Barker had applied for a permanent position. Twice he was rejected despite Buttercup continuing to retain his services in the same or similar positions. Mr. Barker was ultimately forced to resign his employment as the contraction in hours reduced his wages to the extent he was unable to meet mortgage payments. At the time of his resignation, Mr. Barker was the longest serving mechanical fitter at Buttercup.

In effect Buttercup, in reducing Mr. Barker's hours made him redundant. Buttercup denied any responsibility claiming they were not the employer. Steelweld, after initially refusing, paid Mr. Barker pro-rata LSL after an application was filed by the AMWU in the Western Australian Industrial Relations Commission. Mr. Barker had no paid leave of any description for over 11 years. He was forced to keep his unpaid leave to a minimum (6 weeks in 11 years) due to financial commitments.

On any objective criteria, Mr. Barker was not a casual. His hourly rate including the loading, was less than similarly skilled permanent employees.

Mr. Barker is representative of the "flexibilities" created and sanctioned by labour hire and host employers as they seek to drive down the cost of the "commodity" labour.

**CASE STUDY 2**  
**FOOD INDUSTRY PRODUCTION WORKER**

A Victorian food industry production worker has worked as a labour hire employee for the last 7 years. The current placement, at a multi-national food corporation is in its 3rd year. Over the last 3 years, the labour hire employee has applied six times for a permanent position.

Each time the applicant has applied to become permanent, they were required to sit basic English comprehension and maths tests. The applicant was informed by the food company they passed the test, however, was also informed that their skills were not good enough. The food company continues to employ the labour hire worker who has received no skills training in the three years of their employment.

**RECOMMENDATION 1**

The Commonwealth should legislate to ensure long term casual labour hire employees and dependent contractors are deemed permanent employees.

## Wages And Conditions

### Transfer of Contracts

62. Labour hire workers are treated like flotsam and jetsam in the bidding wars between labour hire operators. When a labour hire firm loses a contract, the employee of that firm is left floundering between potentially 3 employers and unemployment. In some cases, employees will be told they may apply for jobs with the new labour hire firm. These employees will suffer:

- loss of continuous service
- loss of accruing entitlements such as LSL, sick leave, severance pay and;
- engagement on the same work, at the same site on the lower wages and conditions offered by the new firm.

Labour hire companies have the opportunity to provide their clients with an immediate workforce and, their employees with continuity of service. Labour hire companies progress the former and decline the latter.

#### CASE STUDY 3 TRANSFER OF CONTRACT – QLD FORSTAFF

In early 2003, Forstaff Aviation lost the technical maintenance contract for Qantas Defence Services (QDS) at the Amberley Aviation Unit, Queensland. QDS is returning the work to in-house management.

The majority of Forstaff employees (approximately 35 people) competed for and obtained QDS positions. The workers became employees of QDS on 9 February 2005, however, have not maintained their continuity of service, thereby losing accrued LSL and sick leave.

Forstaff have also refused to pay any severance despite there being no transmission of business. The former Forstaff workers were engaged by QDS under a new agreement which contains a three month probationary period. Many of the 35 workers had been working at QDS for Forstaff in excess of 2 years. Forstaff has refused redundancy payments to employees whose jobs were made redundant and who did not apply for QDS jobs on the basis that the conditions were unacceptable.

*“I wish to maintain my employment with Forstaff because I have accrued entitlements. I’ve been told I’m redundant, however, compensation is being withheld.”* (Forstaff worker)

63. In other cases where contracts change, the exiting contractor will have tied their casual labour hire employee to a contract whereby the employee is not able to apply for a position with the new agency or the “host” employer for a predetermined period.

#### **CASE STUDY 4**

#### **TRANSFER OF CONTRACT**

#### **1. BAYTECH INDUSTRIAL VICTORIA PTY LTD**

Baytech is a labour hire company. Clause 2.4 of Baytech's "TERMS OF AGREEMENT – PROVISION FOR CASUAL SERVICES" states:

*"2.4 In return for being given the opportunity to provide the casual services, the Worker agrees that during the period of work and any extension thereafter, and for a period of six (6) months after the termination or completion of the contract, the Worker will not enter into any arrangement with the Client, or any related company of the Client (without the prior written consent of Baytech, which we may in our absolute discretion withhold)." [Emphasis Added]*

#### **2. WORKPAC GROUP OF COMPANIES – CASUAL EMPLOYEES – TERMS AND CONDITIONS OF EMPLOYMENT**

Clause 9.2 of the labour hire firm Workpac's agreement states:

*"9.2 For a period of six months following the last assignment, the employee is to immediately notify Workpac in the event that:*

- (a) A Workpac client offers the employee temporary or permanent employment; or*
- (b) The employee approaches a Workpac client to whom the employee was introduced by Workpac."*

#### **3. BLACKHAWK CONSTRUCTION LABOUR HIRE – TERMS AND CONDITIONS OF EMPLOYMENT**

Clause 2.5 of Blackhawk's terms of employment state:

*"2.5 I agree that I will neither seek out nor accept employment, either directly or indirectly, from any client of Blackhawk Construction Labour Hire to whom I am assigned for a period of two months after the termination of my assignment with the client, without prior agreement of Blackhawk Construction Labour Hire."*

64. The Recruitment and Consulting Services Association's (RCSA) Code of Conduct, operating for 10 years and approved by the ACCC in 2003, has done nothing to eliminate what in effect is a restraint of trade. The code at clause 3.4 states that:

*"Members shall not attempt to unfairly or unlawfully prevent a candidate or temporary/contract worker from seeking work from other sources."*

Ignoring the code is evidence of the abject failure of the industry to self regulate and move beyond a “ master and servant” relationship.

## **RECOMMENDATION 2**

The Commonwealth legislate to make it unlawful for labour hire companies to attempt to restrain employees from seeking alternative employment.

### **Unequal Pay**

65. The most obvious phenomenon attached to labour hire workers is the negative pay differential between themselves and permanent or casual in-house workers. Base rates for labour hire workers will:

- Be significantly lower than permanent employees.
- Vary between different agency workers placed at the one site.
- Be set at a lower classification level to the skill level required for the job and the one being performed by the employee; and
- Be based on the minimum award rate.

66. Labour hire workers also cite difficulty in determining their rate of pay due to:

- Inadequate or non-existent payslips.
- Incorrect payment and a refusal to rectify, and
- Non payment of allowances and/or the advertised rates turning out to be flat rates (i.e., inclusive of overtime, allowances).

### **CASE STUDY 5 UNEQUAL PAY – BRISBANE CITY COUNCIL**

In 2001, Alan Lacey was placed by Computer Solutions at Cityfleet, Acacia Ridge, Qld (Cityfleet is the Brisbane City Council ‘BCC’ Maintenance and Engineering Business Unit). While Mr. Lacey was at Cityfleet, four different labour hire companies, each paying different rates of pay to their employees, provided labour to BCC.

Lacey was advised by the Cityfleet payroll manager that the various rates arose depending on the quotes that BCC accepted. Mr. Lacey was further advised that BCC was looking to consolidate with the labour hire operator providing the lowest rates.

Lacey and the other labour hire employees worked side by side with Cityfleet employees, however, all labour hire employees were paid less than the Cityfleet employees. Mr. Lacey and his fellow labour hire colleagues did not have access to the redundancy or job security provisions available to Cityfleet employees.

Lacey’s enquiries also established that one labour hire company was taxing workers as sub-contractors taking only 20% tax deductions from wages rather than PAYG.

### **CASE STUDY 6 UNEQUAL PAY – QANTAS HANGAR #3**

Martin Beck, 47, is a fitter by trade, married with three children, 2 of whom are dependent. Martin is registered with approximately 30 labour hire companies. As the sole provider, Beck cannot afford to be out of work. He is currently employed by labour hire firm Australian Trade Services (ATS) to provide services at Qantas Hangar #3 at Brisbane Airport.

ATS provides the labour hire for fitters on site for M & B Rigging who is contracted by the principal contractor, Multiplex to put infrastructure in place to build the Hangar.

Beck became aware that base trade boilermakers on site were being paid more than the fitters employed by ATS. In addition to experienced labour hire tradespeople receiving a lower rate, it became apparent that ATS were also not paying the correct travel or site allowance and that the labour hire employees were also not receiving meal or tool allowance.

Beck's numerous experiences with labour hire companies leads him to expect that the operators will initially avoid paying the appropriate remuneration in the hope that the labour hire employee will not know the right rate and/or will be too concerned by job insecurity to raise any concerns. (Case Study from the Statement – Martin Beck, February 2005)

Beck's assessment is reflected by operators who make disclosing the rate of pay a sackable offence. Labour Hire company, Advantage Personnel Pty Ltd's pay day information sheet (Attachment A) commences:

*“You Must Never Discuss Your RATE OF PAY With Anyone On Site TO DO SO Will Lead To Instant Dismissal”*

This threat is characteristic of strategies used by operators to intimidate employees and to obfuscate appropriate rates.

### **CASE STUDY 7 UNEQUAL PAY IN THE ALUMINIUM INDUSTRY**

Tomago Aluminium pays a base rate of \$26.50 per hour to their directly employed tradespeople. Labour Hire trades employees at Tomago supplied by D & S Fabrications receive \$19.80 per hour for the same work whilst labour hire employees supplied through Pintab receive \$19.94 per hour.

Tomago employees receive a discount at the canteen and subsidised aluminium products and tools. Labour hire employees have no access to these non-wage benefits.

Hydro Aluminium pay their directly employed casuals an all purpose casual loading of 25%. Labour hire employees supplied to Hydro by Pintab receive a lower hourly rate and the 25% loading is only paid on the base rate.

#### **Lowest Common Denominator – Wages**

67. As labour hire companies compete overwhelmingly on labour costs, operators source the lowest of minimum award rates. In some cases, the award selected will be chosen not

because it appropriately covers the work in question but rather because of inferior wages and conditions which have a tangential relationship to the work being performed.

68. Labour hire operators, their legal representatives and industry associations argue that they are not covered by industry awards such as the Metal and Engineering Associated Industry Award 1998 and the Graphic Arts – General – Award 2000 as they operate in the labour hire industry as opposed to the Manufacturing or Graphic Arts and Printing industry.

### **CASE STUDY 8 AMCOR FIBRE PACKAGING**

Amcor Fibre Packaging (Amcor) is a respondent to the Graphic Arts – General – Award 2000, an award made by the Australian Industrial Relations Commission (AIRC). Amcor operates a site at Rocklea, Queensland. In 2002 Amcor called for labour hire companies to tender to supply work at the Rocklea site.

A labour hire company by the name of Labour Link successfully tendered for the contract on the basis it would provide labour under the Printing Industry Award – State 2003. This is an award made by the Queensland Industrial Relations Commission, pursuant to the *Industrial Relations Act 1999*. The Printing Industry Award State – 2003 is a common rule award. Labour Link maintained that it was a respondent to this award by virtue of the fact it does not qualify to be bound by the Graphic Arts – General – Award 2000 as Labour Link is in the labour hire industry.

A significant difference between the Graphic Arts – General – Award 2000 and the Printing Award State is in respect of the payments made to shift workers. Under the Printing Industry Award State – 2003, shift workers receive a shift allowance of 12.5% of the normal daily wage, or \$9.60 whichever is greater. Graphic Arts – General – Award 2000 covered shift workers receive a shift allowance of 20% of the normal daily wage.

Workers employed by Labour Link and placed at Amcor, were therefore receiving considerably less in terms of shift allowance. The engagement of Labour Link, was a deliberate ploy by both the labour hire company and Amcor. Workers working side by side were receiving differential pay rates based on one worker being a “commodity” and the other, an employee.

The shift differential was ultimately discovered by union members and resolved following stop work meetings. Many labour hire workers do not have the protection of working in a strong union shop.

### **Freedom Of Association And Pursuing Entitlements**

69. Labour hire workers are in a catch 22 situation when “choosing” to exercise their freedom of association to join a union and/or pursue entitlements. Becoming a known union member and/or delegate often results in the work offered by agencies drying up.
70. Pursuing an underpayment or querying why other workers receive superior wages and conditions whilst using the same skills on the same work often results in the labour hire employees services “no longer being required”. The precarious, casual nature of labour

hire facilitates these fundamental breaches of human rights being disguised as normal fluctuations in labour requirements.

**CASE STUDY 9**  
**FREEDOM OF ASSOCIATION – CAPRAL ALUMINIUM EXTRUSION WORKER**

AMWU member Martin Beck worked at the Capral Aluminium Extrusion project at Bundamba in July 2004. There were two principal contractors on site – Trevasan and Copeland Engineering. Mr. Beck outlines the problems and pressures in pursuing rightful entitlements:

*“Labour hire workers on site received differing rates of pay in accordance with what labour hire company they worked for. For example, the base rate for fitters varied between \$21.30 to \$25.00. These fitters were exercising the same level of skill and experience but receiving different rates of pay.*

*Several stop work meetings were conducted by union members from the different labour hire companies in an attempt to secure equal pay for all workers. It was made clear to the workers by the various labour hire companies on site that if the industrial action continued, they would find other people to work on the job.*

*This is a key problem with labour hire – your employment is not secure and you can be told not to return to site without any real legal recourse. I am engaged as a casual worker and it is easy for a labour hire company to get me off site if they wish.*

*In my experience, labour hire companies try to get away with paying workers the minimum payment. On numerous occasions, I have gone onto a site and the labour hire company has tried to pay me less than what the permanent workforce receives.”*  
(Martin Beck’s Statement, February 2005)

## **Superannuation**

71. Workers engaged by labour hire companies face compromised retirement earnings. Superannuation problems identified by labour hire workers include:

- forced mobility and the passing of employees from agency to agency resulting in lost accounts and a multitude of accounts whose value is reduced by a multiplicity of fees;
- sham contracting arrangements where superannuation payments are avoided all together;
- non payment of superannuation;
- superannuation paid on minimum award rates; and
- superannuation paid on fewer hours than worked.



### **CASE STUDY 10 SUPERANNUATION**

Professional Force Personnel Pty Ltd's standard contract is constructed to enliven the ODCO judgement. To access work through Professional Force Personnel, workers must agree that "*no legal employment status exists*" between the worker and the agency (Clause 4, The Agency Contracting System, Professional Force Personnel, Attachment 'B' hereto) between the worker and the agency.

Professional Force's standard contract (Attachment 'C') requires workers to agree that they "*have no claims on Professional in respect of Holiday Pay, Long Service Leave, Sick Pay or any similar payment*" (clause 4).

There is no choice provided for workers whose work is outsourced to Professional Force Personnel. They are required to enter into sham contracting arrangements forgoing all entitlements, including superannuation, to retain a job.

### **CASE STUDY 11 SUPERANNUATION**

The AMWU has spent two years pursuing an underpayment for a member placed by Workpac Industrial at Groote Eylandt Mining Company (GEMCO). Neither GEMCO or Workpac will admit responsibility for the underpayment.

The member's timesheet is attached and marked "D". The timesheet identifies that whilst the members hours were 72 (6 X 12 hour days at the flat rate of \$26.41 per hour) our member was paid the minimum superannuation contribution of 9% on only 32 hours.

In this particular case our labour hire member received an all up flat rate (no additional payments) of \$26.41 per hour compared to the \$37.43 per hour (plus allowances) paid to similarly qualified GEMCO employees.

72. Chapter 4 of the union's submissions extrapolates on the safety consequences of being a labour hire employee. As the growth in labour hire increases so does the competition and hence cost cutting amongst operators. Labour hire workers are regularly required to provide and maintain their own PPE at their own expense. Permanent workers will have PPE supplied and in addition receive a tool allowance for the supply and maintenance of tools. The differential access of labour hire workers to PPE results in negative consequence for both health and income.

**CASE STUDY 12**  
**PERSONAL PROTECTIVE CLOTHING AND EQUIPMENT (PPE)**

A casual worker for labour hire operator Workpac Industrial is required to supply their own:

*“Safety Equipment required to work on assignment:*

*Ear Protection, Eye Protection, Protective Clothing, Protective Gloves, Safety Boots, Safety Boots, Safety Helmet”* (Extract from Workpac Industrial, Darwin, offer of casual employment, December 2002)

*“Long sleeve shirts, long trousers and steel capped boots are minimum PPE that you will need to provide. You will also need to provide your own personal tools, i.e., lockable toolbox...Any loss or theft of tools is at your own risk.”* (Extract from H & S Engineering Construction Pty Ltd, Tumut, letter of offer; 4/11/03)

*“The employee is to correctly use (where required) and maintain all personal protective equipment and clothing.*

*The employee is required to supply at their cost and to wear cotton drill shirts (long or short sleeved) with a collar, cotton drill trousers and steel cap boots for all Workpac Industrial assignments. If a particular assignment or work site demands that a safety helmet be worn, the employee is also required to supply and wear a suitable safety helmet.*

*The employee is to supply prescription safety glasses, should this be a pre-requisite for the job description.”* (Extract from Workpac Group of Companies Casual Employees – Terms and Conditions of Employment, Version 4, August 2000)

73. There are just a few of the multitude of examples of labour hire employees being denied basic entitlements and the simple respect and dignity associated with civil society. The following case study <sup>65</sup> demonstrates the multi-factor disempowerment illustrative of the new, flexible labour market:

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<sup>65</sup> Wabor et al, Ibid, p.76

**CASE STUDY 13**  
**COLIN'S STORY – FROM LABOURER TO QUALIFIED FITTER THEN**  
**LABOUR-HIRE TRADESMAN**

Col started his working life as a labourer in the factories in the Casula area of South-West Sydney. He eventually found his way into the maintenance department of a large food processing factory. The restructuring of the Metal Industry Award and allied training arrangements provided him with the opportunity to upgrade his skills. With the help of his union he completed an adult apprenticeship in fitting and machining. He then moved on to get qualifications in hydraulics and pneumatics as well as a restricted electrical licence. In 1997, after 18 years at the factory he was made redundant when all maintenance at the plant was outsourced to a large labour-hire firm. After working for the union for most of 1998 he then attempted to re-enter the industry. All jobs on offer were available only on a labour-hire basis or through employment centres linked to the CES 'which gave you the run around'.

In taking work through labour-hire firms he has encountered many problems. The first job he went for had been advertised as requiring a tradesperson but the employer would only offer him it at labourer's level when he arrived. At a subsequent job when he raised questions about safety he was 'moved on'. While working for a client warehouse firm that offered proper safety he was offered a permanent job, but only if he signed an Australian Workplace Agreement (AWA): the job was not available on any other terms. At his subsequent workplace he was expected to sign off on safety induction that he had not been given. He argues that labour-hire workers face serious problems even when they are on site. These including being ostracised at the workplace; he 'regularly found himself forced to have lunch by himself'.

But the most troubling and recurring problem that there is always the assumption that you can do the job you are sent to, even though you may not be capable of it. This creates a major dilemma for the worker: do you attempt to do it and potentially make the situation worse or do you indicate your limitations and thereby risk being seen as 'fussy' or a 'trouble-maker'. Either way the labour-hire worker faces major problems in building and preserving a reputation. An allied problem is being sent to a job that may only last a couple of hours, yet which requires an hour or two's travel time to get to. Colin also reported '(t)he only employment he had been offered under labour-hire, however, was on a casual basis'.

### **RECOMMENDATION 3**

The Commonwealth legislate to guarantee labour hire workers and contractors the right to receive the employment conditions operating at the sites where their work is performed.

### **Conclusion**

74. Labour market researchers appear on a compendium ranging from those viewing labour market "developments as empowering workers with greater skills and increased control over their work" to those that perceive these changes as "management taking advantage of

an increased ability to attain higher profits through greater work intensity and poorer working conditions for a large proportion of the workforce”.<sup>66</sup>

75. The AMWU’s evidence supports the latter perspective. The AMWU’s evidence is of a secondary work force suffering in the new market. The ILO’s committee of experts<sup>67</sup> agreed that a national policy might include but not be limited to:

- *providing workers and employers with clear guidance concerning employment relationships, in particular the distinction between dependent workers and self-employed persons;*
- *providing effective appropriate protection for workers;*
- *combating disguised employment which has the effect of depriving dependent workers of proper legal protection;*
- *not interfering with genuine commercial or genuine independent contracting;*
- *providing access to appropriate resolution mechanisms to determine the status of workers.*

76. Australia, in developing an effective legislative response which reflects the above criteria in the evolving (devolving) labour market, must acknowledge the evidence that labour hire and contract workers are inadequately protected.

77. Leaving aside the impact on workers and their families of wage reductions due to outsourcing, is this trend beneficial for the economy? Professor John Quiggin has stated that if “...observed expenditure reductions are achieved through a reduction in workers’ real wages, outsourcing represents a transfer of economic rent from workers to managers rather than an efficiency gain. In this instance, it is not clear that outsourcing results in a net social benefit.”<sup>68</sup>

78. Another trend associated with outsourcing is greater work intensification. Quiggin is “...critical of the tendency to assume that productivity gains achieved through increased work intensity are a free good since it assumes that there are unexploited gains from trade to be had...However, there is no reason to assume that an improvement in productivity is necessarily welfare improving since if it was achieved through increases in work intensity, workers could be worse off than before, so the net welfare benefit may not be positive.”<sup>69</sup>

79. The AMWU submits that cost savings that outsourcing generate for businesses are achieved by an increase in precarious employment and diminished job security, failure to pay prevailing award or agreement rates; standing down employees without pay between jobs during low workload periods; payment of cash for overtime and the treatment of employees as subcontractors. Ultimately, the burden of these cost savings enjoyed by business fall disproportionately on workers and the community.

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<sup>66</sup> Clayton A et al – Study on Employment Situations and Worker Protection in Australia – A Report to the International Labour Office; Melbourne, 1999, p.16

<sup>67</sup> ILO – 91<sup>st</sup> Session (2003), The Scope of the Employment Relationship, Report V – Conclusion, Geneva

<sup>68</sup> Jensen, P. & Stonecash, R., “the Efficiency of Public Sector Outsourcing Contracts: A Literature Review”, Melbourne Institute Working Paper No.29/04, 2004, p.3

<sup>69</sup> Ibid, p.12

## CHAPTER 4 - IMPACT ON OCCUPATIONAL HEALTH AND SAFETY

*“I am not prepared to risk my health and safety to do a job quickly and cheaply. Unfortunately, the flip side of this is that I get fewer jobs. I can see that those workers with lower OHS expectations get more work”*

### Introduction

80. The International Labour Organisations Encyclopaedia of Occupational Health and Safety in reviewing the health and safety of contract labour notes that:

*“one fundamental issue among the possible problems with such arrangements, is whether the owner of the enterprise or the contractor supplying the labour is responsible for the safety, health and welfare of worker. There is often “buck passing” in which each claims the other is responsible for the substandard working conditions...contract workers are often exposed to physical and chemical hazards and are denied the education and training required to recognise and cope with them”. (24.11)<sup>70</sup>*

81. More recent work further lends support to the claim that the use of contract and labour hire working arrangements is a health and safety risk. In a major literature review in 2001 Quinlan et al noted that

*“Of the 93 published journal articles and monographs/books reviewed 76 studies found precarious employment was associated with a deterioration in occupational health and safety (OHS) in terms of injury rates, disease risk, hazard exposures, or worker (and management) knowledge of OHS and regulatory responsibilities. Of the more than 25 studies each on out sourcing and organisational restructuring and downsizing, well over 90 percent found a negative association with OHS. The evidence is fairly persuasive for temporary workers, with 14 of 24 studies finding a negative association with OHS.”<sup>71</sup>*

82. An update of this review revealed that of 36 studies on the health and safety of temporary and leased workers 19 showed adverse effects, (6 nil/positive and 11 indeterminate).<sup>72</sup>

*“As a March 2003 it has been possible to identify more than 180 individual studies undertaken in more than 20 countries, covering a wide range of industries (as well as general population studies) and using a range of indices (injury rates, sickness absence, disease, hazard exposures and psychological distress and methods (longitudinal, survey etc). A review of this research revealed that the vast majority of these studies (around 80%) linked job insecurity and contingent work arrangements*

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<sup>70</sup> International Labour Organisation Encyclopaedia of Occupational Health and Safety, Fourth Edition, 1998. Chapter entitled Precarious Employment and Child Labour.

<sup>71</sup> “The Global Expansion of Precarious employment, work disorganisation and consequences for occupational health: a review of recent research”. M Quinlan, C Mayhew and P Bohle. Int J Health Serv 2001;31(20):335-414, abstract

<sup>72</sup> Precarious Employment and Work related Stress; a Review of Australian and international research: paper at Occupational Stress Workshop- Academy of the Social Sciences in Australia, Adelaide, 28-29 November 2002. P Bohle and M Quinlan

*to adverse OHS outcomes. Neither country nor industry where the research was undertaken, nor methods or indices, appeared to influence these results*<sup>73</sup>

83. The National Occupational Health and Safety Commission (Office of Australian Safety and Compensation Council) and all health and safety jurisdictions have recognised that the impermanent nature of work organisation for labour hire workers leads to their greater representation in accident statistics.

### Legal Obligations

84. Since the 1980's, when all OHS statutes were significantly rewritten, the labour market and industrial context has changed significantly<sup>74</sup>. Despite that change, OHS statutes are able to be applied to labour hire and contracting arrangements.<sup>75</sup>
85. Each of the Australian OHS statutes imposes a duty upon employers in relation to employees and each explicitly extends the scope of general duties beyond traditional employment relationships. The major factor governing the extent of duties that labour hire companies and host employers owe to employees is the "reasonably practicable" qualification.
86. The Full Bench of the NSW Industrial Relations Commission, 12<sup>th</sup> August 1999 Judgement "*Drake Personnel Ltd/as Drake Industrial V Work Cover Authority of New South Wales*" commented<sup>76</sup>:

*"Indeed in our view an employer who sends its employees into another workplace over which they exercise limited control is, for that reason, under particular positive obligations to ensure that those premises, or the work done, do not represent a threat to the health, safety or welfare of those employees. Certainly, there is no basis to consider that such an employer has a lesser liability or obligation under s15 (1)."* (p.45)

The Full Bench added:

*"In our view, a labour hire company is required by the OHS Act to take positive steps to ensure that the premises to which its employees are sent to work do not present risks to health and safety. This obligation would, in appropriate circumstances, require it to ensure that its employees are not instructed to, and do not, carry out work in a manner that is unsafe."*(p.47)

87. Despite the clarity of occupational health and safety law and a growing body of case law, there is still confusion regarding who is responsible for the health and safety of on hire workers, the host or the labour hire employer. The AMWU notes that this confusion is to be expected the consequence of the difficulties associated with these types of labour

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<sup>73</sup> Regulating supply chains to address the occupation health and safety problems associated with precarious employment: The case of home based clothing workers in Australia, August 2003 Working Paper 21 National research Centre for OHS Regulation. I Nossar, R Johnston and M Quinlan

<sup>74</sup> Chapter 3, New Challenges for OHS, Occupational Health and Safety Act Review, Chris Maxwell, March 2004.

<sup>75</sup> "Paradigm Crossed? The statutory Occupational Health and Safety Obligations of the Business Undertaking", R Johnstone, Australian Journal of Labour Law, September 1999, p. 103

<sup>76</sup> Drake Personnel Ltd T/As Drake Industrial V Workcover [1999] Nswircomm 341 (12 August 1999)

market arrangements. Many of the characteristics of labour hire are also risks factors for poorer health and safety outcomes. As noted by Johnstone et al:

*“competitive pressures that induce businesses to adopt the above work and organisational arrangements also encourage corner cutting on OHS, under-bidding of contract, the use of cheaper or inadequately maintained equipment, reductions in staff levels, speeding up production, or longer working hours. These organisational forms, particularly those which involve introducing third parties to work arrangements and creating multi-employer worksites, result in fractured, complex and disorganised work processes, weaker chains of responsibility and “buck passing” and a lack of specific job knowledge (including knowledge about OHS) among workers moving from job to job.”<sup>77</sup>*

### **Evidence of Poorer Outcomes**

88. The characteristics of labour hire/casual arrangements that lead to increased health and safety risks are influenced by the fact that on average they:

- are a younger workforce,
- work for shorter period,
- occupy lower skilled jobs,
- are less likely to be covered by workers compensation,
- are less likely to be a member of a trade union; and
- are less likely to have undergone training.

89. These are all features which have a negative impact on health and safety:

*“most authors find a negative relationship between temporary or fixed (short) term contracts or subcontracting and aspects of the working conditions...risks directly related to working conditions (bad ambient and ergonomic conditions) are shifted towards non permanent workers and subcontractors, who have less protection and/or knowledge to cope with these risks...In general non-permanent workers (and part-time employees) have less job security, less control over their working time, less career prospects, less access to training and perform less skilled tasks.”<sup>78</sup>*

90. The involvement of a third party in the employment relationship results in:

- Off loading of high risk activities to temps and contractors.
- Attenuation of lines of management control.
- Increased complexity and ambiguity in rules and procedures and obscures changes to work practices; and
- Fractured OHS knowledge and disrupted inter-worker communication and task coordination.<sup>79</sup>

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<sup>77</sup> Statutory OHS Workplace Arrangements for the Modern Labour Market, R Johnstone, M Quinlan and D Walters, Working Paper 22, National Research Centre for OHS Regulation, Australian National University, January 2004

<sup>78</sup> New Forms of Contractual Relationships and the Implications for Occupational Safety and Health, European Agency for Safety and Health, p8-9.

<sup>79</sup> *ibid*, Bohle and Quinlan

91. In response to the difficulties with these arrangements, most jurisdictions have produced material to give advice to the labour hire industry and host employers; e.g. Queensland Department of Employment, Training and Industrial Relations, in August 1999 published “*Managing Health and Safety in the Labour Hire Industry*” and have conducted audits, in an attempt to assess the performance, using health and safety parameters. However, recent audits of the labour hire industry by two state jurisdictions<sup>80</sup> illustrate continuing difficulties:

*“WorkSafe and WorkCover have evidence of some labour hire agencies believing and arguing that they are not the direct employer of on hire workers as they on hire to host workplaces...labour hire agencies are direct employers in most circumstances” (Contractor Management, Victoria, page 4).*

*“Induction is not always being carried out by both parties, with some confusion as to who is responsible...where there is a lack of communication and formal processes, labour hire agencies and host employers are not verifying with the other party that risk assessments, monitoring or training have been carried out” (DAIS, page 14.)*

92. The OHS statues require employers to undertake particular activities to ensure health and safety performance. Those which have been identified as problematic for on hire workers include:

- Training and information regarding the risks of the work
- Risk assessments on the work that is performed.
- Issue resolution procedures.
- Participation in consultative and workplace representation arrangements.

93. WorkSafe Victoria, in a background paper on Labour Hire noted that:

*“European report on agency work concluded that “agency workers experience poor (health and safety) working conditions” compared to other forms of employment “because of the precariousness of their employment contract; dual responsibility for health and safety between agency and the user firm; and constant change at the workplace.”<sup>81</sup>*

94. Worksafe then refers to the “...rather pessimistic view of industry attitudes to injury and disease prevention is presented by NSW WorkCover in the Labour Hire Task Force Final report (2001)...For their part, labour hire companies rely on host employers to carry out their responsibilities for them whereas host employers may not be disposed to embrace OHS and injury management commitments....Somewhat surprisingly a study of recruitment agencies industry (including those supplying supplemental labour) in England found that over 10% of companies do not even assess the suitability – capabilities, knowledge, skills and experience – of their temporary workers for the tasks they will be required to perform. While this might not be an issue in Victoria, it demonstrates a disregard for basic OHS responsibilities by some within the industry.”<sup>82</sup>

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<sup>80</sup> Workplace services Report on the Labour Hire/on-Hire Industry Targeted Intervention Strategy September 2004, a joint initiative between DAIS workplace services and WorkCover Corporation, South Australia and Contractor Management Project OHS Phase 1 The Labour Hire Sector in Victoria, January 2005, Worksafe Victoria.

<sup>81</sup> Health and Safety Working Group Background Paper, Labour Hire, 13<sup>th</sup> May 2002, Worksafe Victoria

<sup>82</sup> Ibid, p.2



95. In the same document Worksafe comments that:

*“Labour hire agencies have argued (not only in court) that they have limited control over the host’s workplace and therefore limited responsibility for health and safety. This issue has been specifically addresses in two cases. In a Victorian case (Wait v Extrastaff) the magistrate noted that...There is responsibility (for the labour hire agency) to ensure that the workplace into which the employee is placed is no less safe than if the employee was on the employers own premises.”*

96. In Victoria, since 1985<sup>83</sup> there has been a requirement on host employers to treat contractors and their employees essentially in the same way as their permanent employees. Other jurisdictions have similar requirements, however, it is not uncommon for employers and employees to consider the health and safety of on *hire workers* as not the site’s responsibility:

#### **OHS and Labour Hire Case Study**

During a walk through audit of a manufacturing facility an employee was seen not to be using the manual handling lifting device. The risks involved in the work being performed were a breach of both the parent OHS Act and the specific Manual Handling Regulations. When the question was posed regarding “why the equipment was not being used”, the answer from the company health and safety officer was “oh, he is a casual” (from a labour hire company). The worker had not been trained in use of the equipment but was expected to perform the identified high risk manual handling work. Such an expectation was not placed on permanent employees.

#### **OHS and Contracting Case Study**

The discrepancies between accepted practice for permanents versus contractors or casuals was highlighted in an industrial dispute in the South Australian mining industry where permanent staff employed as welders had access to regular shaded work breaks, access to drinkable water and an ability to regulate their work rates. Contract workers were not provided with any of these basic work arrangements. The welding work (which requires the wearing of significant personal protective equipment) was performed in above 50 degrees centigrade heat.

97. There is a plethora of evidence (see Appendix A) that good health and safety performance requires, amongst other things, participation and consultation with the workforce. Northern Ireland government research into the Construction industry found that:

*"the variable with the **strongest relationship with safety compliance** is the presence or absence of a safety representative....safety representatives are associated with a greater likelihood of reporting risky situations and a lower likelihood of simply continuing to work in such situations...What is most eloquent about these results is the lack of any other significant relationships. In particular the general safety*

<sup>83</sup> Section 21 (3) OHS Act 1985

*management factor is not significantly associated with effective response to audits and hazards and has no influence on behaviour or compliance*<sup>84</sup>

98. Similar, although older evidence, from the USA and Australia also illustrate the point that:

- “Effective strategies for involving workers appear to be conditional on a number of variables, most importantly on worker activism and the effective use of formal negotiations“<sup>85</sup>
- Unionised workplaces were three times as likely to have a health and safety committee, twice as likely to have health and safety representatives and **twice as likely to have undergone a management occupational health and safety audit in the preceding 12 months.**<sup>86</sup>

99. For on hire workers this is commonly *not* the case, it is our submission that the experience of labour hire workers is usually characterised by the following:

- Lack of participation in health and safety committees at the host employer.
- Lack of participation at the labour hire company.
- Lack of representation through elected H&S Representatives. And
- Lack of participation in training courses for H&S Representatives.

100. The NSW Occupational Health And Safety Act 2000 and subsequent regulations, was the first Act to specifically note the needs of on hire workers to be consulted and considered in risk assessment processes. Although the NSW Act specifically addresses consultation with labour hire employees, the workforce experience still is:

- Spasmodic consultation at the host employer’s site; and
- Lack of information the employees regarding the consultative arrangements at the worksite by both the host and labour hire employer.

101. The difficulties for on hire workers to be involved in workplace participatory mechanisms was highlighted in the South Australian report by the Consultative Arrangements Working Party”

*“Participants reported that casual, part-timers, temporary and contract workers tended to be excluded from OHS consultation and participation processes. Contributing to this was the difficulty in providing training and induction at short notice. Participants suggested that contractors and other temporary employees are not part of the culture of the organisation. ...temporary staff are often rostered on shifts where there is no Health and Safety Representative, or other responsible person who can provide induction or other training.”*<sup>87</sup>

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<sup>84</sup> Safety Behaviour in the Construction Sector by Nick McDonald, Dept of Psychology, Trinity College Dublin and Victor Hrymak, School of Food Science and Environmental Health, DIT ,2002

<sup>85</sup> Michelle Ochsner and Michael Greenberg. Factors which support effective worker participation in health and safety: A survey of New Jersey industrial hygienists and safety engineers. Journal of Public Health Policy, volume 19, No.3, 1998

<sup>86</sup> Australian Workplace Relations Survey, 1990 - 1995

<sup>87</sup> Consultative Arrangements Working Party ”Working Together: A review of the Effectiveness of the Health and Safety Representative and Workplace Health and Safety Committee System in South Australia “ Final Report and Recommendations, WorkCover Corporation of South Australia, Adelaide, 2001, p.21

102. There is a lack of research on the effects of non permanent workers and the presence workplace participatory mechanisms. However the 1995 AWIRS data showed that “...47% of workplaces with between 0 and 25% part timers had joint consultative committees compared to just 30% of workplaces where more than 25% of the workforce was part-time.”<sup>88</sup>
103. Despite having a significant membership in labour hire and a high number of elected H&S Reps/committee members, the numbers of these with labour hire employers is less than with other employers. AMWU internal membership data indicate that if a member is employed in labour hire they are three times **less** likely to have access to an elected AMWU health and safety representative than our other members.
104. AMWU members regularly report a reluctance to participate as a health and safety “whistle blower”. Despite being protected by formal legal rights, in practice, labour hire employees who act as whistle blowers jeopardise their employment at their current workplace and even their access to ongoing employment with the labour hire company.

#### **OHS and Labour Hire Case Study**

“I am fortunate to have a good understanding of OHS because the things that you are sometimes asked to do can be very dangerous (eg. doing welding work while standing on a ladder) and I am not prepared to risk my health and safety to do a job quickly and cheaply. Unfortunately, the flip side of this is that I get fewer jobs. I can see that those workers with lower OHS expectations get more work.” Victorian Labour Hire welder.

105. AMWU members regularly report their perception that if on hire workers or contractors raise health and safety issues, the worker will be moved on or put at the bottom of the list for future employment.

#### **Whistleblower Case Study**

At a workplace where employees were concerned about their exposures to asbestos, permanent employees were involved in direct discussions with their employer. The health and safety representative working for the principal contractor briefed fellow labour hire employees about the discussions relating to asbestos on site. The following day he was told that he was no longer required by the host employer. The perception of the workers both permanents and on-hire was that his active participation in reporting and raising issues was the reason for his removal from the site. Given that another person was employed to do his work, the perception was probably accurate.

106. These examples are repeated regularly in labour hire companies:

*“Leased workers are in an especially vulnerable position because the host employer need not give a reason for looking for a worker to be removed and the labour hire*

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<sup>88</sup> Statutory OHS Workplace Arrangements for the Modern Labour Market, r Johnstone, M Quinlan and D Walters, 2003

*firm may be reluctant to pursue the issue (even if it becomes aware of the underlying issue) for fear of losing a client. Further, regulators and others (including employers) interviewed in Quinlan's (2003) research indicated that some industries and employers were using labour leasing as a form of probationary employment – a situation that is likely further inhibit the reporting of problems...particular inhibitions on contingent workers raising OHS issues was repeatedly referred to by regulators in most jurisdictions, with one typical observation being:*

*... if a casual worker or a labour leased workers in a host employer says 'oh this thing's not safe here, I want to get this fixed'. All of a sudden the consultant for the labour firm turns up and says 'you're not required here anymore. You're finished and don't come back'. They've had a call from the host employer (to say) they're just not wanted... there's a fellow I spoke to from a labour leasing firm who went to a host employer, he was a boiler maker and they gave him a grinder that had " a danger out of service' tag on it and he said 'I can't use that one' and the (manager) ripped the tag off and said 'well there's nothing wrong with it now'. These sorts of stories keep emanating from the industry.<sup>89</sup>*

107. Often on hire workers are contracted to perform work in more hazardous industries or at more hazardous times during the lifecycle of production processes. (Underhill 2002).

*“On hired workers may also be exposed to risks because they are often used at times of organisational change when management systems are often in disarray. NSW WorkCover states that ‘labour hire workers step into environment of elevated OHS risk arising from adverse effects created by this process (of using supplemental labour as a short term solution to problems created by organisational change). Several adverse affects are identified including the intentional off loading of high risk activities to contractors who use labour hire sources (Labour Hire Task Force Final Report, 2001 ‘<sup>90</sup>*

108. **So overall, the body of evidence from overseas and Australia supports the hypothesis that on hire workers are “more likely to be injured than direct hire employees, (and that) their injuries appear to be more severe.”<sup>91</sup>**

### **Workers Compensation and Return to Work**

109. Agencies, the labour hire industry and unions all recognise that on hire workers access to good rehabilitation and return to work programs is limited. The South Australian Labour Hire Task Force Report (2000) notes:

*“Both the corporation and the labour hire industry have expressed concern regarding the poor return outcomes for labour hire workers. This has been directly related to the nature of the labour hire industry, which limits the labour hire employer's ability to provide alternative return to work opportunities. Scheme statistics have indicated that claims with a return to work goal with a different employer are more expensive*

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<sup>89</sup> Working Paper 22

<sup>90</sup> Ibid, HSWG Background Paper

<sup>91</sup> Extending Knowledge on Occupational Health and Safety and Labour Hire Employment: A Literature Review and Analysis of Victorian Workers Compensation Claims, Report Prepared for WorkSafe Victoria, Elsa Underhill, Victoria University, June 2002.

*and have poorer outcomes than claims with a return to work goal with the same employer.”<sup>92</sup>*

110. It is not uncommon for injured labour hire workers to receive no return to work programs as their employer, the labour hire company, does not have a permanent work site. This is well recognised by the jurisdictions:

*“agency staff state that labour hire/leasing firms had expressed the view they did not have the capacity to offer rehabilitation or alternative work programs because they do not have a permanent work site”<sup>93</sup>*

111. In many cases, the costs of treatment and rehabilitation of injured on hire workers falls upon the State, Medicare and the social security system. This is well recognised as a transfer of costs from the private to the public purse. The AMWU argued in our submission to the House of Representatives Inquiry into Aspects of Workers Compensation that “...the growth in labour hire and contracting arrangements has allowed for evasion of payment of workers compensation premiums and strong disincentives are applied to employees not to access their legal entitlements.

112. The following are a snap shot of the types of "fraud" the AMWU discovers:

(i) Incorrect classification of employees work so that a lower workers compensation premium is paid

A labour hire company doing heavy engineering work, but insured as fish mongerers; a labour hire company conducting engineering work on the waterfront, insured as maritime importers.

(ii) Incorrect number of employees insured for:

In an effort to save upwards of \$175 000 a labour hire company understated the number of employees by a factor of ten

(iii) Interstate companies not paying insurance premiums to the relevant jurisdiction:

Queensland companies working and employing in northern New South Wales, without paying the relevant premiums in NSW

(iv) Employees pressured to take other types of leave instead of making workers compensation claim:

When asked why an employee had not been taking his Rostered Days Off (an employment entitlement) the employer replied “I’ve been helping the guy out, he has been injured and has used the RDOs to recover”; an employee with ankle injury was paid, including shift penalties, to attend but not to work for weekend work, rather than a Lost Time Injury is recorded.“

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<sup>92</sup>“Workers Compensation and the Challenges Posted by Changing Patterns of Work: Evidence from Australia”, Michael Quinlan, University of Sydney, March 2004, page 11.

<sup>93</sup> Ibid

## CASE STUDY

I live in the Latrobe Valley. I am a welder by trade. I have had occupational, health and safety training (provided by the union) in 1987 and attended a more advanced OHS training course in 1997. I was an OHS rep at SEC when I worked there, and continue to be pro-active about OHS issues at my later jobs.

It has been very difficult to find work in the Latrobe valley, whether with labour hire companies or other employers. As a result I have had to look for work interstate. The work I am able to get is a mixture of short term contract work and labour hire work.

### **Raising OHS issues**

It is fair to say that my OHS knowledge has affected the number of jobs offered to me by labour hire companies.

In 1999, I was placed by skilled at Longford for a welding job for about 6 months. 3 months into the job, I was voted by the guys to be their steward and OHS rep. We had really serious concerns about the way a lot of work was done there. There were the usual daily OHS issues and more serious issues like emissions and fall-outs from the stack that made some guys sick, and there was asbestos lying around. This was because non-union labour had been used to remove asbestos from the site, and they had taken short cuts in asbestos removal either because they didn't know how to do it properly, or just to save money by doing it quickly without the right safeguards. After the job finished, skilled offered me a job to work off-shore, but they inferred that I would only get this job if I kept my mouth shut. I disagreed. They never got me any work after that.

In another case, I accepted a 1 month job as a boilermaker in Wollongong for a cement company. When I turned up for work, the company wanted me to remove insulation. I conducted a job safety analysis and told them that for the job to be done safely, workers would need masks, overalls, tape, plastic bags and other things to make sure that the insulation materials were properly removed and contained. In the end, the company did not have plastic bags (which can be easily bought from a hardware store) and told us to just rip out the insulation. I insisted that the job had to be done properly. On the second day, I got a call to say that my services were no longer required. I immediately raised my concern with a union organiser. In the end I was only reinstated for 2 weeks, instead of the 4 that I was originally promised. Having travelled to Wollongong from Latrobe Valley, this did not turn out to be a good investment of my own resources or my time. That labour hire company never offered me any more work.

My skills and ability to do a good job have never been questioned or raised as an issue on the job. Despite this, I have had trouble getting further placements with labour hire companies once they find out about my OHS qualifications. To me, it's pretty clear that if you insist on doing your job safely, there is a good chance that you lose out on

job offers or that your work gets cut short. The labour hire company or the actual company wanting the work done will always try to find somebody else who is willing to do the work for lower wages and who will do as they are told.

### **Lack of OHS training and safety wear**

In my experience, the labour hire company usually gives me a general induction when I start a specific job on issues such as pay and their policies and procedures. They don't give OHS training. Often, I am required to supply my own safety boots and other safety apparel, especially on shorter jobs. The level of OHS training on the job depends on the company where I am placed. Some provide quite extensive information while others don't provide very much at all.

I am fortunate to have a good understanding of OHS because the things that you are sometimes asked to do can be very dangerous (eg. Doing welding work while standing on a ladder) and I am not prepared to risk my health and safety to do a job quickly and cheaply. Unfortunately, the flip side of this is that I get fewer jobs. I can see that those workers with lower OHS expectations get more work.

### **Labour hire casuals are not counted**

It is obvious that labour hire casuals like myself are not properly represented in a workplace. If casuals have an issue, we are generally afraid or reluctant to raise them, because often there are no stewards or representatives on the job. Even if there are, it can be hard to find out who they are when you're only placed there for a short time. For the sites that have OHS reps, often this rep is appointed by the employer rather than a union OHS rep. The OHS reps are also more likely to represent the permanents more than the casuals, because us casuals are only there for a short time and change around all the time. There have been occasions when the interests of casuals have been traded off to benefit the permanent workers.

The problem with labour hire work is that you only get bits and pieces of work at different places and you're never there long enough. Also, you are so easily replaced that it's a constant battle to have your voice heard on the job. This makes it difficult especially if there are real issues like inferior working conditions or safety concerns. I feel that the whole aim of this type of work is to reduce employer obligations to casuals because at the end of the day, casuals are nameless and faceless workers that nobody needs to be responsible for.

### **Financial problems**

It is obvious that my lack of permanent work affects my financial situation. A few years ago I needed to apply for a loan for \$5000 to repair both my car and my wife's car. Even though I had 90% equity on my house, I had to jump a lot of hoops before I got that loan. The bank wanted my group certificates and tax returns for the last 5 years, and needed my pay slips for the 3 months leading up to my loan application.

Luckily I'm good with my paperwork, otherwise it would have been almost impossible to get the loan. I'm sure that if I had a permanent job, it would have been as simply as getting the loan over the phone.

Also, I have to spend a lot of time and resources into looking for work all the time. This includes having a computer, modem, fax machine, mobile phone, writing, printing and sending off resumes just to find work. Most people do this once every few years because they get permanent jobs but I have to do it constantly throughout the year. These things are all expensive to buy and maintain. I can't claim any of these things on tax.

### **Impact on family and social life**

I am married with 3 kids, aged 20, 18 and 15. I have no control over my family or social life. I can't be a member of sporting club or plan family holidays or fishing trips with the kids because I never know when I will get work. It is hard to organise activities because I have to accept work as it comes because I don't know when the next job will come after that.

Working as a labour hire casual has definitely affected my marriage. Money is the only thing my wife and I argue about, because we can never plan or commit to anything because we never really know whether we can afford those things. Nowadays, I am forced to work interstate, which means more stress on our relationship. I feel that I'm not there for my wife and my kids because of this irregular kind of work.

Much of my time at home, when I am not working is spent looking for work and applying for work. It is also a time I have to give priority to my family, which means I don't catch up with my mates or extended family very often at all.

I know other people say that labour hire companies help people have a flexible work life. But what it really means is that my rights as an employee is reduced because I am disposable and it also means I can't plan my life from one day to the next. It has caused me and my family great stress and we would all like to see things improved so that we can work safely and have our voices respected and heard.

### **Solutions in OHS and Labour Hire**

113. As the research evidence continues to accumulate, which is increasingly being acknowledged by occupational health and safety jurisdictions and bodies, the response by governments and employers has been piecemeal in addressing the core issues regarding growing health and safety risks. Flexible labour market arrangements that distance the relationship between employer and employee are tantamount to the contracting out of health and safety obligations *to an individual worker*.
114. Suggestions made by Professor Johnstone that a number of improvements could be made to improve understanding of the separate and overlapping duties of host and labour hire employers including:



- Developing industry specific guidance to provide more explanation of the duties;
- Ensuring health and safety regulations particularise the duties on all parties;
- Ensuring that the OHS inspectorate is equipped to deal with complex employment arrangements particularly where they are used to undermine the duties; and by
- Ensuring that labour hire workers' rights to representation and consultation are ensured through the implementation of OHS laws<sup>94</sup>.

115. The AMWU puts forward the following recommendations to help alleviate the negative OHS consequences of the growth of outsourcing. However, the source of the problem is the labour market arrangement, so mechanisms to decrease the numbers of employees employed under these arrangements will be most effective in improving health and safety.

### **RECOMMENDATION 1**

That there be an improvement of worker representation in the OHS statutes by amending the negotiating processes for electing Health and Safety Representatives and for the membership on Health and Safety Committees. Actions could include:

- a) All statutes to be reformed to include the right to elect roving or regional Health and Safety Representatives who are not confined to a particular work site or employer.
- b) All statutes to be amended to ensure that workers are represented by Health and Safety Representatives, including all the workforce, being individuals engaged directly by the employer, contractors or employees engaged through a third party.
- c) All statutes to be amended to ensure that employers are obliged to consult with all their workforce including contractors and on hire workers regard OHS issues.
- d) All statutes to be amended to remove any size restrictions on the right for employees to participate in Health and Safety Committees.

### **RECOMMENDATION 2**

Workers and their representatives should be able to intervene in serious situations without being limited by difficult employers or the threat of discrimination or the threat of unemployment. This necessitates the following:

- a) All OHS statutes to include the power of Health and Safety Representatives/worker representatives to issue provisional improvement notices, prohibition notices and cease unsafe work without fear of reprisals.
- b) Strengthening the OHS laws to prohibit discrimination against employees and their representatives.
- c) Strengthening unfair dismissal laws.
- d) Ensuring access to independent and extended training for worker representatives on occupational health and safety.
- e) Ensuring that inspectorates are adequately trained and supported to ensure proper operation of worker participation.
- f) Inclusion in all relevant statutes the right of union officials to enter workplaces for the purposes of health and safety.

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<sup>94</sup> Working Paper 22

### **RECOMMENDATION 3**

The health and safety laws and regulations should particularise the duties of all parties, notably both the hiring and host employers, as well as contractors and workers.

### **RECOMMENDATION 4**

There is an absolute need to ensure that the OHS inspectorate is equipped to deal with complex employment arrangements.

### **RECOMMENDATION 6**

Provision of preventative health services for employers and workers that are independent of the workplace parties to improve access to information and guidance. That is government funded tripartite managed services located in regions which are easily accessible to everyone.

## CHAPTER 5 – IMPACT ON SKILL FORMATION

### Introduction

116. Section 1 examined the growth of labour hire and self-employed contractors. Importantly these form a significant part of a broader trend associated with the re-organisation of employment away from standard employment towards casualised employment. Outsourcing to labour hire agencies and self-employed contractors represents competitive cost strategy by firms in response to globalisation and involves intensification of the division of labour and intensification of work. What we need to ask is to what extent are Australian businesses missing future opportunities by going down this path of focusing on cutting labour costs rather than investing in longer term growth? Cost cutting focusing on flexibility undermines current and future skill formation and that is likely to have an impact on the future competitiveness of Australian businesses. As Pickersgill has argued:

*“The major problem for skill formation is that the demands for flexibility from employers are expressed in ways that do not support coherent skill formation practices”.*<sup>95</sup>

117. It is an issue that the Business Council of Australia also seems concerned about. Recently they argued that a form of short termism<sup>96</sup> has been infecting Australian businesses. Short-termism occurs where there is:

*“ an excessive preoccupation with projects, activities and investment designed to deliver improved near-term returns and outcomes at the expense of those that could deliver higher returns and outcomes over the long run.”*<sup>97</sup>

118. The implication of this short tenure is that 'local CEOs have just two to three years to deliver concrete results before their jobs are at risk. A corporate strategy that delivers negative returns during this period, even if it will deliver strong longer-term results for the company, can be fatal to the CEOs' tenure<sup>98</sup>. It leads to a situation where managers favour 'investment in highly observable projects, where progress is easy to demonstrate' and to lower investment in 'less tangible projects, such as in human capital or certain types of R&D'<sup>99</sup>.

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<sup>95</sup> Pickersgill R. (2001) Skill Formation in Australia and Beyond, International Journal of Employment Studies, Vol. 9, p.134

<sup>96</sup> The causes of this managerial short-termism are documented in a recent Business Council of Australia report. This short termism takes the form of a number of pressures:

- global of integration of capital markets and acceleration in the net flows into and out of countries in search of investment;
- an increase in the volume of funds under management as a result, for example, of compulsory superannuation. Competition amongst superannuation funds and the pressure of quarterly reporting 'is seen as a problem because it encourages group herd- that is, decision-making on the basis of short-term movements in the market and among competitors' (BCA 2004: 42)
- the short tenure of funds managers, just under three years in Australia (BCA 2004: 42) and of CEOs of major corporations at 4.4 years which is half the global average (BCA 2004: 44).

<sup>97</sup> Ibid., p.37

<sup>98</sup> Ibid., p.44

<sup>99</sup> Ibid., p.41

119. This short-termism is demonstrated by the growth of labour hire and outsourcing arrangements to the detriment of adequate investment in skills and training. Put bluntly, under the current system of incentives it is against the self-interest of a CEO to invest in longer-term workforce training such as apprenticeships, as it is generally perceived that it is not until an apprentice is in their third or fourth year that their output exceeds their costs. As a consequence, short-termism creates a strong incentive to buy-in skilled labour, through the use of labour-hire and contractors, rather than invest in the long-term skills development within a firm.

### **Impact of Labour Hire on Training**

120. The major Australian study into the growth of labour hire firms that was focussed on the supply of trade-based labour and its effects on vocational training concluded that “...labour hire firms primarily rely upon the pool of skilled people in the labour market, and are not large providers of formalised training of the type involved in the traditional apprenticeship.”<sup>100</sup>

121. The study undertook a survey of labour hire firms to determine the type of training provided to their workers and who pays for this training. The data is summarised in Table 7.

**Table 7 Type of Training Provided to Labour Hire Employees and Funded by Labour Hire Firms, Employees, Client Firms and Other Sources (Percent of Respondents)**

Type of Training	Labour Hire firm funds	Employee funds	Client firm Funds	Other	Number of responses
Induction training	50%	5%	45%	0	22
Safety training	61%	9%	30%	0	23
Trade training	26%	43%	4%	Not undertaken: 22% Government: 4%	23
Qualification updates	29%	58%	0	Not undertaken: 13%	24
Post-trade	21%	58%	4%	Not undertaken: 17%	24

*Source: ANTA 1998: 32*

122. The principal conclusion from the data is that “...that labour hire firms make small investments in training...with the labour hire firm more likely to fund induction and safety training than skills maintenance or extension. Labour hire firms appear to expect their employees to take private responsibility for skill development and maintenance.”<sup>101</sup>

### **Why Labour Hire Reduces Investment in Training**

123. The orthodox literature on the economics of training identifies a number of characteristics of labour hire firms, labour hire workers and the clients of labour hire

<sup>100</sup> Australian National Training Authority (1998) Impact of the Growth of Labour Hire Companies on the Apprenticeship System, Brisbane, p.1

<sup>101</sup> Ibid, p.31-32

firms that lead to significantly lower rates of training for labour hire workers and depress training in firms that are heavily reliant on outsourced labour.

### *Labour Hire Workers Are Casual Workers*

124. Principal among these reasons is the ‘impermanence of the majority of employment contracts - dependent on the availability of placement opportunities’<sup>102</sup>. 81 percent of labour hire contracts with clients are three weeks or less.<sup>103</sup> The very short term nature of placement contracts results in very high rates of casualisation amongst labour hire workers. The Australian Industry Group estimates that more than 95 percent of all labour hire employees are casual<sup>104</sup>. The significance of casual employment for training is that, controlling for a wide range of personal, educational, demographic, occupational and industry variables, casual employees are much less likely to have undertaken employer-provided training compared to full time employees<sup>105</sup>.
125. The main reason that casuals receive much less employer provided training is that:
- “training investments will be dependent on the length of time over which these investments can be recouped. In turn, because casual employees are likely to have a shorter tenure with a firm (because they can be easily dismissed)...than permanent workers, employers can be expected to be less willing to favour casual employees when offering training places’.”*<sup>106</sup>
126. The average tenure of a male casual with an employer is 3.3 years compared to 7.2 years for a permanent employee<sup>107</sup>. The tenure of casual male employees is just 48 percent of that of permanent employees.
127. In addition, the possibility that a labour hire worker could be poached by a user firm creates a disincentive on the part of labour hire firms to train their workers. A survey of 205 labour hire and temporary workers conducted in 2003 found that two-thirds of these workers preferred to be employed directly by a company rather than through an agency<sup>108</sup>. These attributes may well predispose these workers to be ‘poached’ in the hope of seeking permanent work.
128. Disincentives to labour hire workers investing in their own training are also generated as a result of their casual employment status. Casual workers “may be less willing to participate in training, especially if the training is considered to be largely firm-specific and thus not easily transferable to other employers.”<sup>109</sup>
129. There are also disincentives on the part of user firms to train labour hire employees. The casual nature of employment and the generally short duration of labour hire placements

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<sup>102</sup> Ibid., p.32

<sup>103</sup> Ibid., p.26. The body representing labour hire firms, Recruitment and Consulting Services Association (RCSA) estimates that ‘the average duration of a labour hire assignment is six weeks’ (NSW Labour Hire Taskforce 2000: 18)

<sup>104</sup> DIR, Op.cit, p.24

<sup>105</sup> VandenHeuvel A. and Wooden M. (1999) Casualisation and Outsourcing: Trends and Implications for Work Related Training, NCVER, Adelaide, p.27

<sup>106</sup> Ibid., p.24

<sup>107</sup> Ibid., p.13

<sup>108</sup> Hall 2004, Op.cit, p.11

<sup>109</sup> VandenHeuvel A. and Wooden M. (1999) Op.cit, p.24

in host firms ‘is unlikely to lead to user firms training the labour hire worker’<sup>110</sup>. In some instances the primary impediment to the training of labour hire and contract workers is the reluctance of the client firm to invest in such training. A number of case studies of manufacturing firms in Victoria in 2002 found that the reluctance to train is “...not necessarily with the labour hire firms or outsourced maintenance the contractors. These latter organisation often realise they have to train, in the long run, to remain in business. Their clients, however, were often reluctant, if not downright hostile about having contract apprentices on their site.”<sup>111</sup> Firms using labour hire workers only wanted fully qualified and experienced persons working for them and do not see it as their role to train labour hire or contract workers.

#### *Level of Competition in Labour Hire Industry*

130. Low profit margins and a highly competitive market amongst labour hire firms has also been identified by Adecco, a large labour hire firm, as an impediment to labour hire firms’ investing in their workers<sup>112</sup>.

#### *Intensification of Work Effort*

131. Use of labour hire (and contract) workers can also create disincentives to firms investing in the training of their own employees. Earlier in this report it was noted that contracting out and downsizing and the use of labour hire is used to reduce direct employment and intensify work effort. ‘Work intensification is preventing on the job training’ as trained and experienced workers are too busy with production work to teach and mentor apprentices and apprentices are too busy with production work to be permitted to attend TAFE studies<sup>113</sup>.

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<sup>110</sup> Australian National Training Authority (1998), Op.cit, p.31

<sup>111</sup> ACIRRT (2002) Renewing the Capacity for Skill Formation: The Challenge for Victorian Manufacturing. A Report for the Victorian Manufacturing Industry Consultative Council, Melbourne, p.36

<sup>112</sup> DIR, Op.cit, p.25

<sup>113</sup> ACIRRT (2002), Op.cit, p.28

### **Labour Hire and Skill Formation Case Study**

I am 47 years of age. I am a Fitter by trade. I am married with three children, two of which are dependent. My wife does not work. As such, I am the sole provider for my family.

I have worked as a labour hire employee since 1996 and have been employed by a countless number of labour hire companies. The main labour hire companies I have worked for throughout this period include: Australian Trade Services (“ATS”), Skilled Engineering (“Skilled”), Workforce Solutions, Manpower and All Hands Labour Hire (“All Hands”). I am currently registered with approximately 30 labour hire companies.

I mainly work on shutdowns and on general construction sites. I am currently employed by ATS and am working at the Qantas Hangar #3 at the Brisbane Airport. I have worked there since October 2004. ATS provides the labour hire for fitters onsite for M&B Rigging, who is contracted by the principal contractor, Multiplex, to put infrastructure in place to build the hangar.

In my experience many smaller labour hire companies come and go. It is interesting to note that there is an extremely high turnover of labour within labour hire companies, that is, the employees of the labour hire companies that co-ordinate the engagement and placement of workers. It is not uncommon for these people to move around the industry and attempt to recruit workers registered with their former employer to their new labour hire firm.

#### **Pressure on skills base**

Eight years ago when I was working at Swanbank Power Station for Skilled Engineering, there was one apprentice fitter onsite. Now it is extremely rare to see apprentices.

Most of the apprentices I have come into contact with are employed through group training schemes and only engaged to do menial tasks which do not assist with their education and skills development.

During my time as a labour hire employee, I have never received above trade training.

The first time I received any type of training from a labour hire company was just last week. The fitters required elevated work platform tickets to do work at the Qantas Hangar. Consequently we asked ATS to provide an instructor. This request was accepted and I received brief training on elevated platform work. This training was very simple, did not take up a lot of my time and was inexpensive.

I class labour hire companies as vultures. Without making any outlays of their own, they expect fully qualified and competent workers. Labour hire companies are not prepared to train workers, but expect workers to come to them with trade certificates and all the qualifications under the sun.

The other skills issue I have with labour hire companies is their use of non-trade workers for trade positions. Labour hire companies, including those I listed above, rarely check trade papers and subject workers to a “trade test” that is so simple a worker without a trade could pass it. This not only denigrates trades but is also a health and safety issue.

### **Impact of Independent Contractors**

132. This section examines relevant Australian and international studies on the impact of independent or self employed contractors on training.

#### **Australian Data on Contractors and Training**

133. There is unfortunately little Australian data on the effect of the growth of contract employment on training. One of the few official sources which provide indirect evidence is the ABS *Employer Training Expenditure and Practices, Australia, 2001-2002* (Cat. No. 6362.0). The data is indirect as employers were only asked to report on employer provided training to either employees or non-employees. Nevertheless, the difference in the proportion of firms who provide training to the two groups is very large. The category of non-employee includes “proprietors/partners of unincorporated businesses, contractors, consultants and self-employed workers; persons paid by commission only; temporary agency workers; apprentices and trainees provided by Group Training Companies; unpaid workers in a family business; volunteers; and work for the dole participants.”<sup>114</sup>
134. The survey found that 41 percent of all firms provided structured training to their employees in 2001, compared to just 22 percent of all firms who used the services of non-employees (2003: Tables 2, 18). In other words, the number of firms that provide structured training to non-employees is close to half the number that provides such training to their employees. Whilst this data included categories of labour other than contractors, it does support the contention that firms are much less likely to provide training to contractors (and labour hire workers) than direct employees.
135. Another study used data from the Australian Workplace Industrial Relations Survey (AWIRS) and a survey of employers<sup>115</sup> to test the hypothesis that ‘outsourcing is used as a means of reducing labour costs’<sup>116</sup>. It is important to note that outsourcing in this instance captures both the use of labour hire and contractors. The study used AWIRS data to measure the extent to which increases in the use of contractors between 1989/90 and 1995 by firms affected their propensity to offer formal training programmes. The data from the survey of employers was used to test the correlation between firms’ data on training as a percentage of labour costs and the share of contractors in the firms’

<sup>114</sup> (ABS 2003: 42)

<sup>115</sup> VandenHeuvel A., and Wooden M. (1996) The use of contractors in the Australian workplace: Evidence from a survey of employers, National Institute of Labour Studies Monograph Series 3, Flinders University, Adelaide

<sup>116</sup> VandenHeuvel A. and Wooden M. (1999), Op.cit, p.34



workforce as at 1994. The overall conclusion was that “no evidence could be found in any of the data sets we considered that outsourcing has a deleterious impact on the amount of training received by employees. Instead, if anything, our results suggest that greater use of contractors is associated with an increase in training effort (although the strength of the association appears to be quite weak).”<sup>117</sup>

136. There are a number of problems with the data that was used by VandenHeuvel & Wooden to test for the association between outsourcing and a failure to consider alternative explanations of this association.
137. Firstly, the growth of labour hire has been driven largely by large firms and large firms have a much higher propensity to train and spend more per employee on training than small firms. Firms with more than 100 employees are more than three times more likely to offer structured training than firms with less than five employees. (The difference in training activity by firm size is discussed in more detail below). The positive association between training and outsourcing evident in the VandenHeuvel & Wooden (1999) analysis reflects, in part, this bias in the data. Evidence for the importance of large firms in the growth of labour hire is provided by ACIRRT<sup>118</sup> and the ANTA study<sup>119</sup>. The latter found that 42 percent of all the clients of labour hire firms had 100 or more employees. By contrast only 1.1 percent of all private sector employing businesses in the same period had 100 or more employees<sup>120</sup>. Further, note that “it is large firms and workplaces where the growth in contracting out since 1989 has been concentrated. Indeed, in the smallest firms, the incidence of contractor related employment has actually declined.”<sup>121</sup>
138. Secondly, the key rationale for downsizing and contracting out, as noted earlier, is to focus on the core competencies of the firm and buy-in those functions which are considered non-essential to the competitive advantage of the firm. Such a strategy is much more likely to favour firms retaining and further enhancing higher level skills. It is well established that higher level skills and education begets further training. The AWIRS data reveals for example that “employees who had higher levels of educational attainment were more likely than those with low levels of education to have participated in further training.”<sup>122</sup>
139. Finally, firms with high levels labour turnover are likely to have higher rates of certain types of training especially that associated with induction and OH&S than firms with low levels of labour turnover. It has been established that the average duration of a labour hire placement is only a matter of six weeks and that firms using the services of labour hire workers are expected to pay a substantial share of the training costs for safety and induction (see Table 7 above).
140. This critical analysis of the data purporting to demonstrate a positive association between outsourcing and training suggests that this finding is unwarranted. One of the few large scale empirical studies to comprehensively examine the effects of contractors on training is summarised below. This study avoids the problems outlined above.

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<sup>117</sup> Ibid, p.35

<sup>118</sup> ACIRRT (2002), Op.cit, p.31

<sup>119</sup> Australian National Training Authority (1998), Op.cit, p.25

<sup>120</sup> (ABS 2001)

<sup>121</sup> VandenHeuvel A. and Wooden M. (1999) Op.cit, p.21

<sup>122</sup> Ibid, p.27

## UK Construction Industry

141. The role of Labour Only Subcontractors (LOSC), or self employed contractors, in the UK construction industry was the subject of a major study in 2002-03 by the Construction Industry Training Board and the Department for Education and Skills.<sup>123</sup>

The purpose of the study was to:

- identify the extent of use of contractor employment by UK construction firms;
- identify the characteristics of contractors and direct employees;
- determine the effect of engaging contractors on construction firms' propensity to train;
- and compare the extent and type of training provided by employers to direct employees and contractors.

142. The study involved face to face and telephone interviews with 350 construction industry employers; face to face interviews with 504 construction workers across 35 sites and telephone interviews with 10 recruitment agencies specialising in supplying construction workers<sup>124</sup>. Of the 350 firms in the sample nearly three quarters (73 percent) had used LOSC in the previous twelve months.<sup>125</sup> Almost all of the Labour Only Subcontractors were self-employed (89 percent); the remainder came from agencies or on-loan from other companies.<sup>126</sup> Almost all of the firms (98 percent) using LOSC engaged skilled trades, with only 2 percent 'using this method mainly to recruit for relatively low skilled, labouring positions'.<sup>127</sup> The major findings are presented below.

### *Contractors Substitute for Training*

143. The UK construction industry is becoming increasingly reliant on self employed contractors. The share of self employed contractors in the UK construction industry has grown from 23 percent in 1978 to 45 percent in 1996<sup>128</sup>. The CITB and DfES found that 42 percent of the onsite workers in the study were not directly employed.<sup>129</sup>

144. Increased dependence by firms on labour only subcontractors reduces a firm's investment in trainee or apprentice training. Only 22 percent of firms who reported that the number of subcontractors engaged exceeded the number of employees at any one time over the previous twelve months had apprentices or trainees. However, 54 percent of firms who reported the number of direct employees exceeded the number of subcontractors had apprentices or trainees<sup>130</sup>. The report did not investigate the reasons for the much lower training rate amongst firms that intensively use contractors. One plausible explanation is that firms that are particularly dependent on the use of contractors for the supply of tradespeople substitute contractors from the external labour market for internal skills development within the firm through the apprenticeship system. This explanation is supported by two key findings in the study. Firstly, the

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<sup>123</sup> Construction Industry Training Board and the Department for Education and Skills (2003) *The Effect of Employment Status on Investment in Training*

<sup>124</sup> *Ibid.*, p.2-3)

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*, p.16

<sup>127</sup> *Ibid.*, p. 14

<sup>128</sup> Winch, *Op.cit.*, p.533)

<sup>129</sup> Construction Industry Training Board and the Department for Education and Skills, *Op.cit.*, p. 32

<sup>130</sup> *Ibid.*, p.21

overwhelming majority of persons engaged on a contractor basis were tradespersons<sup>131</sup>. Secondly, “almost all these employers (97%) say they only take on LOSC staff if they think they are fully experienced...employers are really only interested in using such workers if they can make an impact from day one.”<sup>132</sup>

#### *Contractors Receive Less On and Off the Job Training than Employees*

145. Employers provide much less training to labour only subcontractors. More than one in three (37 percent) of firms with direct employees provided off the job training to these employees in the previous twelve months. Just one in five (20 percent) of employers provided off the job training to contractors.<sup>133</sup> In other words the proportion of firms that provide off the job training to contractors is close to half that of firms with employees.
146. A similar trend is apparent for on the job training provision. 44 percent of firms with directly employed staff provided on the job training to these employees compared to just 23 percent of firms who provided on the job training to contractors.<sup>134</sup>
147. Not only do a higher proportion of firms provide training to direct employees than contractors, but a higher proportion of direct employees receive training than contractors. Twenty five percent of firms provide off the job train to ‘all/vast majority’ of their direct employees compared to just 10 percent of firms who provide off the job training to ‘all/vast majority’ of contractors.<sup>135</sup>

#### *Increased Reliance on Self Employed Contractors is Not Sustainable*

148. The study highlighted an internal contradiction in the UK construction industry labour market whereby firms were highly reliant on self employed contractors with trade qualifications, but this training was received when the contractors were employees.
149. Reflecting the reliance of firms on contractors for sourcing trades labour, 48 percent of the self employed in the study had completed an apprenticeship. However, the great majority (86 percent) of these contractors said they had undertaken the apprenticeship in an earlier period when they were directly employed. ‘Hence clearly the vast majority of apprenticeship training in the industry is taking place while staff is directly employed’<sup>136</sup>. Confirmation of the importance of direct employment for the maintenance of the apprenticeship system is that among those contractors who had only worked on a self employed basis only 18 percent had received an apprenticeship.<sup>137</sup>
150. These findings also apply to the acquisition of any other formal qualifications relevant to the construction industry. Among those who hold formal construction related qualifications, and have been a direct employee and worked on a self employed basis, 72 percent of these persons acquired the qualification while a direct employee and another ten percent while mainly an employee.<sup>138</sup> In other words, the system is dependent on the use of contractors, but the supply of qualified labour relies on the

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<sup>131</sup> Ibid., p.14, 15)

<sup>132</sup> Ibid., p.18

<sup>133</sup> Ibid., p.22

<sup>134</sup> Ibid, p.26

<sup>135</sup> Ibid., p.23

<sup>136</sup> Ibid., p.36

<sup>137</sup> Ibid.

<sup>138</sup> Ibid., p.38

continuation of direct employment, which the growth of self employment is undermining.

151. There is considerable evidence already cited in this chapter that this trend is also occurring in Australia. The outsourcing phenomenon and the consequent decline in skills formation is one of the most significant reasons for the skills shortage currently plaguing the Australian economy.

### **Declining Firm Size Reduces Training**

152. As noted above the effect of outsourcing, of which the use of labour hire and contractors are an essential mechanism, is to reduce average firm size in many industries. For the economy as a whole there has been a marked reduction in average firm size due to the more rapid growth of employment amongst own account workers (self employed individuals or partners) and small firms.

### **Reduced Firm Size**

153. In the Australian private sector between 1983-84 and 1999-2000 the annual average rate of growth of employment for persons working on their own account was 2.9 percent compared to just 0.4 percent for employers (Appendix: Table A1). In other words the annual rate of growth in the number of persons working on a self employed basis was over seven times faster than the rate of growth of persons who employ others. The effect of this differential rate of growth was a substantial increase in the share of own account workers amongst persons who work in their own business. (Persons who work in their own business is the sum of own account workers and employers). In 1983-84 own account workers represented 61.6 percent of all persons working in their own business, by 1999-2000 this had increased to 70.4 percent (Appendix: Table A2-A3).
154. In the private sector between 1983-84 and 1999-2000 the annual average rate of increase in employment in micro firms was nearly double that in very large firms. The annual average rate of increase in employment in firms having 1-4 employees was 3.8 percent compared to 2.1 percent for firms with more than 200 employees (Appendix: Table A1). For small business (defined as firms with 19 or fewer employees) the annual rate of employment growth was 3.6 percent.
155. These differential rates of growth over such an extended period have altered the firm size structure of the economy. In 1983-84 34.4 percent of all employees were in small business (1-19 employees); by 1999-2000 this had increased to 38.3 percent. In 1983-84 34.7 percent of all employees were in firms with 200 or more employees; by 1999-2000 this had declined to 30.5 percent (Appendix: Tables A2, A3).
156. In some industries the reduction in employment in larger firms was much greater than for the economy as a whole. In manufacturing for example, in 1983-84 52 percent of employment was in firms with 200 or more employees; by 1999-2000 this had declined to 41.4 percent. The share of employment in micro firms nearly doubled from 3.5 percent to 6.6 percent. The share of own account workers amongst persons who work in their own business in manufacturing increased from 54 percent in 1983-84 to 69.3 percent in 1999-2000. Over the period the annual average rate of increase of own account workers in manufacturing was 4.2 percent, with the number of employers recording no growth. As a consequence of this rapid growth the number of own account

workers in manufacturing increased from being the equivalent of 2.9 percent of the number of manufacturing employees to 6.2 percent (Appendix: Tables A1, A2).

157. Across the private sector as a whole differential rates of growth across firm size resulted in small firms accounting for a disproportionate share of total employment growth over the period. Between 1983-84 and 1999-2000 total employment increased by 45 percent. Firms employing less than 20 persons accounted for 45 percent of total employment growth over the period, significantly more than their share of total employment in 1999-2000. Large firms accounted for just 23 percent of the increase, significantly less than their share of total employment (Appendix: Tables A1, A2). Alternatively, if the share of total employment in large firms had remained constant over the period an additional 244,000 persons or 4.2 percent of total employees would be employed in large firms. Given that close to 100 percent of all large firms invest in training, and that large firms invest much more per person on training, it follows that the level of training in the economy would have been higher than it actually was. The relation between firm size and training is discussed below.

### Firm Size and Training

158. The growth of small firms has an adverse effect on the capacity of the economy to invest in skills formation as the propensity to train and the intensity of training is positively associated with increasing firm size. (The propensity to train is the proportion of firms in a given firm size category that provide training and the intensity is the level of resources per person in receipt of training. Intensity of training can be measured for example, by hours of training or expenditure on training per person as a share of gross wages and salaries).
159. It is evident from Table 8 that the propensity to invest in structured training increases markedly with firm size. Structured training is defined as “training activities which have a specified content or predetermined plan designed to develop employment related skills and competencies. It consists of instruction or a combination of instruction and monitored practical work.”<sup>139</sup> In 2001-02 less than one-third of all firms employing fewer than five persons provided structured training, compared to 70 percent of firms with 20 or more employees, and nearly all firms with more than 100 employees.

**Table 8 Proportion of Firms Providing Structured Training. Australia 2001-02**

Firm Size (No. of Employees)	Proportion Providing Structured Training
<5	30.9%
5-9	50.9%
10-19	59.3%
20-99	70.4%
≥100	97.5%

Source: ABS (2003) *Employer Training Expenditure and Practices, Australia, 2001-2002* (Cat. No. 6362.0):  
Table 2

<sup>139</sup> ABS (2003) *Employer Training Expenditure and Practices, Australia, 2001-2002* (Cat. No. 6362.0), p.43

160. Similar trends hold for training intensity with firms having 20 or fewer employees spending 0.9 percent of gross wages and salaries on structured training, which is half the proportion spent by large firms (Table 9).

161. The crucial role of large firms is also indicated by the disproportionate contribution of large firms in the provision of structured training in the economy (Table 10). Firms with 100 or more employees account for 39 percent of employees, yet account for 71 percent of total expenditure on structured training in the economy.

**Table 9 Net Structured Training Expenditure as a Proportion of Gross Wages and Salaries. All Employers. Australia. 2001-02**

<b>Firm Size (No. of Employees)</b>	<b>Net Training Expenditure as a Proportion of GWS</b>
<5	0.9%
5-9	0.7%
10-19	0.7%
1-20	0.8%
20-99	1.1%
≥100	1.6%

Source: ABS (2003) *Employer Training Expenditure and Practices, Australia, 2001-2002* (Cat. No. 6362.0): Table 7

**Table 10 Contribution to Total Structured Training Expenditure of Firm Size Categories. 2001-02**

<b>Firm Size (No. of Employees)</b>	<b>Net Expenditure On Structured Training Per Employer \$'000</b>	<b>Number of Employers Providing Structured Training '000</b>	<b>Net Expenditure On Structured Training Per Firm Size Category \$'000</b>	<b>Firm Size Expenditure on Training as a Proportion of Total %</b>
<5	1.7	129.2	220	6.0
5-9	2.3	71.5	164	4.5
10-19	4	40.5	162	4.4
20-99	19.3	26.6	513	14.1
≥100	336.1	7.7	2588	71.0
		275.6	3647	100

Source: ABS (2003) *Employer Training Expenditure and Practices, Australia, 2001-2002* (Cat. No. 6362.0): Tables 7 and 8

### **Decline in Training Intensity**

162. Over recent years there has been a decline in training intensity in the economy. Between 1996 and 2001-02 net employer expenditure on structured training as a share of gross wages and salaries amongst all firms that provided such training declined from 1.7 percent to 1.5 percent (ABS 2003: Table 7). This is a decline of 12 percent. Unfortunately, data is not available to quantify the effect of labour hire and subcontracting on this decline, from the data already presented on the lower training

propensity and intensity provided to these groups, it is clear their growing share of total employment has contributed to this decline in employer investment in training.

## RECOMMENDATION 1

As discussed elsewhere the Commonwealth should establish a licensing regime for labour hire companies. As part of the regime licensing fees should be collected to form a training levy to provide training for labour hire workers.

## RECOMMENDATION 2

That a ratio of apprentice hiring be required by the labour hire agencies. The ratio would be relative to the number of employees a labour hire company has on its books, and that clients have to have an apprentice onsite if they have engaged over a certain number of labour hire workers (globally, not just from one supplier).

## Conclusion

163. At best, casualisation and outsourcing are integral parts of labour management strategies that achieve the better deployment, **not development**, of labour. Such an approach to labour productivity improvement cannot continue forever. Any long run growth in labour productivity can only be sustained if the capacity for labour to undertake a broader range of activities is increased. This problem cannot be solved by greater intervention off site. Highly skilled, innovative individuals cannot be created by the education system alone. “It has long been recognised that ‘learning by doing’ is essential for the development of well rounded skills. Indeed, for many people not suited to classroom based learning situations it is often a superior setting within which to learn. In addition, it has also been recognised that long term employment relations are of benefit to employers as well as workers. The continuity of association provides the basis for innovation as well as continuity of production and service provision.”<sup>140</sup>
164. Thus the overwhelming majority of evidence supports the conclusion that the growth of outsourcing (both labour hire and contracting) has had a negative impact on skills formation. The national skills shortage, especially in the manufacturing sector, is partly attributable to this phenomenon. Outsourcing not only reduces the wages, conditions and safety of workers, it hinders the long term sustainability of the market economy. As the next chapter will demonstrate it also reduces the fiscal base of the Commonwealth.

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<sup>140</sup> Buchanan, J., “Paradoxes of significance: Australian casualisation and labour productivity”, ACIRRT Working Paper 93, p.31

## CHAPTER 6 - IMPACT ON COMMONWEALTH REVENUE

165. The growth in contracting is leading to a \$14.38 billion per annum risk to the tax base.
166. In over half of all industries there exists more dependant contractors than independent contractors<sup>141</sup>. On the available evidence it is reasonable to conclude that most of the growth in contracting has been in dependant contractors.<sup>142</sup>
167. As discussed earlier most dependant contractors are defacto employees. They are so dependant upon one client, with little or no bargaining power that they are ‘fake self-employed’ or ‘surrogate employees’.<sup>143</sup>
168. Designating an employee as a contractor enables employers to avoid paying correct rates of pay, superannuation, etc... It also enables the contractor to pay less tax, for example the contractor can write off many work related expenses as business costs. This is the pay off that motivates some people to accept the lesser conditions of an all-in payment.
169. The AMWU requested the National Institute of Economic and Industry Research to undertake a study into the impact on the tax base of the growth in contracting. This concluded that there is a risk to the income tax base as people move from wage and salary employment to contracting, partnerships or small family companies. This risk is up to \$14.38 billion per annum or \$13 897 per non-employee in industry.
170. The loss in the tax base is a mixture of tax evasion (illegal) and tax avoidance (legal). When persons move from wage and salary the possibilities for tax evasion, inter alia, can arise from the following actions:
- a failure to report substantial amounts of income, i.e. failure to report part of business receipts;
  - a claim for fictitious or improper (i.e. over-stated) deductions (travel expenses, etc.); and
  - improper allocation of income to persons who are in a lower tax bracket.
171. The strategies to effect this can extend from the straightforward (e.g. deducting travel expenses to and from work) to the more complex. For example, setting up fictitious home based businesses that in effect will allocate income to non-workers in a lower tax bracket, as well as allowing fictitious deductions.
172. Tax avoidance is possible in many forms, including:
- the ability to make deductions not available to wage and salary earners;
  - the ability to split income with family and relatives and, thereby, lower the average tax rate.

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<sup>141</sup> See Table 5

<sup>142</sup> Buchanan, J., “Taxation and the Labour Market”, ACIRRT Working paper 55, 1998, p.16

<sup>143</sup> Vandenheuval, A., and Wooden, M. (1994) “Self Employed Contractors in Australia: A Review of the Evidence and Research”, Working Paper No.134, national Institute of Labour Studies Inc, Flinders University, South Australia, p.10-11



173. Table 11 shows the expenses claimed by industry by three business types, namely sole traders, partnerships and companies. The expenses are expressed as a percentage of business income less cost of sales. Cost of sales (i.e. material inputs) vary significantly across business types for the same industry and, therefore, the exclusion of cost of sales makes the data more comparable across business categories. For example Table 11 shows that in the construction industry, sole traders claim that 8.96% of their business income is spent on motor vehicle expenses, in contrast the average construction company claims 2.84%.
174. Table 12 builds up the prima facie estimates of tax base loss as people move from companies (as employees) to sole trader or partnership status. That is, taking the company ratio as standard, Table 12 takes the difference between the sole trader or partnership ratio in Table 11 and the company standard. Thus, partnerships and sole traders generally claim significantly higher motor vehicle expenses per dollar of business revenue than companies. Using the same example as above, in Table 12 we see that a prima facie risk to the tax base exists due to the fact that sole traders in the construction sector can claim 6.12% more of their income as motor vehicle expenses than the company standard ( $8.96\% - 2.84\% = 6.12\%$ )
175. Other expenses are treated as “excessive” if the expense ratio of partnerships and sole traders is above the company rate. However, because of the uncertainty surrounding this measure, only half the difference is assigned to the column in Table 12. For example, partnerships in the manufacturing industry claim on average 66.21% of their income as other expenses, compared to the manufacturing company standard of 48.74%. The difference is 17.47%, which is halved, giving the 8.74% figure in Table 12.
176. Contractor costs can vary because of the variation in wage and salary costs. Hence, no attempt is made to estimate excessive estimates for this cost category.
177. Payments to related entities is payments to trusts, children, wives, etc. For sole traders and partnerships this is treated as income splitting which reduces the tax base. It is assumed to reduce the tax base by half, compared to the case of sole wage and salary earners. For example, in the finance and insurance industry sole traders claim that 2.04% of their income are payments to related entities. This is likely to be income splitting, hence it reduces the tax base by half, translating into the 1.02% figure in Table 12.
178. The last column gives the sum of the entities of the tax base at risk as a percentage of business income.
179. An additional risk to the tax base comes from small companies. Table 13 shows an estimate of the “excess” claims of small private companies relative to all public companies. The two factors taken into account are motor vehicle deductions and (half) payments to related entities.
180. Table 14 shows the share of small company business income in total business income by industry. The results, from Tables 13 and 14, are combined in column 3 of Table 15 to derive estimates of the tax base at risk from people moving from medium to large companies and estimating this on small companies.

181. The first two columns in Table 15 are derived by matching the results in the last two columns of Table 12 by the level of corresponding business income (less cost of sales). For example, there is a prima facie risk to the tax base from sole traders in the personal and other services industry of 6.75% (of their business income) [Table 12]. This is multiplied by the total income (minus cost of sales) for sole traders in the personal and other services industry giving a figure of \$140.61 million. In the opinion of the National Institute of Economic and Industry Research this is how much the tax base is put at risk by 'excessive' expense claims by sole traders in the personal and other services industry.
182. The sum across the first three columns of Table 15 gives the \$m estimate of the tax base at risk. The primary sector is treated as a special case and excluded from the estimates.
183. In 2002 the tax base at risk was \$14.38 billion, or \$13 897 per non-employee. (See appendices for more information)

	Contractor/sub-contractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (including rent, interest etc.)			Total expenses			Payments to related entities		
	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company
<b>Primary production</b>	3.28	2.48	3.72	4.82	2.17	1.62	7.19	6.55	4.31	78.18	69.05	56.69	93.48	80.26	66.34	0.59	0.99	2.67
<b>Mining</b>	9.73	4.25	6.3	6.61	1.7	0.35	4.79	2.71	3.32	54.1	57.16	62.74	75.23	65.81	72.72	0.28	9.88	0.12
<b>Manufacturing</b>	6.19	4.75	4.11	7.6	3.58	1.11	1.3	2.78	3.59	52.14	66.21	48.74	67.23	77.32	57.55	0.92	1.64	1.38
<b>Electricity, gas and water supply</b>	6.53	7.66	3.67	12.41	0.25	0.39	1.33	3.36	2.71	42.75	82.94	75.23	63.03	94.2	82	0.41	0.01	0.2
<b>Construction</b>	9.16	17.8	18.7	8.96	4.85	2.84	0.88	1.36	1.63	38.36	45.81	41.66	57.37	69.81	64.83	0.49	1.61	5.51
<b>Wholesale trade</b>	2.68	2.9	3.22	8.09	4.37	1.5	2.21	2.5	1.08	63.64	66.5	60.44	76.63	76.28	66.24	1.13	6.21	2.16
<b>Retail trade</b>	2.03	2.11	1.77	4.67	3.25	1.21	1.17	1.41	1.07	74.38	72.02	56.21	82.25	78.79	60.26	1.91	2.44	2.52
<b>Accommodation, cafes and restaurants</b>	0.97	0.97	1.36	2.95	1.62	0.49	3.12	3.18	2.51	87.4	81.54	61.32	94.44	87.3	65.68	1.79	1.44	1.76
<b>Transport and storage</b>	3.01	3.24	7.75	15.05	6.43	2.91	3.06	2.05	2.78	48.86	31.72	61.75	69.98	43.45	75.19	0.39	0.58	1.25
<b>Communication</b>	2.79	6.22	4.36	19.55	9.38	0.65	0.87	1.56	3.66	26.96	60.72	61.94	50.17	77.88	70.62	0.35	1.84	0.28
<b>Finance and insurance</b>	3.45	9.58	3.15	4.92	0.96	0.29	0.73	0.56	0.46	53.86	64.56	65.44	62.96	75.66	69.34	2.04	3.96	1.09
<b>Education</b>	2.52	3.65	8.19	9.4	5.83	1.09	0.9	1.23	0.59	45.77	61.8	55.26	58.59	72.51	65.12	0.47	2.11	5.23
<b>Health and community services</b>	2.35	2.91	3.44	2.33	0.5	0.89	0.56	0.58	1.02	55.28	69.55	51.6	60.52	73.54	56.95	1.94	3.39	11.37
<b>Cultural and recreational services</b>	3.92	3	3.28	7.66	0.15	0.45	1.36	0.16	1.19	61.64	93.33	79.71	74.57	96.65	84.63	1.96	0.08	1.63
<b>Personal and other services</b>	2.28	3.61	6.43	6.52	4.14	2.27	1.5	1.81	2.3	59.01	66.61	53.33	69.31	76.17	64.34	0.93	7.52	4.98

<b>Table 12 Prima facie risk to tax base (relative to company standard) - per cent of business income (less cost of sales), 2001-02</b>																				
	Contractor/subcontractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (inc. rent, interest etc.)			Total expenses			Payments to related entities			Total prima facie risk to tax base – per cent of income (less cost of sales)	
	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership
<b>Mining</b>	0	0	0	6.27	1.35	0	1.47	-0.62	0	0	0	0	7.74	0.73	0	0.14	4.94	0	7.87	5.67
<b>Manufacturing</b>	0	0	0	6.49	2.48	0	-2.3	-0.82	0	1.7	8.74	0	5.9	10.4	0	0.46	0.82	0	6.35	11.22
<b>Electricity, gas and water supply</b>	0	0	0	12.02	-0.15	0	-1.38	0.64	0	0	3.86	0	10.64	4.35	0	0.21	0.01	0	10.85	4.36
<b>Construction</b>	0	0	0	6.12	2.01	0	-0.75	-0.27	0	0	2.07	0	5.37	3.81	0	0.25	0.81	0	5.62	4.62
<b>Wholesale trade</b>	0	0	0	6.59	2.87	0	1.13	1.42	0	1.6	3.03	0	9.32	7.32	0	0.57	3.11	0	9.89	10.43
<b>Retail trade</b>	0	0	0	3.46	2.04	0	0.1	0.34	0	9.08	7.9	0	12.64	10.28	0	0.96	1.22	0	13.6	11.5
<b>Accommodation, cafes and restaurants</b>	0	0	0	2.47	1.13	0	0.61	0.67	0	13.04	10.11	0	16.11	11.91	0	0.89	0.72	0	17.01	12.63
<b>Transport and storage</b>	0	0	0	12.14	3.52	0	0.29	-0.72	0	0	0	0	12.43	2.8	0	0.19	0.29	0	12.62	3.09
<b>Communication</b>	0	0	0	18.9	8.73	0	-2.79	-2.1	0	0	0	0	16.11	6.63	0	0.18	0.92	0	16.28	7.55
<b>Finance and insurance</b>	0	0	0	4.64	0.67	0	0.27	0.09	0	0	0	0	4.9	0.76	0	1.02	1.98	0	5.92	2.74
<b>Education</b>	0	0	0	8.31	4.74	0	0.32	0.65	0	0	3.27	0	8.63	8.65	0	0.24	1.06	0	8.86	9.71
<b>Health and community services</b>	0	0	0	1.45	-0.38	0	-0.46	-0.45	0	1.84	8.97	0	2.82	8.15	0	0.97	1.69	0	3.79	9.84
<b>Cultural and recreational services</b>	0	0	0	7.2	-0.3	0	0.17	-1.03	0	0	6.81	0	7.37	5.48	0	0.98	0.04	0	8.35	5.52
<b>Personal and other services</b>	0	0	0	4.25	1.87	0	-0.81	-0.49	0	2.84	6.64	0	6.29	8.02	0	0.46	3.76	0	6.75	11.78

<b>Table 13 Expenses and payments as a per cent of business income (excluding cost of sales) by company type (per cent), 2001-02</b>								
<b>Small companies total income (&lt; \$500,000)</b>								
	<b>Contractor/ subcontractor &amp; commission expenses</b>	<b>Motor vehicle expenses</b>	<b>Repairs &amp; maintenance</b>	<b>Other expenses</b>	<b>Wages and salaries</b>	<b>Taxable income</b>	<b>Payments to related entities</b>	<b>Small companies tax base at risk</b>
<b>Private company</b>	4.9	4.1	1.4	52.4	28.5	8.8	14.9	11.2
<b>All public companies</b>	3.3	0.3	1.4	66.8	13.7	14.4	0.1	

<b>Table 14 Share of small company business income (less than half million) in total company business income by industry (per cent), 2002</b>	
<b>Agriculture, forestry &amp; fishing</b>	8.7
<b>Mining</b>	0.3
<b>Manufacturing</b>	1.5
<b>Electricity, gas and water supply</b>	0.5
<b>Construction</b>	10
<b>Wholesale trade</b>	0.9
<b>Retail trade</b>	2.9
<b>Accommodation, cafes and restaurants</b>	7.8
<b>Transport and storage</b>	3.7
<b>Communication</b>	0.9
<b>Finance and insurance</b>	12.6
<b>Education</b>	21.6
<b>Health and community services</b>	25.7
<b>Cultural and recreational services</b>	5.3
<b>Personal and other services</b>	17.3

<b>Table 15 Prima facie estimates of the tax base at risk (relative to wage and salary status) – \$ million, 2001-02</b>						
	Total prima facie risk to tax base			Total tax base at risk (\$ million)	Total non-employees ('000)	Tax base at risk per non-wage and salary earner (dollars)
	(\$ million)					
	Sole trader	Partnership	Company			
<b>Mining</b>	4.96	23.28	17.03	45.28	2.28	19901
<b>Manufacturing</b>	105.43	393.47	175.05	673.95	78.3	8607
<b>Electricity, gas &amp; water supply</b>	1.93	114.95	3.25	120.12	na	na
<b>Construction</b>	376.65	408.48	347.72	1132.85	243.58	4651
<b>Wholesale trade</b>	58.32	182.59	52.13	293.03	37.05	7909
<b>Retail trade</b>	526.8	845.66	161.3	1533.75	172.55	8889
<b>Accommodation, cafés &amp; restaurants</b>	109.7	325.7	116.89	552.29	46.23	11948
<b>Transport &amp; storage</b>	286.34	199.24	195.7	681.27	65.23	10445
<b>Communication</b>	78.78	26.87	28.82	134.47	20.13	6682
<b>Finance &amp; insurance</b>	432.92	433.33	5812.77	6679.02	183.43	36413
<b>Education</b>	23.52	11.1	37.78	72.41	21.03	3444
<b>Health &amp; community services</b>	207.33	253.26	371.56	832.15	53.7	15496
<b>Cultural and recreational services</b>	102.13	920.03	108.84	1131	38.8	29150
<b>Personal and other services</b>	140.61	208.15	147.73	496.5	72.38	6860
<b>All industries</b>	2455	4346	7577	14378	1035	13897

184. This is a very conservative estimation of the risk to Commonwealth revenue arising from contracting. This study refers to the loss in the tax base as prima facie estimates. This is because the final arbiter must be the Australian Taxation Office. All that can be done in this case is use the statistics the Australian Taxation Office makes available to the public. This data is limited and, therefore, any conclusions must be qualified by this fact. Hence, the use of the term 'prima facie', which implies best estimates given available data.

185. Nevertheless this study, based on the best available data and compiled by an economic institute of great integrity, has concluded that outsourcing is leading to a risk to the taxation base of \$14.38 billion per annum or \$13 897 per non employee.

### **Section 3 - Solutions – Ways Independent Contracting Can Be Pursued Consistently Across State And Federal Jurisdictions And Strategies To Ensure Contracting Arrangements Are Legitimate**

#### **CHAPTER 7 - THE STATUS OF INDEPENDENT CONTRACTING AND LABOUR HIRE ARRANGEMENTS**

##### **Introduction**

186. The Minister for Employment and Workplace Relations has asked the Committee to investigate, *inter alia*, the status of independent contracting and labour hire arrangements. Together with casual workers, independent contractors and labour hire workers stand outside, or at the margins, of more traditional or standard notions of employment.
187. While the actual terms and conditions of all three forms of non-standard employment or engagement vary widely, all three forms have in common a considerable degree of insecurity for the worker concerned. Such workers are generally not entitled to annual leave, sick leave, bereavement leave, carers leave or leave of a similar kind, notice of termination, or severance pay. In addition workers either have limited access to unfair dismissal remedies or are denied access completely.
188. Notwithstanding the quite different rights and obligations that are attached to casual employment, independent contractor arrangements and labour hire arrangements as compared to ongoing or permanent employment, the work performed under each arrangement, and the manner in which it is performed, can be very similar and is, at times, virtually identical. This can and does lead to problems in establishing the true or appropriate characterisation of a contract for the performance of work.
189. The following paragraphs provide a brief discussion of the legal status of independent contractors and how this form of employment or engagement relates to the employment relationship. The legal status of labour hire workers is dealt with elsewhere in this submission and in particular in Chapter 2.
190. The AMWU concludes by positing the adoption of a new definition for “employee”. The proposed definition seeks to ensure that the characterisation of the status of workers as either an employee or independent contractor better reflects the underlying economic reality of the particular contractual relationship.
191. The AMWU also states its strong opposition to the introduction of any legislation that would have the effect of further undermining the employment relationship.

### Self-Employed or Independent Contractors

192. Except for a handful of exceptions,<sup>144</sup> the common law divides workers into one of two categories:

- workers who are in a contractual relationship that can be characterised as a “contract of service”; and
- workers who are in a contractual relationship that can be characterised as a “contract for service”.

193. Workers characterised as being in a *contract of service* are considered to be employees, while workers characterised as being in a *contract for service* are considered to be self-employed or “independent contractors”.

194. This employee/independent contractor dichotomy has generally been adopted in the interpretation of the majority of state and federal statutes concerned with the regulation of the provision of labour.

195. In determining whether a worker is an employee or a contractor courts and tribunals have developed a “multi-factor test”. The multi-factor test involves the consideration of a number of indicia including:

- The rights of a person or entity to exercise control over the worker.<sup>145</sup>
- The extent to which a worker is integrated into the business of another or carrying on his or her own business.<sup>146</sup>
- The characterisation of the relationship in the contract itself (although parties cannot deem a relationship between them to be something that it is not).<sup>147</sup>
- How a contract came into existence, for example whether the worker advertised his or her services to the public, competed for a tender or answered a job advertisement.<sup>148</sup>
- Whether the worker uses his or her own tools or pays for his or her own business expenses.<sup>149</sup>
- Whether the contract is to achieve a specific result.<sup>150</sup>

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<sup>144</sup> Other types of relationships under which a person performs work include agency relationships, a bailment relationship and partnership agreements.

<sup>145</sup> See generally *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16; *Zuijs v. Wirth Bros* (1955) 93 CLR 561.

<sup>146</sup> *Hollis v. Vabu* (2001) 207 CLR 21 at 39.

<sup>147</sup> See *Australian Mutual Provident Society v. Chaplin and Anor* (1978) 18 ALR 385 at 389; *Hollis v. Vabu* (2001) 207 CLR 21 at 45; *Re Porter: re Transport Union of Australia* (1989) 34 IR 179 at 184.

<sup>148</sup> *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 at 37; *Roy Morgan Research Centre Pty Ltd v. Commissioner of State Revenue (Vic)* 96 ATC 4767 at 4772 – 4773.

<sup>149</sup> *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16; and *Vabu Pty Ltd v. FC of T* 96 ATC 4898.

<sup>150</sup> *World Book (Australia) Pty Ltd v. FC of T* 92 ATC 4327.



- If a worker is required to wear a uniform.<sup>151</sup>
- Who bears the risk arising out of poor workmanship or injury during performance of work.<sup>152</sup>
- Whether the worker performs work for others.<sup>153</sup>
- Whether the work can be delegated or subcontracted.<sup>154</sup>

196. In many cases the indicia will overlap or point in different directions, and no single indicia has been held to be determinative. Instead, courts examine “the totality of the relationship”<sup>155</sup> between the parties in order to determine the true nature of the arrangement.

197. The necessarily impressionistic nature of the multi-factor test raises some uncertainties in its application to certain arrangements.<sup>156</sup> These uncertainties have implications for the status of workers.

### **Is the status of independent contractors under threat from the multi-factor test?**

198. The AMWU notes that the Howard Government in its pre-election policy announcement on independent contractors stated:

*“While courts have developed tests to uncover ‘sham’ independent contractor arrangements, there is a view in the community that these tests have gone too far and that, too frequently, the honest intentions of parties are disregarded and overturned.*

*A party’s freedom to contract must be upheld and there must be certainty in commercial relationships. The Independent Contractors Act will seek to ensure that these principles are enshrined and protected.”<sup>157</sup>*

199. Elsewhere the policy provided:

*“A re-elected Coalition Government will introduce the Independent Contractors Act to prevent the workplace relations system from being used to undermine the status of independent contractors.”<sup>158</sup>*

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<sup>151</sup> *Hollis v. Vabu* (2001) 207 CLR 21 at 42.

<sup>152</sup> *Hollis v. Vabu* (2001) 207 CLR 21.

<sup>153</sup> *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16; *Abdalla v. Viewdaze* [2003] 53 ATR 30 at paragraph 34.

<sup>154</sup> *Australian Mutual Provident Society v. Chaplin and Anor* (1978) 18 ALR 385 at 391 and *Steven v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 at 26.

<sup>155</sup> *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 per Mason J at paragraph 20.

<sup>156</sup> Creighton B. and Stewart A., “Labour Law”, 4<sup>th</sup> Edition, Federation Press, 2005 at page 287.

<sup>157</sup> See “Protecting and Supporting Independent Contractors” 26 September 2004. A copy can be downloaded at

[http://www.liberal.org.au/2004\\_policy/Sept26\\_Protecting\\_And\\_Supporting\\_Independent\\_Contractors.pdf](http://www.liberal.org.au/2004_policy/Sept26_Protecting_And_Supporting_Independent_Contractors.pdf).

<sup>158</sup> *Ibid.*

200. The AMWU is unaware of any significant view in the broader community that the judiciary's efforts to uncover "sham" independent contractor arrangements have 'gone too far'. On the contrary, community and academic concerns have been raised that contractual relationships that appear to have the vast majority of features of an employment relationship have either been misconstrued or deliberately disguised as independent contractor arrangements.<sup>159</sup>
201. Indeed on any objective analysis of the law, or study of the empirical data, it is clear that the uncertainties in the multi-factor test are not undermining the legal status of independent contractors but the status of the employment relationship. For example on the present state of the law, what would otherwise be an employment contract can effectively be disguised as an "independent contractor" arrangement by either:<sup>160</sup>
- the addition of a clause describing a worker as an independent contractor together with a clause granting an unqualified right of delegation;<sup>161</sup> or
  - the interposing of a legal entity between a worker and their employer.
202. It is the AMWU's view that the status of a worker should reflect the underlying economic relationship that worker has with the person or entity that has hired the worker. If a contractual relationship is in substance an employment relationship – the worker should be characterised as an employee. If a contractual relationship is in substance a genuinely commercial relationship – the self-employed worker should be characterised as a contractor or independent contractor.
203. To allow parties to be in a position to contract out of the employment relationship, while at the same time performing work in substantially the same manner as in an employment relationship, not only creates a risk that powerless individuals will be unfairly exploited, but also risks undermining the rights and obligations attaching to the employment relationship more generally.
204. It is for this reason that both the federal and state legislatures, including the Howard Government in its personal services income legislation in 2000, have attempted to either clarify or extend the definition of an employment relationship, or in the alternative, impose rights and obligations in relation to certain contractors that are substantially similar to, or the same as, those relating to employees. This has occurred in a variety of contexts including for the purposes of income tax, industrial relations, workers compensation and superannuation.

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<sup>159</sup> Indeed the problem is not confined to Australia, see the International Labour Organisation report "Report V: The scope of the employment relationship", Geneva, 2003.

<sup>160</sup> Creighton B. and Stewart A., "Labour Law", 4<sup>th</sup> Edition, Federation Press, 2005 at page 287.

<sup>161</sup> Australian Mutual Provident Society Ltd v. Chaplin (1978) 18 ALR 385 at 391 and *Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 at 26,38.

205. Similar attempts to clarify or extend the definition of the employment relationship have also been made in New Zealand, the United Kingdom, Ireland, and South Africa.<sup>162</sup>
206. Indeed the International Labour Organisation has recognised the problem of “disguised employment” as a world wide phenomenon and is currently seeking information from its members with a view to preparing a recommendation in relation to the scope of the employment relationship.<sup>163</sup>
207. The AMWU endorses such initiatives and supports a further extension and clarification of the statutory definition of the employment relationship. In particular the AMWU supports the definition proposed by Professor Andrew Stewart to the Building and Construction Industry Royal Commission.<sup>164</sup> While the proposed definition would not in itself resolve all of the serious disadvantages faced by independent contractors (and labour hire workers), Professor Stewart’s clarification and expansion of the definition of employee may at least ensure that independent contractor (and labour hire arrangements) are not used inappropriately to evade the rights and obligations attaching to the employment relationship.
208. The proposed definition is as follows:
- (1) *A person who contracts to supply their labour to another is to be presumed to do so as an employee, unless it can be shown that the other party is a client or customer of a business genuinely carried on by the first person.*
  - (2) *A contract is not to be regarded as one other than for the supply of labour merely because:*
    - (a) *the contract permits the work in question to be delegated or subcontracted to others; or*
    - (b) *the contract is also for the supply of the use of an asset or for the production of goods for sale.*
  - (3) *In determining whether a person is genuinely carrying on a business, regard should be had to the following factors:*
    - (a) *the extent of the control exercised over the person by the other party;*

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<sup>162</sup> International Labour Organisation, “Report V: The scope of the employment relationship”, Geneva, 2003 at page 54 – 61.

<sup>163</sup> See ILO, “Report V(1): The Employment Relationship”, Geneva 2005.

<sup>164</sup> See the statement of Professor Andrew Stewart at [http://www.royalcombcgi.gov.au/docs/submissions/DPI1\\_014.pdf](http://www.royalcombcgi.gov.au/docs/submissions/DPI1_014.pdf).

- (b) *the extent to which the person is integrated into the other party's business or organisation;*
  - (c) *the degree to which the person is or is not economically dependent on the other party;*
  - (d) *whether the person actually engages others to assist in providing the relevant labour;*
  - (e) *whether the person has business premises (in the sense used in the personal services income legislation); and*
  - (f) *whether the person has performed work for two or more unrelated clients in the past year, as a result of advertising their services.*
- (4) *Courts are to have regard for this purpose to:*
- (a) *the practical reality of each relationship, and not merely the formally agreed terms; and*
  - (b) *the objects of the statutory provisions in respect to which it is necessary to determine this issue of employment status.*
- (5) *An employment agency (that is an entity whose business involves or includes the supply of workers to other unrelated businesses or organisations, whether through a contract or a chain of contracts) which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person's employer, except where this results in a direct contract between the worker and the client.*
- (6) *Where:*
- (a) *an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or chain of contracts involving another entity (the intermediary), and*
  - (b) *it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of factors similar to those set out in (3) above,*
- the worker is deemed to be the employee of the ultimate employer.*

## **RECOMMENDATION 1**

That the definition of employee be clarified and expanded in Commonwealth industrial legislation by adopting the definition posited by Professor Stewart.

That state and federal governments work together to assess the practicability of extending Professor Stewart's definition to other legislative regimes with a view to achieving a common definition of employee.

209. The AMWU is concerned however that the proposal for an "Industrial Contractors Act" raised by the Howard Government in last year's federal election appears to signal a policy move away from the goal of ensuring that the characterisation of workers as independent contractors does not undermine existing laws relating to employees. For example the AMWU would be concerned if any new legislation were to:

- More easily allow parties to deem a contract to be something that it is not by an express term in a contract. Such a provision would further facilitate the ability of parties to contract out of safety net award entitlements and negotiated certified agreements.
- Prevent employees and their unions from coming to an agreement with their employer in certified agreement negotiations that employees will not have their employment adversely affected by the use of contractors (or labour hire workers). Employees whose employment is subject to a certified agreement have a genuine and legitimate interest in both their own employment continuing and the integrity of the agreement they have struck being maintained. This may mean coming to an agreement with their employer about the terms and conditions upon which other workers will be employed or engaged by the employer (whether those other workers are employees, contractors or employees of contractors). This legitimate interest should not be compromised by the introduction of "independent contractor" legislation.

210. The AMWU would strongly oppose any legislation that would have the effect of undermining the status of the employment relationship or that would directly or indirectly lead to the reduction in the rights of workers who, because of the dependent and subordinate relationship they have with the person or entity to which they provide labour, are properly and more appropriately characterised as being within an employment relationship.

211. The AMWU also strongly opposes independent contractor arrangements being used to undermine existing laws conferring benefits and obligations on employees.

## **RECOMMENDATION 2**

That the government should not implement any new legislation to further undermine the status of the employment relationship.

## **Conclusion**

212. Despite government claims to the contrary, there is little or no evidence either in fact or in law that the status of independent contractors is being seriously undermined by judicial activism or the workplace relations system. Instead, the use of independent contractors (and labour hire arrangements) is very much undermining the status of employees and thereby threatening the statutory rights and obligations that are attached to the employment relationship.
213. The AMWU contends that to maintain the integrity of legislation applying to the employment relationship and at the same time to confirm the legitimacy of, and community support for, independent contractors in *genuinely* commercial relationships the Commonwealth and other governments should consider adopting a clarified and expanded definition of an employee.
214. The government should not implement any new legislation to further undermine the status of the employment relationship.

## CHAPTER 8 – CONCLUSION AND FINAL RECOMENDATIONS

215. Short termism characterises Australian capitalism. Manifestations of this myopia include the skills shortage, the 90 billion dollar infrastructure gap, the current account deficit, the household debt explosion and the housing bubble. Nowhere is this short termism more apparent than in the growth of labour hire and contracting. The growth of these two phenomena (sometimes referred to as out-sourcing) has been driven by short term competitive advantages, to the disadvantage of workers and the long term sustainability of the Australian economy.
216. This inquiry into labour hire and contracting was required to inquire into and report on:
- i) the status and range of independent contracting and labour hire arrangements;
  - ii) ways independent contracting can be pursued consistently across state and federal jurisdictions;
  - iii) the role of labour hire arrangements in the modern Australian economy; and
  - iv) strategies to ensure independent contract arrangements are legitimate.
217. It is the AMWU's submission that any approach to these issues must be shaped by the minimum requirements suggested by the ILO for a national policy on outsourcing. The ILO's committee of experts<sup>165</sup> agreed that a national policy might include but not be limited to:
- *providing workers and employers with clear guidance concerning employment relationships, in particular the distinction between dependent workers and self-employed persons;*
  - *providing effective appropriate protection for workers;*
  - *combating disguised employment which has the effect of depriving dependent workers of proper legal protection;*
  - *not interfering with genuine commercial or genuine independent contracting;*
  - *providing access to appropriate resolution mechanisms to determine the status of workers.*

### **Status And Range Of Independent Contracting And Labour Hire Arrangements**

218. The growth of outsourcing, both through contracting and labour hire, is the most obvious employment trend in the Australian economy in the last ten to fifteen years. It is part of a larger trend towards casualisation of the workforce.

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<sup>165</sup> ILO – 91<sup>st</sup> Session (2003), The Scope of the Employment Relationship, Report V – Conclusion, Geneva

219. The porous legal boundary between employee and non-employee has assisted this casualisation trend by providing a method that allows firms to reduce the numbers of directly employed workers and utilising a pool of casual contract workers via labour hire and sub-contracting arrangements.
220. It is the AMWU's contention that this porous legal boundary must be solidified. Recommendations to achieve this are discussed below.
221. A first step in solidifying the legal boundary is to understand how much traffic there is between employee and non-employee status.

### **RECOMMENDATION 1**

That the Federal Department of Employment and Workplace Relations commission a new Australian Workplace Industrial Relations Survey as a matter of urgency for the purpose of determining:

- The exact nature of the growth in labour hire and contracting.
- The exact numbers of dependant contractors.
- An up to date figure for the length of the average labour hire placement.
- What is the average difference between labour hire wage rates and direct employees wage rates' for comparative tasks.

### **Role Of Labour Hire Arrangements And Contracting In The Modern Australian Economy**

222. Reducing costs, particularly labour costs, is the main motivation for outsourcing. The other significant motivation for outsourcing is the transfer of risk. Risk formerly born by business is now born by some of the most economically vulnerable persons in the nation. These people who earn low levels of income from tenuous, spasmodic income are being asked to bear the burden of costs associated with bringing greater 'flexibility' and 'competitiveness' to the Australian economy.
223. The burden of costs associated with outsourcing are not isolated to just reduced wages and conditions for temporary workers. Another cost is an alarming increase in workplace injuries suffered by labour hire workers and contractors. This cost goes unreported because in many cases, the costs of treatment and rehabilitation of injured on-hire workers falls upon the State, Medicare and the social security system. This is a transfer of costs from the private to the public purse that leads to a serious underestimation of the true costs of outsourcing.
224. Ultimately the negative consequences of outsourcing are not limited to the army of temporary workers created by this phenomenon. The rise of outsourcing has deleterious consequences for the entire economy. As discussed in Chapter 5, outsourcing has hindered skill formation considerably. The sustainability of the



Australian economy is dependant upon continuous skill formation. The present skills shortage is evidence of the current imbalance in the economy. Outsourcing is a major factor in this imbalance. There is a direct relationship between the growth of labour hire and contracting and the massive downturn in training.

225. The long term revenue base of the Commonwealth is also undermined by the rise of outsourcing. Chapter 6 concluded that outsourcing is leading to a risk to the taxation base of \$14.38 billion per annum or nearly \$14 000 per non employee, thereby reducing the ability of the Commonwealth to manage the economy and increase the welfare of the Australian population.
226. Despite these shortcomings Australian business appear content to utilise outsourcing in greater and greater quantities in an effort to cut costs. This is part of the myopia that plagues Australian business; a condition highlighted by the Business Council of Australia<sup>166</sup>.
227. Outsourcing will not provide the productivity boost that so many economic commentators claim we need. We need truly creative approaches to improve labour productivity while increasing equity. Increasing labour intensification through outsourcing is not a sustainable solution. Quiggin has shown that it does not necessarily increase net social benefit. Furthermore, "...the greatest barrier to social and economic renewal are not rigidities in the labour or other markets. Rather it is the intellectual rigidities concerning the inevitability of current developments and the purported superiority of market solutions. These are retarding our capacity to respond creatively to the challenges of working life today. Breaking out of these rigidities is essential if effective solutions to the deepening problem of casualisation (*of which outsourcing is the most worrying category*) in Australia are to be overcome."<sup>167</sup>
228. Accordingly the following recommendations are aimed at positioning out-sourcing to ensure that it does not harm the sustainability of the Australian economy.

## **RECOMMENDATION 2**

That legislative requirements be placed on the use of labour hire and dependant contractors. These requirements would specify the permissible purposes for labour hire and dependant contracting as including: temporary replacement of absent employees or in the interim prior to a new permanent engagement, the performance of a special, fixed term task or role or for the performance of inherently temporary or seasonal work.

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<sup>166</sup> BCA, Op.cit

<sup>167</sup> Buchanan, J., "Paradoxes of significance: Australian casualisation and labour productivity", ACIRRT Working Paper 93, p.32

### **RECOMMENDATION 3**

Given the evidence that labour hire agencies are not meeting their obligations to their employees, it is necessary for the Commonwealth to establish a licensing scheme for labour hire agencies, with penalties for conducting labour hire services unlicensed, in order to ensure that these agencies meet their legal and social obligations.

### **RECOMMENDATION 4**

Given that outsourcing is characterised by a short term increase in business competitiveness at the expense of worker's pay, entitlements, safety and long term skill development it is essential that as part of the labour hire licensing regime, licensing fees should be collected to meet the cost of:

- a) a regulatory scheme and inspectorate;
- b) a centralised fund for the accrual of redundancy and long service leave entitlements for workers engaged in the industry;
- c) supplementing superannuation shortfalls arising from casual workers not reaching the minimum monthly income threshold; and
- d) establishing a centralised training scheme for labour hire employees.

### **RECOMMENDATION 5**

As discussed in Chapter 5 the growth in outsourcing has led to a severe shortage of skills formation. Accordingly a ratio of apprentice hiring be required by the labour hire agencies. The ratio would be relative to the number of employees a labour hire company has on its books, and that clients have to have an apprentice onsite if they have engaged over a certain number of labour hire workers (globally, not just from one supplier).

### **RECOMMENDATION 6**

That an inquiry be conducted into the short termism that plagues Australian business. This inquiry should look at institutional solutions to this myopia, for example greater co-ordination through a 'National Development Authority'.

## **Ways Contracting Can Be Pursued Consistently Across State And Federal Jurisdictions**

229. It is essential that a consistent approach to contracting (and labour hire) be pursued by State and Federal governments. However, this pursuit should not aim to minimise the employment conditions, wages and safety of persons operating in this sector. Instead, governments should aim at lifting the safety and conditions of persons in this sector to the level enjoyed by the rest of society.

230. Accordingly the following recommendations should form part of this consistent governmental approach:

### **RECOMMENDATION 7**

Given the exploitation of workers by unscrupulous labour hire agencies, the Commonwealth and States should legislate to ensure long term casual labour hire employees and dependent contractors are deemed permanent employees.

### **RECOMMENDATION 8**

Given the considerable evidence pointing towards severe restraints of trade of labour hire workers, the Commonwealth and States should legislate to make it unlawful for labour hire companies to attempt to restrain employees from seeking alternative employment.

### **RECOMMENDATION 9**

Given that outsourcing poses a serious challenge to the Australian economy when it is used for a short term fix to competition problems by reducing wages, the Commonwealth and States should legislate to guarantee labour hire workers and contractors the right to receive the employment conditions operating at the sites where their work is performed.

### **RECOMMENDATION 10**

All workers should have a clear right to security of entitlements. This is doubly necessary given the severe limitations of the General Employees Entitlements and Redundancy (GEERS) Scheme. Accordingly, the Commonwealth and States should legislate to create portability of employment entitlements within the labour hire industry, specifically long service leave and redundancy, based on the construction industry model

### **RECOMMENDATION 11**

That there be an improvement of worker representation in the OHS statutes by amending the negotiating processes for electing Health and Safety Representatives and for the membership on Health and Safety Committees. Actions could include:

- a) All statutes to be reformed to include the right to elect roving or regional Health and Safety Representatives who are not confined to a particular work site or employer.
- b) All statutes to be amended to ensure that workers are represented by Health and Safety Representatives, including all the workforce, being individuals engaged directly by the employer, contractors or employees engaged through a third party.
- c) All statutes to be amended to ensure that employers are obliged to consult with all their workforce including contractors and on hire workers regard OHS issues.
- d) All statutes to be amended to remove any size restrictions on the right for employees to participate in Health and Safety Committees.

### **RECOMMENDATION 12**

Workers and their representatives should be able to intervene in serious situations without being limited by difficult employers or the threat of discrimination or the threat of unemployment. This necessitates the following:

- a) All OHS statutes to include the power of Health and Safety Representatives/worker representatives to issue provisional improvement notices, prohibition notices and cease unsafe work without fear of reprisals.
- b) Strengthening the OHS laws to prohibit discrimination against employees and their representatives.
- c) Strengthening unfair dismissal laws.
- d) Ensuring access to independent and extended training for worker representatives on occupational health and safety.
- e) Ensuring that inspectorates are adequately trained and supported to ensure proper operation of worker participation.
- f) Inclusion in all relevant statutes the right of union officials to enter workplaces for the purposes of health and safety.

### **RECOMMENDATION 13**

The health and safety laws and regulations should particularise the duties of all parties, notably both the hiring and host employers, as well as contractors and workers.

### **RECOMMENDATION 14**

There is an absolute need to ensure that the OHS inspectorate is equipped to deal with complex employment arrangements.

### **RECOMMENDATION 15**

Provision of preventative health services for employers and workers that are independent of the workplace parties to improve access to information and guidance. That is government funded tripartite managed services located in regions which are easily accessible to everyone.

## **Strategies To Ensure Contracting Arrangements Are Legitimate**

231. Despite government claims to the contrary, there is little or no evidence either in fact or in law that the status of independent contractors is being seriously undermined by judicial activism or the workplace relations system. Instead, the use of independent contractors (and labour hire arrangements) is very much undermining the status of employees and thereby threatening the statutory rights and obligations that are attached to the employment relationship.
232. The AMWU contends that to maintain the integrity of legislation applying to the employment relationship and at the same time to confirm the legitimacy of, and

community support for, independent contractors in *genuinely* commercial relationships the Commonwealth and other governments should consider adopting a clarified and expanded definition of an employee.

#### **RECOMMENDATION 16**

In light of the growth in sham contracting arrangements and the subsequent \$14.38 billion risk to the tax base, the Commonwealth should clarify and expand the definition of employee in Commonwealth legislation by adopting the definition posited by Professor Stewart.

233. The AMWU would strongly oppose any legislation that would have the effect of undermining the status of the employment relationship or that would directly or indirectly lead to the reduction in the rights of workers who, because of the dependent and subordinate relationship they have with the person or entity to which they provide labour, are properly and more appropriately characterised as being within an employment relationship.
234. The AMWU also strongly opposes independent contractor arrangements being used to undermine existing laws conferring benefits and obligations on employees or to evade tax. In the end contracting arrangements will only be legitimate if dependant contracting is reduced, if not eradicated.

#### **RECOMMENDATION 17**

That the government should not implement any new legislation to further undermine the status of the employment relationship.

235. The adoption of these recommendations offers the best hope of ensuring the long term sustainability is not endangered by the growth of labour hire and outsourcing.
236. These recommendations will limit the range of contracting and labour hire arrangements to roles beneficial to the economy in a manner that is consistent across State and Federal jurisdictions, at the same time, ensuring that independent contracting arrangements are legitimate.
237. It is incumbent upon the Commonwealth to ensure that the short termism (as exemplified by current outsourcing behaviour) that dominates Australian business is not allowed to reduce the long term living standards of Australians nor hinder our nation building capability.

238. The AMWU would like to thank the House Of Representatives Employment, Workplace Relations and Workforce Participation Committee for the opportunity to make this submission. The AMWU would value any further opportunities for consultation with respect to this inquiry.

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## Appendix 1

### RESEARCH EVIDENCE REGARDING THE POSITIVE EFFECT OF UNIONS ON HEALTH AND SAFETY PERFORMANCE

(presented to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee 2004 in AMWU Submission on changes to Commonwealth OHS Act 1991)

Barry Reilly, Peirella Paci and Peter Hall. *Unions safety committees and workplace injuries*. British Journal of Industrial Relations, 33.2, June 1995.

In workplaces with full union recognition and a joint management-union safety committee serious accident rates were less than half those at firms with no union recognition and no joint committee.

Paper for the Canadian Ministries of Labour, 1993. Cited in *Unions make your workplace safer*, Canadian Labour Congress.

Union supported health and safety committees have a significant impact in reducing injury rates.

Safety Behaviour in the Construction Sector by Nick McDonald, Dept of Psychology, Trinity College Dublin and Victor Hrymak, School of Food Science and Environmental Health, DIT

Northern Ireland government research into the Construction industry that found "*the variable with the strongest relationship with safety compliance is the presence or absence of a safety representative. ....safety representatives are associated with a greater likelihood of reporting risky situations and a lower likelihood of simply continuing to work in such situations.*"

Australian Workplace Relations Survey, 1990 - 1995

Unionised workplaces were three times as likely to have a health and safety committee, twice as likely to have health and safety representatives and twice as likely to have undergone a management occupational health and safety audit in the preceding 12 months

Michelle Ochsner and Michael Greenberg. *Factors which support effective worker participation in health and safety: A survey of New Jersey industrial hygienists and safety engineers*. Journal of Public Health Policy, volume 19, No.3, 1998

Effective strategies for involving workers appear to be conditional on a number of variables, most importantly on worker activism and the effective use of formal negotiations.

World Bank Report, 1995

Studies in industrial countries indicate that the role of labour unions in ensuring compliance with health and safety standards is often an important one.

Professor David Walters, TUC Professor of Work Environment, School of Social Sciences, Cardiff University, United Kingdom. July 2003

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Unions Safety Committees and Workplace Injuries.

Kaj Frich and David Walters, *International Labour Review*, Vol. 137 (1998), No.3.  
Worker representation on health and safety in small enterprises: Lessons from a Swedish approach.

HK Abrams. *A short history of Occupational Health*  
Organised labour has been the essential factor central to most workplace health and safety improvements, from the industrial revolution to the present.

Adam Seth Litwin. *Trade union and industrial injury in Great Britain*. LSE discussion paper DP0468, August 2000.

Strikes and slow-downs serve as efficacious union tools for reducing workplace injuries ..... labour possesses vital, tacit, shopfloor knowledge regarding health and safety, knowledge that is imperative for reducing accident rates.

Ontario Workplace Health and Safety Agency. Cited in *Unions make your workplace safer*, Canadian Labour Congress.

78-79 per cent of unionised workplaces reported high compliance with health and safety legislation while only 54-61 per cent of non-unionised workplaces reported such compliance.



**Table A1**

**Average Annual Rate of Change in Employment X Firm Size and Status in Employment.  
Private sector employees. 1983–84 to 1999–00. Australia**

Industry division(b)	Persons working in own business(a)		Employer size group					Small business employees (≤19)	All employees
	Own account workers	Employers	1-4	5-19	20-99	100-199	200 or more		
	%	%	%	%	%	%	%	%	
Manufacturing	4.2	0.0	3.3	0.6	0.4	-0.2	-2.0	1.3	-0.7
Construction	3.2	1.6	4.7	6.5	-0.6	*3.3	2.4	5.7	4.0
Wholesale trade	1.0	-2.0	3.6	2.3	4.3	1.2	1.2	2.6	2.7
Retail trade	-0.2	-1.2	2.0	1.9	4.1	0.6	3.5	1.9	2.7
Accommodation, cafes and restaurants	2.8	2.6	-0.3	3.6	3.4	8.2	4.3	2.7	3.7
Transport and storage	0.7	1.1	4.1	5.8	3.2	3.1	4.6	5.2	4.4
Finance and insurance	2.2	-1.3	5.3	*1.1	1.6	5.6	4.2	3.3	3.8
Property and business services	6.2	2.4	5.9	6.4	6.4	6.7	6.1	6.2	6.2
Education	6.7	5.4	5.9	6.3	5.7	8.9	5.7	6.2	6.4
Health and community services	7.0	0.1	4.4	6.6	2.8	4.3	5.4	5.8	4.8
Cultural and recreational services	3.5	0.6	3.0	3.0	3.1	*7.5	8.1	3.0	4.5
Personal and other services	4.4	-0.1	5.1	4.9	2.8	7.3	6.2	4.9	4.9
<b>Total</b>	<b>2.9</b>	<b>0.4</b>	<b>3.8</b>	<b>3.5</b>	<b>3.0</b>	<b>2.9</b>	<b>2.1</b>	<b>3.6</b>	<b>2.9</b>

Source: ABS 2001: derived from Table 2.4

(a) Includes working proprietors and partners of unincorporated non-employed businesses. Working directors of incorporated businesses are classified as employees.

**Table A2**

**Employed Persons By Industry And Employer Size.  
Private Sector Employees. Australia 1983-84**

Industry division(b)	Persons working in own business(a)		Own account workers as a proportion of total employees	Employer size group as proportion of total employees				
	Own account workers	Employers		1-4	5-19	20-99	100-199	≥ 200
	%	%	%	%	%	%	%	%
Manufacturing	54.0	46.0	2.9	3.5	12.9	20.5	11.2	51.9
Construction	73.6	26.4	55.1	27.2	27.3	24.0	*	13.7
Wholesale trade	60.9	39.1	7.6	9.5	29.5	27.8	11.2	22.0
Retail trade	54.2	45.8	15.6	14.9	30.2	13.8	6.8	34.3
Accommodation, cafes and restaurants	31.2	68.8	3.6	11.8	32.3	35.8	5.7	14.5
Transport and storage	76.8	23.2	33.4	14.0	21.0	24.6	8.4	32.0
Finance and insurance	71.6	28.4	4.9	8.1	*	13.8	5.4	62.9
Property and business services	60.7	39.3	12.1	19.6	28.2	23.6	6.6	22.0
Education	82.8	17.2	10.5	7.0	16.0	34.9	14.2	27.9
Health and community services	33.6	66.4	4.0	12.5	20.0	26.3	12.7	28.5
Cultural and recreational services	76.0	24.0	20.9	14.5	30.2	31.9	*	16.9
Personal and other services	62.5	37.5	31.3	23.6	36.4	22.1	7.3	10.6
<b>Total(c)</b>	<b>61.6</b>	<b>38.4</b>	<b>12.0</b>	<b>11.5</b>	<b>22.9</b>	<b>22.0</b>	<b>8.9</b>	<b>34.7</b>

Source: ABS 2001: derived from Table 2.4

\*Value not statistically significant

**Table A3**

**Employed Persons By Industry And Employer Size.  
Private Sector Employees. Australia 1999-00**

Industry division(b)	Persons working in own business(a)		Own account workers as a proportion of total employees	Employer size group as proportion of total employees				
	Own account workers	Employers		1-4	5-19	20-99	100-199	200 or more
	%	%	%	%	%	%	%	%
Manufacturing	69.3	30.7	6.2	6.6	15.8	24.2	12.0	41.4
Construction	77.9	22.1	48.4	30.5	40.0	11.8	*	10.8
Wholesale trade	71.5	28.5	5.8	10.9	27.5	35.5	8.8	17.3
Retail trade	57.8	42.2	9.7	13.3	26.5	17.0	4.9	38.3
Accommodation, cafes and restaurants	31.6	68.4	3.1	6.3	31.8	34.5	11.3	16.1
Transport and storage	75.6	24.4	18.6	13.4	26.2	20.5	6.9	33.2
Finance and insurance	81.1	18.9	3.8	10.1	*	9.8	7.1	66.5
Property and business services	73.4	26.6	11.9	18.5	28.8	24.3	7.1	21.3
Education	85.3	14.7	11.0	6.5	15.9	31.6	20.7	25.2
Health and community services	59.5	40.5	5.6	11.8	26.1	19.1	11.6	31.3
Cultural and recreational services	83.2	16.8	18.0	11.4	24.0	25.4	*	28.8
Personal and other services	77.3	22.7	29.3	24.4	36.2	16.0	10.4	13.0
<b>Total(c)</b>	<b>70.4</b>	<b>29.6</b>	<b>11.9</b>	<b>13.2</b>	<b>25.1</b>	<b>22.4</b>	<b>8.9</b>	<b>30.5</b>

Source: ABS 2001: derived from Table 2.4

\* Value not statistically significant

**Table A4 Industry employment by status – per cent of industry total**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
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<b>Agriculture, forestry and fishing</b>										
Employee	36.7	39.2	40.4	41.4	44.7	44.4	46.2	48.7	48.8	50.5
Employer	11.5	12.1	11.3	11.9	11.9	11.5	12.6	12.0	10.8	11.4
Own account worker	45.1	42.3	42.4	42.2	38.9	38.8	36.2	36.3	37.7	35.5
Contributing family worker	6.7	6.4	5.9	4.5	4.4	5.3	5.1	2.9	2.7	2.6
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Mining</b>										
Employee	94.9	95.3	96.6	96.3	97.7	98.1	98.2	97.2	96.9	97.3
Employer	0.6	0.3	0.1	0.4	0.2	0.5	0.1	0.2	0.4	0.5
Own account worker	4.0	4.4	2.9	3.0	1.9	1.3	1.8	2.5	2.7	2.1
Contributing family worker	0.5	0.1	0.3	0.3	0.2	0.1	0.0	0.1	0.0	0.0
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Manufacturing</b>										
Employee	93.2	93.0	92.8	92.4	92.4	92.4	92.4	92.8	92.3	93.1
Employer	2.1	2.3	2.1	2.2	2.4	2.2	2.0	2.0	1.8	1.7
Own account worker	4.3	4.4	4.7	5.0	4.7	4.9	5.2	5.0	5.6	5.0
Contributing family worker	0.4	0.4	0.5	0.4	0.5	0.5	0.4	0.3	0.3	0.2
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Electricity, gas and water supply</b>										
Employee	99.7	100.0	99.6	99.6	100.0	99.4	99.5	99.0	99.1	99.1
Employer	0.2	0.0	0.0	0.1	0.0	0.0	0.2	0.6	0.1	0.0
Own account worker	0.1	0.0	0.4	0.3	0.0	0.5	0.3	0.3	0.7	0.9
Contributing family worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.0
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Table A4 Industry employment by status – per cent of industry total (continued)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Construction</b>										
Employee	62.4	61.5	64.1	64.5	65.6	66.7	64.0	64.9	64.7	66.6
Employer	8.6	8.4	7.0	7.8	7.6	7.1	6.9	6.6	6.2	6.0
Own account worker	27.5	28.8	27.7	26.7	25.6	25.1	28.1	27.8	28.5	26.8
Contributing family worker	1.4	1.4	1.3	0.9	1.2	1.1	1.0	0.7	0.6	0.5
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Wholesale trade</b>										
Employee	90.8	91.4	91.3	91.4	91.4	90.6	91.8	91.4	90.6	91.2
Employer	3.1	2.7	2.9	2.7	2.5	2.4	2.2	2.7	2.7	2.2
Own account worker	5.4	5.3	5.2	5.3	5.5	6.2	5.4	5.5	6.3	6.2
Contributing family worker	0.6	0.6	0.6	0.6	0.6	0.8	0.6	0.4	0.3	0.4
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Retail trade</b>										
Employee	80.9	81.9	83.2	83.7	85.2	85.7	87.0	87.5	87.7	88.1
Employer	8.1	7.6	6.7	7.0	6.5	5.7	5.0	5.0	4.7	4.6
Own account worker	9.6	9.3	8.8	8.1	7.3	7.7	7.2	7.1	7.0	6.9
Contributing family worker	1.4	1.2	1.3	1.2	1.0	0.9	0.8	0.5	0.6	0.4
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Accommodation, cafes and restaurants</b>										
Employee	89.9	89.4	89.5	90.4	90.7	90.3	89.7	89.9	90.9	90.6
Employer	5.8	6.4	6.7	5.8	5.9	6.0	6.2	5.7	5.0	5.3
Own account worker	3.3	3.4	3.0	3.0	2.6	2.8	3.2	3.6	3.4	3.4
Contributing family worker	1.0	0.9	0.8	0.9	0.8	0.9	0.9	0.7	0.7	0.7
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Table A4 Industry employment by status – per cent of industry total (continued)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Transport and storage</b>										
Employee	83.6	81.9	84.0	83.1	83.6	84.1	83.5	84.2	84.5	85.5
Employer	3.2	3.9	3.2	3.7	3.3	3.8	3.2	2.2	2.8	2.4
Own account worker	12.6	13.6	12.2	12.9	12.6	11.7	12.6	13.2	12.5	11.9
Contributing family worker	0.6	0.6	0.6	0.3	0.5	0.4	0.7	0.4	0.3	0.2
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Communication services</b>										
Employee	92.6	93.8	92.5	89.3	91.2	89.0	88.6	88.0	88.8	89.7
Employer	0.9	0.8	1.1	1.7	1.6	1.3	1.1	1.4	1.9	0.9
Own account worker	6.4	5.2	6.1	8.8	6.8	9.4	10.0	10.4	9.1	9.3
Contributing family worker	0.1	0.3	0.3	0.1	0.4	0.3	0.2	0.2	0.1	0.1
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Finance and insurance</b>										
Employee	96.5	96.7	96.7	95.8	96.3	95.8	95.7	94.8	95.9	94.9
Employer	0.7	0.8	0.7	0.9	0.9	0.7	0.7	0.9	0.8	0.7
Own account worker	2.6	2.2	2.3	3.0	2.5	3.2	3.1	4.1	3.1	4.2
Contributing family worker	0.2	0.3	0.3	0.3	0.4	0.3	0.6	0.2	0.2	0.1
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Property and business services</b>										
Employee	80.9	81.0	82.8	81.6	83.4	84.2	84.6	84.0	82.9	83.4
Employer	5.5	5.6	5.1	4.9	4.4	4.0	3.8	3.8	3.6	3.4
Own account worker	12.9	12.7	11.3	12.6	11.6	11.1	11.0	11.8	13.2	12.8
Contributing family worker	0.7	0.7	0.8	0.8	0.7	0.7	0.6	0.4	0.3	0.3

Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Table A4 Industry employment by status – per cent of industry total (continued)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Government administration and defence</b>										
Employee	100.0	99.8	99.9	100.0	100.0	99.8	99.9	99.6	99.6	99.6
Employer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
Own account worker	0.0	0.1	0.1	0.0	0.0	0.2	0.1	0.4	0.4	0.4
Contributing family worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Education</b>										
Employee	97.1	96.9	97.0	96.7	96.5	96.0	96.7	96.7	96.4	95.7
Employer	0.4	0.3	0.3	0.5	0.4	0.6	0.5	0.4	0.5	0.4
Own account worker	2.4	2.7	2.6	2.7	3.0	3.3	2.8	2.8	3.1	3.8
Contributing family worker	0.1	0.0	0.0	0.1	0.1	0.1	0.0	0.1	0.0	0.0
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Health and community services</b>										
Employee	93.5	92.9	93.9	93.6	94.2	94.3	93.9	94.1	93.3	93.8
Employer	2.7	2.8	2.4	2.3	2.0	2.3	2.1	1.9	2.2	1.8
Own account worker	3.6	4.1	3.5	3.9	3.6	3.3	3.9	4.0	4.4	4.3
Contributing family worker	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.0	0.1	0.1
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Cultural and recreational services</b>										
Employee	83.2	81.8	81.9	82.6	84.4	83.2	82.5	83.3	82.6	81.8

Employer	2.8	2.5	3.2	2.9	2.7	2.7	2.8	2.2	2.7	2.1
Own account worker	12.9	15.1	14.2	13.8	12.4	13.3	14.2	14.0	14.3	15.7
Contributing family worker	1.1	0.6	0.7	0.6	0.5	0.9	0.5	0.6	0.4	0.4
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Table A4 Industry employment by status – per cent of industry total (continued)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Personal and other services</b>										
Employee	78.5	78.9	79.3	78.6	77.5	79.4	80.1	80.0	80.4	80.5
Employer	5.0	4.7	5.1	5.2	5.4	4.6	5.1	4.8	4.5	3.9
Own account worker	15.8	15.6	15.0	15.8	16.6	15.5	14.2	14.6	14.5	15.3
Contributing family worker	0.6	0.8	0.7	0.4	0.5	0.5	0.6	0.6	0.6	0.3
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Total</b>										
Employee	84.4	84.5	85.2	84.9	85.7	85.7	85.9	86.2	86.3	86.7
Employer	4.4	4.4	4.1	4.2	4.0	3.8	3.7	3.5	3.3	3.2
Own account worker	10.2	10.2	9.8	10.1	9.5	9.7	9.6	9.8	9.9	9.7
Contributing family worker	1.0	0.9	0.9	0.8	0.8	0.8	0.7	0.5	0.4	0.4
Unpaid voluntary worker	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: ABS Labour Force Statistics.

**Table A5 Expenses and payments as a per cent of business income (excluding cost of sales) by business type and industry (per cent)**

	Contractor/sub-contractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (including rent, interest etc.)			Total expenses			Payments to related entities		
	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company
<b>Primary production</b>																		
1996-97	4.16	na	3.84	6.49	na	1.74	8.16	na	4.74	91.58	na	65.02	110.38	na	75.34	1.17	na	4.93
1997-98	0.55	2.43	4.53	6.33	2.85	1.75	8.17	7.27	4.85	98.35	76.10	54.58	113.39	88.66	65.71	1.21	1.36	4.06
1998-99	4.68	2.77	5.15	6.33	2.87	1.83	8.01	7.31	5.15	94.15	77.87	57.66	113.17	90.83	69.79	1.07	1.35	4.25
1999-00	4.08	2.90	4.02	6.17	2.96	1.58	8.01	7.54	4.34	92.13	80.75	59.77	110.39	94.15	69.70	0.99	1.39	4.32
2000-01	3.46	2.52	4.50	5.32	2.50	1.83	6.95	6.44	4.68	82.88	74.38	58.81	98.62	85.84	69.82	0.00	1.21	3.65
2001-02	3.28	2.48	3.72	4.82	2.17	1.62	7.19	6.55	4.31	78.18	69.05	56.69	93.48	80.26	66.34	0.59	0.99	2.67
<b>Mining</b>																		
1996-97	5.18	na	3.24	6.81	na	0.40	4.46	na	6.98	47.91	na	61.02	64.37	na	71.65	0.34	na	0.23
1997-98	0.35	3.28	4.74	5.86	1.47	0.44	3.55	5.39	5.24	128.49	70.32	62.49	138.25	80.46	72.91	0.39	0.61	0.29
1998-99	2.24	3.91	6.28	6.24	1.37	0.41	3.55	2.77	4.63	52.31	62.96	67.54	64.35	71.01	78.87	0.62	0.82	0.22
1999-00	3.09	4.72	7.45	6.61	1.58	0.35	3.87	3.51	3.92	45.44	71.45	68.58	59.01	81.26	80.29	0.42	0.50	0.20
2000-01	8.84	4.44	6.25	6.88	1.25	0.36	4.58	2.52	2.88	51.29	65.80	63.26	71.60	74.02	72.76	0.00	9.06	0.15
2001-02	9.73	4.25	6.30	6.61	1.70	0.35	4.79	2.71	3.32	54.10	57.16	62.74	75.23	65.81	72.72	0.28	9.88	0.12
<b>Manufacturing</b>																		
1996-97	7.49	na	3.49	7.87	na	1.26	1.42	na	3.91	55.27	na	48.12	72.05	na	56.78	1.71	na	1.82
1997-98	0.64	4.82	3.79	7.80	4.20	1.32	1.31	2.34	3.87	54.42	64.53	46.78	64.17	75.88	55.77	1.58	2.47	2.86
1998-99	5.04	4.66	3.68	7.91	4.10	1.14	1.22	2.26	3.30	49.11	63.45	47.45	63.28	74.47	55.57	1.41	2.62	1.43
1999-00	5.18	5.03	3.50	7.97	3.91	1.16	1.22	2.38	3.52	47.63	63.35	46.85	62.00	74.67	55.03	1.26	2.61	1.33
2000-01	5.47	4.40	3.78	7.94	3.77	1.12	1.28	2.28	3.41	52.48	69.25	49.99	67.17	79.70	58.30	0.00	2.33	1.62
2001-02	6.19	4.75	4.11	7.60	3.58	1.11	1.30	2.78	3.59	52.14	66.21	48.74	67.23	77.32	57.55	0.92	1.64	1.38
<b>Electricity, gas and water supply</b>																		
1996-97	2.82	na	2.92	10.21	na	0.57	1.77	na	0.83	43.42	na	73.82	58.23	na	78.14	0.98	na	0.28
1997-98	0.60	0.10	1.60	10.30	0.39	0.50	1.43	0.06	0.94	44.01	115.77	76.60	56.35	116.32	79.64	1.30	2.34	0.28
1998-99	3.59	4.25	2.97	10.26	0.22	0.55	1.55	9.89	1.84	36.53	86.85	78.18	51.92	101.22	83.54	0.60	1.79	0.35
1999-00	4.63	5.16	3.32	10.47	0.29	0.44	1.17	4.09	1.42	37.00	85.64	73.24	53.27	95.18	78.42	0.81	0.04	0.20

2000-01	3.68	6.40	7.52	14.17	0.36	0.29	1.46	1.59	1.76	41.17	78.69	70.70	60.48	87.04	80.27	0.00	0.07	0.20
2001-02	6.53	7.66	3.67	12.41	0.25	0.39	1.33	3.36	2.71	42.75	82.94	75.23	63.03	94.20	82.00	0.41	0.01	0.20

**Table A5 Expenses and payments as a per cent of business income (excluding cost of sales) by business type and industry (per cent) – continued**

Contractor/sub-contractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (including rent, interest etc.)			Total expenses			Payments to related entities		
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company

### Construction

1996-97	6.95	na	20.05	9.23	na	3.36	0.91	na	1.83	36.27	na	39.55	53.36	na	64.79	0.75	na	7.12
1997-98	0.33	13.28	20.78	8.98	5.77	3.20	0.83	1.41	1.67	41.41	47.28	42.43	51.56	67.74	68.08	0.65	2.43	7.03
1998-99	6.75	13.76	22.77	8.89	5.53	3.06	0.78	1.32	1.83	33.85	47.23	42.14	50.28	67.83	69.81	0.61	2.36	6.69
1999-00	6.76	14.21	22.18	8.75	4.97	2.98	0.72	1.17	1.85	33.91	48.13	38.81	50.15	68.48	65.82	0.53	2.14	5.70
2000-01	8.15	17.02	22.91	9.47	5.67	3.08	0.82	1.48	1.59	37.74	45.72	39.00	56.18	69.89	66.58	0.00	2.60	5.26
2001-02	9.16	17.80	18.70	8.96	4.85	2.84	0.88	1.36	1.63	38.36	45.81	41.66	57.37	69.81	64.83	0.49	1.61	5.51

### Wholesale trade

1996-97	2.54	na	2.66	8.82	na	1.76	2.44	na	1.39	68.72	na	62.79	82.53	na	68.60	1.96	na	2.32
1997-98	1.05	2.16	2.80	8.33	4.94	1.50	2.09	2.31	1.18	71.26	69.43	66.00	82.73	78.84	71.48	1.99	2.74	2.11
1998-99	3.06	2.98	3.15	8.90	4.97	1.54	2.25	2.35	1.33	65.72	67.97	62.91	79.93	78.27	68.93	1.58	2.54	2.20
1999-00	3.03	3.19	2.76	8.69	4.85	1.45	2.20	2.38	1.09	64.04	68.84	61.40	77.97	79.26	66.69	1.72	2.38	2.49
2000-01	2.84	2.51	2.66	8.65	4.07	1.37	2.28	2.11	0.99	63.93	71.50	67.98	77.69	80.19	73.00	0.00	1.87	2.70
2001-02	2.68	2.90	3.22	8.09	4.37	1.50	2.21	2.50	1.08	63.64	66.50	60.44	76.63	76.28	66.24	1.13	6.21	2.16

### Retail trade

1996-97	2.68	na	2.06	5.10	na	1.37	1.26	na	1.43	74.36	na	58.68	83.40	na	63.54	2.45	na	4.32
1997-98	1.28	1.82	2.27	5.07	3.80	1.37	1.30	1.48	1.46	74.92	72.41	56.03	82.57	79.51	61.13	2.39	3.07	5.23
1998-99	2.06	2.13	3.23	5.14	3.56	1.26	1.24	1.48	1.18	73.23	72.60	55.72	81.67	79.76	61.39	3.28	3.39	3.09
1999-00	2.04	2.16	2.24	4.98	3.59	1.26	1.23	1.48	1.13	73.23	71.42	51.71	81.48	78.65	56.35	3.41	3.19	2.78
2000-01	1.95	1.99	2.28	4.79	3.50	1.21	1.16	1.42	1.17	74.59	72.83	59.44	82.49	79.74	64.10	0.00	3.26	18.65
2001-02	2.03	2.11	1.77	4.67	3.25	1.21	1.17	1.41	1.07	74.38	72.02	56.21	82.25	78.79	60.26	1.91	2.44	2.52

### Accommodation, cafes and restaurants

1996-97	0.84	na	1.36	2.90	na	0.55	3.25	na	2.67	86.07	na	60.61	93.06	na	65.18	2.22	na	2.17
1997-98	1.18	1.36	1.22	3.12	1.83	0.54	3.27	3.42	2.71	83.70	79.50	58.97	91.28	86.11	63.44	2.21	2.18	2.24
1998-99	0.91	1.15	1.35	3.06	1.78	0.53	3.25	3.32	2.71	82.96	80.23	62.14	90.18	86.47	66.73	2.20	2.05	2.25
1999-00	1.03	1.16	0.92	3.10	1.75	0.46	3.25	3.38	2.49	84.34	81.74	64.63	91.72	88.04	68.49	2.40	2.02	2.02
2000-01	0.95	1.03	1.42	3.01	1.68	0.50	3.17	3.25	2.64	86.26	83.83	62.72	93.39	89.79	67.28	0.00	1.94	2.04
2001-02	0.97	0.97	1.36	2.95	1.62	0.49	3.12	3.18	2.51	87.40	81.54	61.32	94.44	87.30	65.68	1.79	1.44	1.76

**Table A5 Expenses and payments as a per cent of business income (excluding cost of sales) by business type and industry (per cent) – continued**

Contractor/sub-contractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (including rent, interest etc.)			Total expenses			Payments to related entities		
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company

### Transport and storage

1996-97	2.69	na	7.31	17.80	na	3.60	3.69	na	2.54	48.05	na	62.96	72.23	na	76.41	0.63	na	1.78
1997-98	0.34	3.18	7.80	17.28	8.81	3.33	3.75	2.53	2.31	49.95	38.56	60.14	71.32	53.08	73.58	0.57	0.86	1.39
1998-99	2.60	2.72	10.50	16.73	8.18	3.42	3.65	2.55	2.61	46.40	38.03	54.63	69.38	51.47	71.16	0.61	0.84	1.47
1999-00	2.81	2.71	10.37	16.93	8.35	2.81	3.37	2.31	2.60	46.13	37.20	59.03	69.24	50.58	74.80	0.50	0.97	1.19
2000-01	3.03	3.13	8.66	15.41	7.83	2.75	2.97	2.34	3.52	49.04	39.94	60.13	70.45	53.24	75.06	0.00	0.85	1.27
2001-02	3.01	3.24	7.75	15.05	6.43	2.91	3.06	2.05	2.78	48.86	31.72	61.75	69.98	43.45	75.19	0.39	0.58	1.25

### Communication

1996-97	1.96	na	3.00	20.87	na	1.09	1.09	na	6.04	26.09	na	56.21	50.01	na	66.35	0.80	na	0.31
1997-98	0.32	4.01	2.43	20.39	12.45	0.99	1.02	1.27	5.22	28.97	42.78	47.47	50.68	60.51	56.11	0.80	2.50	0.28
1998-99	1.94	5.03	2.62	20.10	12.04	0.84	0.94	1.41	4.51	25.79	41.50	58.93	48.77	59.98	66.89	0.63	2.26	0.25
1999-00	2.02	4.95	4.30	19.71	12.39	0.74	0.89	1.27	4.11	27.09	41.72	45.77	49.71	60.33	54.91	0.55	2.41	0.25
2000-01	2.86	5.83	4.18	19.56	10.57	0.63	0.83	1.68	3.63	27.87	62.30	51.39	51.11	80.38	59.83	0.00	4.92	3.50
2001-02	2.79	6.22	4.36	19.55	9.38	0.65	0.87	1.56	3.66	26.96	60.72	61.94	50.17	77.88	70.62	0.35	1.84	0.28

### Finance and insurance

1996-97	3.85	na	2.66	5.20	na	0.40	0.72	na	0.46	56.26	na	62.19	66.02	na	65.72	2.43	na	1.57
1997-98	1.19	8.86	3.08	5.18	1.31	0.40	0.71	0.66	0.42	58.48	69.31	64.10	65.57	80.14	67.99	2.26	2.15	1.54
1998-99	3.36	10.48	3.12	5.17	1.32	0.34	0.72	0.73	0.37	54.07	65.04	54.38	63.32	77.58	58.22	2.78	4.41	1.88



1999-00	3.25	7.01	3.51	5.04	1.10	0.39	0.69	0.74	0.44	54.17	70.08	63.44	63.15	78.93	67.78	2.73	4.87	1.49
2000-01	3.51	6.02	2.87	5.04	1.07	0.31	0.76	1.07	0.42	56.63	72.15	67.93	65.93	80.31	71.53	0.00	7.67	1.26
2001-02	3.45	9.58	3.15	4.92	0.96	0.29	0.73	0.56	0.46	53.86	64.56	65.44	62.96	75.66	69.34	2.04	3.96	1.09

## Education

1996-97	2.04	na	na	10.33	na	na	1.11	na	na	70.08	na	na	83.56	na	na	1.05	na	na
1997-98	0.53	na	na	10.13	na	na	1.04	na	na	62.79	na	na	74.49	na	na	0.89	na	na
1998-99	2.18	2.64	7.60	10.25	6.91	1.34	1.01	1.19	0.85	52.79	72.24	60.33	66.23	82.98	70.13	0.86	2.86	6.48
1999-00	2.35	2.69	7.78	10.48	6.80	1.39	1.02	1.38	0.93	49.87	69.07	54.42	63.73	79.94	64.52	0.82	2.51	5.92
2000-01	2.36	3.48	7.93	9.57	5.59	1.29	0.88	1.05	0.62	47.87	69.40	56.08	60.68	79.53	65.92	0.00	2.09	6.10
2001-02	2.52	3.65	8.19	9.40	5.83	1.09	0.90	1.23	0.59	45.77	61.80	55.26	58.59	72.51	65.12	0.47	2.11	5.23

**Table A5 Expenses and payments as a per cent of business income (excluding cost of sales) by business type and industry (per cent) – continued**

Contractor/sub-contractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (including rent, interest etc.)			Total expenses			Payments to related entities		
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company

## Health and community services

1996-97	2.95	na	3.77	3.04	na	1.66	0.69	na	1.17	59.62	na	50.24	66.31	na	56.84	2.35	na	15.03
1997-98	1.44	4.47	3.76	2.96	1.29	1.68	0.66	0.78	1.21	61.69	68.78	51.33	66.75	75.32	57.97	2.19	3.67	14.85
1998-99	2.65	4.55	3.67	2.88	1.03	1.65	0.65	0.61	1.21	59.57	69.68	49.97	65.74	75.87	56.51	3.58	8.78	14.15
1999-00	2.35	4.70	3.85	2.78	1.05	1.64	0.58	0.71	1.44	59.53	69.55	51.99	65.24	76.00	58.92	3.40	7.64	12.59
2000-01	2.33	4.84	3.63	2.48	0.54	0.88	0.60	0.55	1.00	57.70	69.13	59.45	63.10	75.06	64.96	0.00	6.71	10.16
2001-02	2.35	2.91	3.44	2.33	0.50	0.89	0.56	0.58	1.02	55.28	69.55	51.60	60.52	73.54	56.95	1.94	3.39	11.37

## Cultural and recreational services

1996-97	6.07	na	6.64	8.45	na	0.68	1.62	na	1.21	75.40	na	66.85	91.54	na	75.37	1.29	na	2.46
1997-98	0.51	0.58	4.56	8.09	0.21	0.63	1.56	0.14	1.06	74.74	98.44	61.57	84.90	99.37	67.83	1.30	0.16	2.18
1998-99	3.83	0.46	3.68	8.01	0.18	0.50	1.50	0.11	0.95	68.11	97.58	75.84	81.44	98.33	80.98	1.21	0.18	1.75
1999-00	3.54	2.57	3.95	8.10	0.17	0.48	1.53	0.21	1.01	66.38	94.99	71.15	79.56	97.94	76.59	1.02	0.47	1.40
2000-01	3.70	2.56	3.31	7.32	0.17	0.46	1.31	0.23	0.84	64.30	94.59	69.97	76.63	97.55	74.58	0.00	0.70	1.36
2001-02	3.92	3.00	3.28	7.66	0.15	0.45	1.36	0.16	1.19	61.64	93.33	79.71	74.57	96.65	84.63	1.96	0.08	1.63

**Personal and other services**

1996-97	1.98	na	4.54	6.32	na	1.93	1.58	na	1.44	62.35	na	51.33	72.23	na	59.24	1.79	na	7.52
1997-98	1.06	2.89	4.49	6.39	3.98	1.94	1.58	1.98	1.52	62.56	67.77	49.70	71.59	76.61	57.64	1.76	3.32	7.45
1998-99	2.19	3.06	4.75	6.47	3.87	1.68	1.65	1.93	1.63	60.53	68.40	53.01	70.84	77.26	61.07	1.86	3.51	6.82
1999-00	2.24	3.47	2.62	6.48	3.89	0.68	1.60	1.85	0.65	60.10	68.14	62.53	70.43	77.35	66.49	2.84	3.85	2.38
2000-01	2.30	3.11	5.97	6.69	4.07	2.25	1.49	1.74	1.86	59.38	68.39	51.26	69.87	77.31	61.35	0.00	2.58	4.91
2001-02	2.28	3.61	6.43	6.52	4.14	2.27	1.50	1.81	2.30	59.01	66.61	53.33	69.31	76.17	64.34	0.93	7.52	4.98

**Table A6 Prima facie risk to tax base (relative to company standard) - per cent of business income (less cost of sales)**

Contractor/subcontractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (inc. rent, interest etc.)			Total expenses			Payments to related entities			Total prima facie risk to tax base – per cent of income (less cost of sales)		
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	
<b><i>Mining</i></b>																				
1996-97	0.00	0.00	0.00	6.41	na	0.00	-2.52	na	0.00	0.00	na	0.00	3.89	na	0.00	0.17	na	0.00	4.06	na
1997-98	0.00	0.00	0.00	5.42	1.03	0.00	-1.69	0.15	0.00	33.00	3.91	0.00	36.73	5.10	0.00	0.19	0.30	0.00	36.92	5.40
1998-99	0.00	0.00	0.00	5.83	0.96	0.00	-1.08	-1.86	0.00	0.00	0.00	0.00	4.76	-0.90	0.00	0.31	0.41	0.00	5.06	-0.49
1999-00	0.00	0.00	0.00	6.26	1.23	0.00	-0.04	-0.41	0.00	0.00	1.44	0.00	6.22	2.26	0.00	0.21	0.25	0.00	6.43	2.51
2000-01	0.00	0.00	0.00	6.52	0.89	0.00	1.70	-0.36	0.00	0.00	1.27	0.00	8.22	1.80	0.00	0.00	4.53	0.00	8.22	6.33
2001-02	0.00	0.00	0.00	6.27	1.35	0.00	1.47	-0.62	0.00	0.00	0.00	0.00	7.74	0.73	0.00	0.14	4.94	0.00	7.87	5.67
<b><i>Manufacturing</i></b>																				
1996-97	0.00	0.00	0.00	6.62	na	0.00	-2.49	na	0.00	3.57	na	0.00	7.70	na	0.00	0.86	na	0.00	8.56	na
1997-98	0.00	0.00	0.00	6.48	2.88	0.00	-2.56	-1.53	0.00	3.82	8.87	0.00	7.74	10.22	0.00	0.79	1.23	0.00	8.53	11.46
1998-99	0.00	0.00	0.00	6.77	2.96	0.00	-2.08	-1.04	0.00	0.83	8.00	0.00	5.53	9.92	0.00	0.71	1.31	0.00	6.23	11.23
1999-00	0.00	0.00	0.00	6.81	2.75	0.00	-2.30	-1.13	0.00	0.39	8.25	0.00	4.90	9.86	0.00	0.63	1.31	0.00	5.53	11.17
2000-01	0.00	0.00	0.00	6.82	2.65	0.00	-2.13	-1.13	0.00	1.24	9.63	0.00	5.94	11.16	0.00	0.00	1.16	0.00	5.94	12.32
2001-02	0.00	0.00	0.00	6.49	2.48	0.00	-2.30	-0.82	0.00	1.70	8.74	0.00	5.90	10.40	0.00	0.46	0.82	0.00	6.35	11.22
<b><i>Electricity, gas and water supply</i></b>																				
1996-97	0.00	0.00	0.00	9.64	na	0.00	0.94	na	0.00	0.00	na	0.00	10.58	na	0.00	0.49	na	0.00	11.07	na
1997-98	0.00	0.00	0.00	9.80	-0.11	0.00	0.49	-0.88	0.00	0.00	19.58	0.00	10.29	18.59	0.00	0.65	1.17	0.00	10.94	19.76
1998-99	0.00	0.00	0.00	9.71	-0.33	0.00	-0.29	8.06	0.00	0.00	4.33	0.00	9.42	12.06	0.00	0.30	0.89	0.00	9.72	12.96
1999-00	0.00	0.00	0.00	10.03	-0.14	0.00	-0.25	2.67	0.00	0.00	6.20	0.00	9.78	8.73	0.00	0.41	0.02	0.00	10.19	8.75
2000-01	0.00	0.00	0.00	13.88	0.07	0.00	-0.29	-0.17	0.00	0.00	3.99	0.00	13.58	3.90	0.00	0.00	0.03	0.00	13.58	3.93
2001-02	0.00	0.00	0.00	12.02	-0.15	0.00	-1.38	0.64	0.00	0.00	3.86	0.00	10.64	4.35	0.00	0.21	0.01	0.00	10.85	4.36
<b><i>Construction</i></b>																				
1996-97	0.00	0.00	0.00	5.88	na	0.00	-0.92	na	0.00	0.00	na	0.00	4.96	na	0.00	0.38	na	0.00	5.33	na

1997-98	0.00	0.00	0.00	5.78	2.57	0.00	-0.84	-0.26	0.00	0.00	2.42	0.00	4.94	4.73	0.00	0.33	1.22	0.00	5.27	5.95
1998-99	0.00	0.00	0.00	5.83	2.47	0.00	-1.05	-0.51	0.00	0.00	2.55	0.00	4.78	4.50	0.00	0.31	1.18	0.00	5.09	5.68
1999-00	0.00	0.00	0.00	5.77	1.99	0.00	-1.13	-0.68	0.00	0.00	4.66	0.00	4.64	5.97	0.00	0.27	1.07	0.00	4.91	7.04
2000-01	0.00	0.00	0.00	6.39	2.59	0.00	-0.77	-0.11	0.00	0.00	3.36	0.00	5.62	5.84	0.00	0.00	1.30	0.00	5.62	7.14
2001-02	0.00	0.00	0.00	6.12	2.01	0.00	-0.75	-0.27	0.00	0.00	2.07	0.00	5.37	3.81	0.00	0.25	0.81	0.00	5.62	4.62

**Table A6 Prima facie risk to tax base (relative to company standard) - per cent of business income (less cost of sales) – continued**

Contractor/subcontractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (inc. rent, interest etc.)			Total expenses			Payments to related entities			Total prima facie risk to tax base – per cent of income (less cost of sales)	
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership

**Wholesale trade**

1996-97	0.00	0.00	0.00	7.06	na	0.00	1.05	na	0.00	2.97	na	0.00	11.08	na	0.00	0.98	na	0.00	12.06	na
1997-98	0.00	0.00	0.00	6.84	3.44	0.00	0.91	1.13	0.00	2.63	1.71	0.00	10.37	6.29	0.00	0.99	1.37	0.00	11.37	7.66
1998-99	0.00	0.00	0.00	7.36	3.43	0.00	0.92	1.02	0.00	1.40	2.53	0.00	9.68	6.97	0.00	0.79	1.27	0.00	10.47	8.24
1999-00	0.00	0.00	0.00	7.25	3.41	0.00	1.12	1.29	0.00	1.32	3.72	0.00	9.68	8.42	0.00	0.86	1.19	0.00	10.54	9.61
2000-01	0.00	0.00	0.00	7.28	2.71	0.00	1.30	1.12	0.00	0.00	1.76	0.00	8.58	5.59	0.00	0.00	0.93	0.00	8.58	6.52
2001-02	0.00	0.00	0.00	6.59	2.87	0.00	1.13	1.42	0.00	1.60	3.03	0.00	9.32	7.32	0.00	0.57	3.11	0.00	9.89	10.43

**Retail trade**

1996-97	0.00	0.00	0.00	3.73	na	0.00	-0.17	na	0.00	7.84	na	0.00	11.40	na	0.00	1.22	na	0.00	12.63	na
1997-98	0.00	0.00	0.00	3.70	2.44	0.00	-0.15	0.02	0.00	9.44	8.19	0.00	12.99	10.64	0.00	1.19	1.53	0.00	14.18	12.18
1998-99	0.00	0.00	0.00	3.88	2.30	0.00	0.06	0.29	0.00	8.75	8.44	0.00	12.69	11.04	0.00	1.64	1.69	0.00	14.33	12.73
1999-00	0.00	0.00	0.00	3.71	2.32	0.00	0.10	0.35	0.00	10.76	9.85	0.00	14.57	12.53	0.00	1.71	1.60	0.00	16.28	14.13
2000-01	0.00	0.00	0.00	3.57	2.29	0.00	-0.01	0.24	0.00	7.58	6.70	0.00	11.14	9.23	0.00	0.00	1.63	0.00	11.14	10.86
2001-02	0.00	0.00	0.00	3.46	2.04	0.00	0.10	0.34	0.00	9.08	7.90	0.00	12.64	10.28	0.00	0.96	1.22	0.00	13.60	11.50

**Accommodation, cafes and restaurants**

1996-97	0.00	0.00	0.00	2.35	na	0.00	0.58	na	0.00	12.73	na	0.00	15.67	na	0.00	1.11	na	0.00	16.78	na
1997-98	0.00	0.00	0.00	2.59	1.29	0.00	0.57	0.72	0.00	12.37	10.27	0.00	15.52	12.27	0.00	1.11	1.09	0.00	16.63	13.36
1998-99	0.00	0.00	0.00	2.53	1.24	0.00	0.54	0.61	0.00	10.41	9.04	0.00	13.48	10.90	0.00	1.10	1.03	0.00	14.58	11.92
1999-00	0.00	0.00	0.00	2.65	1.30	0.00	0.76	0.89	0.00	9.85	8.56	0.00	13.26	10.75	0.00	1.20	1.01	0.00	14.46	11.75

2000-01	0.00	0.00	0.00	2.51	1.18	0.00	0.53	0.61	0.00	11.77	10.55	0.00	14.82	12.35	0.00	0.00	0.97	0.00	14.82	13.32
2001-02	0.00	0.00	0.00	2.47	1.13	0.00	0.61	0.67	0.00	13.04	10.11	0.00	16.11	11.91	0.00	0.89	0.72	0.00	17.01	12.63

**Transport and storage**

1996-97	0.00	0.00	0.00	14.20	na	0.00	1.15	na	0.00	0.00	na	0.00	15.35	na	0.00	0.31	na	0.00	15.67	na
1997-98	0.00	0.00	0.00	13.95	5.48	0.00	1.44	0.22	0.00	0.00	0.00	0.00	15.39	5.70	0.00	0.29	0.43	0.00	15.68	6.13
1998-99	0.00	0.00	0.00	13.32	4.76	0.00	1.04	-0.06	0.00	0.00	0.00	0.00	14.35	4.70	0.00	0.30	0.42	0.00	14.66	5.12
1999-00	0.00	0.00	0.00	14.12	5.55	0.00	0.77	-0.29	0.00	0.00	0.00	0.00	14.89	5.25	0.00	0.25	0.49	0.00	15.14	5.74
2000-01	0.00	0.00	0.00	12.67	5.08	0.00	-0.56	-1.19	0.00	0.00	0.00	0.00	12.11	3.90	0.00	0.00	0.42	0.00	12.11	4.32
2001-02	0.00	0.00	0.00	12.14	3.52	0.00	0.29	-0.72	0.00	0.00	0.00	0.00	12.43	2.80	0.00	0.19	0.29	0.00	12.62	3.09

**Table A6 Prima facie risk to tax base (relative to company standard) - per cent of business income (less cost of sales) – continued**

Contractor/subcontractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (inc. rent, interest etc.)			Total expenses			Payments to related entities			Total prima facie risk to tax base – per cent of income (less cost of sales)	
Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership	Company	Sole trader	Partnership

**Communication**

1996-97	0.00	0.00	0.00	19.78	na	0.00	-4.95	na	0.00	0.00	na	0.00	14.83	na	0.00	0.40	na	0.00	15.23	na
1997-98	0.00	0.00	0.00	19.40	11.46	0.00	-4.20	-3.95	0.00	0.00	0.00	0.00	15.19	7.51	0.00	0.40	1.25	0.00	15.59	8.76
1998-99	0.00	0.00	0.00	19.26	11.19	0.00	-3.57	-3.10	0.00	0.00	0.00	0.00	15.69	8.10	0.00	0.31	1.13	0.00	16.00	9.23
1999-00	0.00	0.00	0.00	18.97	11.66	0.00	-3.22	-2.84	0.00	0.00	0.00	0.00	15.75	8.82	0.00	0.28	1.20	0.00	16.03	10.02
2000-01	0.00	0.00	0.00	18.93	9.94	0.00	-2.80	-1.95	0.00	0.00	5.45	0.00	16.12	13.44	0.00	0.00	2.46	0.00	16.12	15.90
2001-02	0.00	0.00	0.00	18.90	8.73	0.00	-2.79	-2.10	0.00	0.00	0.00	0.00	16.11	6.63	0.00	0.18	0.92	0.00	16.28	7.55

**Finance and insurance**

1996-97	0.00	0.00	0.00	4.80	na	0.00	0.25	na	0.00	0.00	na	0.00	5.05	na	0.00	1.22	na	0.00	6.27	na
1997-98	0.00	0.00	0.00	4.79	0.91	0.00	0.30	0.25	0.00	0.00	2.60	0.00	5.09	3.76	0.00	1.13	1.07	0.00	6.22	4.84
1998-99	0.00	0.00	0.00	4.83	0.98	0.00	0.34	0.36	0.00	0.00	5.33	0.00	5.17	6.67	0.00	1.39	2.21	0.00	6.56	8.88
1999-00	0.00	0.00	0.00	4.64	0.71	0.00	0.25	0.30	0.00	0.00	3.32	0.00	4.89	4.33	0.00	1.36	2.43	0.00	6.26	6.76
2000-01	0.00	0.00	0.00	4.73	0.77	0.00	0.34	0.64	0.00	0.00	2.11	0.00	5.07	3.52	0.00	0.00	3.84	0.00	5.07	7.36
2001-02	0.00	0.00	0.00	4.64	0.67	0.00	0.27	0.09	0.00	0.00	0.00	0.00	4.90	0.76	0.00	1.02	1.98	0.00	5.92	2.74

**Education**

1996-97	0.00	0.00	0.00	na	na	na	na	na	na	na	na	na	na	na	na	0.53	na	0.00	na	na
1997-98	0.00	0.00	0.00	na	na	na	na	na	na	na	na	na	na	na	na	0.44	na	0.00	na	na
1998-99	0.00	0.00	0.00	8.90	5.57	0.00	0.16	0.34	0.00	0.00	5.96	0.00	9.07	11.86	0.00	0.43	1.43	0.00	9.50	13.29
1999-00	0.00	0.00	0.00	9.10	5.42	0.00	0.09	0.45	0.00	0.00	7.32	0.00	9.18	13.19	0.00	0.41	1.26	0.00	9.59	14.45
2000-01	0.00	0.00	0.00	8.28	4.30	0.00	0.26	0.43	0.00	0.00	6.66	0.00	8.54	11.40	0.00	0.00	1.04	0.00	8.54	12.44
2001-02	0.00	0.00	0.00	8.31	4.74	0.00	0.32	0.65	0.00	0.00	3.27	0.00	8.63	8.65	0.00	0.24	1.06	0.00	8.86	9.71

**Health and community services**

1996-97	0.00	0.00	0.00	1.38	na	0.00	-0.47	na	0.00	4.69	na	0.00	5.60	na	0.00	1.18	na	0.00	6.78	na
1997-98	0.00	0.00	0.00	1.28	-0.39	0.00	-0.55	-0.43	0.00	5.18	8.73	0.00	5.91	7.91	0.00	1.10	1.84	0.00	7.01	9.74
1998-99	0.00	0.00	0.00	1.23	-0.62	0.00	-0.57	-0.61	0.00	4.80	9.86	0.00	5.46	8.62	0.00	1.79	4.39	0.00	7.25	13.02
1999-00	0.00	0.00	0.00	1.14	-0.59	0.00	-0.86	-0.73	0.00	3.77	8.78	0.00	4.05	7.45	0.00	1.70	3.82	0.00	5.75	11.27
2000-01	0.00	0.00	0.00	1.60	-0.34	0.00	-0.40	-0.45	0.00	0.00	4.84	0.00	1.20	4.05	0.00	0.00	3.35	0.00	1.20	7.40
2001-02	0.00	0.00	0.00	1.45	-0.38	0.00	-0.46	-0.45	0.00	1.84	8.97	0.00	2.82	8.15	0.00	0.97	1.69	0.00	3.79	9.84

**Table A6 Prima facie risk to tax base (relative to company standard) - per cent of business income (less cost of sales) – continued**

Contractor/subcontractor & commission expenses			Motor vehicle expenses			Repairs and maintenance			Other expenses (inc. rent, interest etc.)			Total expenses			Payments to related entities			Total prima facie risk to tax base – per cent of income (less cost of sales)	
Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship	Comp-any	Sole trader	Partner-ship

**Cultural and recreational services**

1996-97	0.00	0.00	0.00	7.78	na	0.00	0.41	na	0.00	4.28	na	0.00	12.46	na	0.00	0.64	na	0.00	13.11	na
1997-98	0.00	0.00	0.00	7.46	-0.42	0.00	0.49	-0.92	0.00	6.58	18.43	0.00	14.54	17.09	0.00	0.65	0.08	0.00	15.19	17.17
1998-99	0.00	0.00	0.00	7.50	-0.33	0.00	0.55	-0.84	0.00	0.00	10.87	0.00	8.05	9.71	0.00	0.61	0.09	0.00	8.66	9.80
1999-00	0.00	0.00	0.00	7.62	-0.31	0.00	0.52	-0.80	0.00	0.00	11.92	0.00	8.14	10.81	0.00	0.51	0.23	0.00	8.65	11.04
2000-01	0.00	0.00	0.00	6.86	-0.29	0.00	0.47	-0.61	0.00	0.00	12.31	0.00	7.34	11.41	0.00	0.00	0.35	0.00	7.34	11.76
2001-02	0.00	0.00	0.00	7.20	-0.30	0.00	0.17	-1.03	0.00	0.00	6.81	0.00	7.37	5.48	0.00	0.98	0.04	0.00	8.35	5.52

**Personal and other services**

1996-97	0.00	0.00	0.00	4.39	na	0.00	0.14	na	0.00	5.51	na	0.00	10.03	na	0.00	0.89	na	0.00	10.93	na
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*AMWU Submission to Senate Committee Inquiry into the Independent Contractors Bill 2006 and  
Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, July 2006 – Appendix 1*

1997-98	0.00	0.00	0.00	4.45	2.03	0.00	0.06	0.46	0.00	6.43	9.04	0.00	10.94	11.53	0.00	0.88	1.66	0.00	11.82	13.19
1998-99	0.00	0.00	0.00	4.79	2.19	0.00	0.02	0.30	0.00	3.76	7.70	0.00	8.57	10.18	0.00	0.93	1.76	0.00	9.50	11.94
1999-00	0.00	0.00	0.00	5.80	3.21	0.00	0.95	1.20	0.00	0.00	2.80	0.00	6.75	7.21	0.00	1.42	1.93	0.00	8.17	9.14
2000-01	0.00	0.00	0.00	4.44	1.82	0.00	-0.37	-0.12	0.00	4.06	8.57	0.00	8.13	10.26	0.00	0.00	1.29	0.00	8.13	11.55
2001-02	0.00	0.00	0.00	4.25	1.87	0.00	-0.81	-0.49	0.00	2.84	6.64	0.00	6.29	8.02	0.00	0.46	3.76	0.00	6.75	11.78

**Table A7 Expenses and payments as a per cent of business income (excluding cost of sales) by company type (per cent)  
 Small companies total income (< \$500,000)**

	Contractor/subcontractor & commission expenses	Motor vehicle expenses	Repairs & maintenance	Other expenses	Wages and salaries	Taxable income	Payments to related entities	Small companies tax base at risk
<b>Private company</b>								
1996-97	5.1	4.0	1.5	43.3	29.1	17.0	17.0	12.0
1997-98	5.1	4.1	1.5	42.4	29.6	17.4	17.5	12.2
1998-99	5.2	4.0	1.4	41.4	29.3	18.6	37.9	22.5
1999-00	5.1	4.1	1.5	41.6	28.3	19.4	14.3	10.7
2000-01	4.9	4.2	1.4	52.9	30.3	6.3	14.2	10.7
2001-02	4.9	4.1	1.4	52.4	28.5	8.8	14.9	11.2
<b>All public companies</b>								
1996-97	2.3	0.5	2.0	62.8	14.1	18.3	0.1	
1997-98	2.7	0.5	2.0	62.9	15.6	16.4	0.2	
1998-99	3.2	0.4	1.6	57.0	13.1	24.7	0.1	
1999-00	3.4	0.4	1.8	48.0	15.0	31.4	0.2	
2000-01	3.2	0.3	1.4	67.5	12.5	15.2	0.5	
2001-02	3.3	0.3	1.4	66.8	13.7	14.4	0.1	



**Table A8 Share of small company business income (less than half million) in total company business income by industry**

	Agri- culture, forestry & fishing	Mining	Manufact- uring	Elect- ricity	Con- struction	Whole- sale trade	Retail trade	Accommo- dation, cafes	Trans- port and storage	Commun- ication	Finance and business services	Edu- cation	Health	Rec- reation	Personal and other services
1996	11.8	0.4	1.8	1.7	12.1	1.1	3.9	8.1	4.2	0.7	12.6	0.0	0.0	7.6	24.0
1997	13.8	0.4	1.9	0.8	12.9	1.1	3.7	8.4	5.0	0.8	12.6	23.4	34.4	9.1	23.8
1998	10.6	0.5	1.8	0.8	11.7	1.2	3.6	8.4	4.3	0.9	12.6	25.1	33.9	8.2	22.6
1999	10.7	0.5	1.7	0.9	11.1	1.1	3.2	8.4	4.6	0.8	12.6	24.6	29.6	6.4	20.8
2000	10.2	0.4	1.6	0.6	9.7	1.0	2.9	7.8	4.0	0.7	12.6	24.4	29.0	6.1	9.3
2001	9.2	0.3	1.5	0.5	10.7	0.9	3.1	8.0	3.6	0.7	12.6	25.2	25.3	5.7	17.2
2002	8.7	0.3	1.5	0.5	10.0	0.9	2.9	7.8	3.7	0.9	12.6	21.6	25.7	5.3	17.3

**Table A9 Prima facie estimates of the tax base at risk (relative to wage and salary status) – \$ million**

	Total prima facie risk to tax base (\$ million)				Total tax base at risk	Total non employees ('000)	Tax base at risk per non-wage and salary earner (dollars)
	Sole trader	Partnership	Company				
<b>Mining</b>							
1996-97	2.78	0.00	15.93	18.71	2.95	6342	
1997-98	26.49	21.35	16.23	64.08	3.07	20838	
1998-99	3.75	-1.98	30.04	31.82	1.83	17437	
1999-00	5.04	9.30	14.20	28.54	1.48	19352	
2000-01	4.85	27.55	15.30	47.70	1.45	32896	
2001-02	4.96	23.28	17.03	45.28	2.28	19901	
<b>Manufacturing</b>							
1996-97	113.82	320.00	182.30	616.12	81.83	7530	
1997-98	123.20	369.15	197.46	689.81	85.03	8113	
1998-99	95.05	348.79	377.14	820.98	82.13	9997	
1999-00	94.42	378.56	176.56	649.54	83.78	7753	
2000-01	89.85	417.17	173.54	680.57	84.05	8097	
2001-02	105.43	393.47	175.05	673.95	78.30	8607	
<b>Electricity, gas &amp; water supply</b>							
1996-97	2.14	121.00	4.55	127.69	na	na	
1997-98	2.13	343.66	4.34	350.14	na	na	
1998-99	1.67	141.99	7.55	151.22	na	na	
1999-00	2.01	121.07	3.63	126.72	na	na	
2000-01	1.98	60.67	3.20	65.85	na	na	
2001-02	1.93	114.95	3.25	120.12	na	na	
<b>Construction</b>							
1996-97	267.45	423.00	280.93	971.38	210.50	4615	
1997-98	296.71	443.75	297.48	1037.95	212.25	4890	
1998-99	321.09	447.87	574.29	1343.25	217.23	6184	
1999-00	375.43	657.40	282.94	1315.78	228.63	5755	
2000-01	330.03	551.84	317.24	1199.11	241.45	4966	
2001-02	376.65	408.48	347.72	1132.85	243.58	4651	

### Wholesale trade

1996-97	54.52	120.00	49.04	223.57	42.80	5224
1997-98	55.94	123.08	60.19	239.21	43.05	5557
1998-99	48.17	126.25	102.22	276.64	43.65	6338
1999-00	56.39	153.92	51.56	261.87	46.23	5665
2000-01	44.87	123.43	55.60	223.89	35.68	6276
2001-02	58.32	182.59	52.13	293.03	37.05	7909

**Table A9 Prima facie estimates of the tax base at risk (relative to wage and salary status) – \$ million (continued)**

	Total prima facie risk to tax base (\$ million)			Total tax base at risk	Total non employees ('000)	Tax base at risk per non-wage and salary earner (dollars)
	Sole trader	Partnership	Company			
<b>Retail trade</b>						
1996-97	386.28	830.00	163.57	1379.85	208.00	6634
1997-98	440.62	851.21	162.76	1454.58	203.28	7156
1998-99	448.05	907.54	314.27	1669.87	192.68	8667
1999-00	571.94	998.44	143.51	1713.89	186.88	9171
2000-01	399.67	754.17	160.39	1314.23	170.38	7714
2001-02	526.80	845.66	161.30	1533.75	172.55	8889
<b>Accommodation, cafés &amp; restaurants</b>						
1996-97	86.08	260.00	102.04	448.12	41.60	10772
1997-98	85.02	293.76	104.37	483.15	38.90	12420
1998-99	77.44	266.09	197.00	540.52	38.58	14012
1999-00	86.04	274.60	98.89	459.53	41.93	10961
2000-01	88.93	320.62	104.69	514.24	48.10	10691
2001-02	109.70	325.70	116.89	552.29	46.23	11948
<b>Transport &amp; storage</b>						
1996-97	305.39	312.00	173.02	790.41	63.63	12423
1997-98	313.49	342.31	185.52	841.32	66.73	12609
1998-99	295.03	285.89	367.28	948.20	67.20	14110
1999-00	331.01	321.85	184.70	837.56	64.48	12990
2000-01	265.15	236.56	184.22	685.94	68.98	9945
2001-02	286.34	199.24	195.70	681.27	65.23	10445

### Communication

1996-97	56.61	20.00	21.06	97.67	12.23	7989
1997-98	61.78	23.71	25.05	110.54	15.88	6963
1998-99	66.60	24.23	47.89	138.71	13.30	10430
1999-00	72.62	27.22	22.65	122.49	18.50	6621
2000-01	72.48	50.73	25.83	149.04	20.58	7244
2001-02	78.78	26.87	28.82	134.47	20.13	6682

### Finance & insurance

1996-97	312.76	700.00	3762.94	4775.71	153.08	31198
1997-98	329.78	571.03	4123.35	5024.16	178.15	28202
1998-99	361.82	998.01	9368.50	10728.33	169.80	63182
1999-00	415.72	963.00	4026.91	5405.64	169.80	31835
2000-01	319.27	1040.40	5309.84	6669.51	180.53	36945
2001-02	432.92	433.33	5812.77	6679.02	183.43	36413

**Table A9 Prima facie estimates of the tax base at risk (relative to wage and salary status) – \$ million (continued)**

	Total prima facie risk to tax base (\$ million)			Total tax base at risk	Total non employees ('000)	Tax base at risk per non-wage and salary earner (dollars)
	Sole trader	Partnership	Company			
<b>Education</b>						
1996-97	20.00	12.00	20.00	52.00	17.25	3014
1997-98	20.00	12.00	20.00	52.00	19.38	2684
1998-99	22.30	14.49	43.82	80.61	21.28	3789
1999-00	25.56	17.10	22.91	65.57	24.30	2699
2000-01	18.63	13.51	33.55	65.69	20.65	3181
2001-02	23.52	11.10	37.78	72.41	21.03	3444

### Health & community services

1996-97	247.62	220.00	380.72	848.34	46.90	18088
1997-98	269.04	231.68	406.31	907.03	51.20	17715
1998-99	281.36	293.67	670.40	1245.43	47.55	26192
1999-00	254.73	259.25	329.82	843.80	47.23	17868
2000-01	58.86	177.52	352.97	589.34	53.75	10965

2001-02	207.33	253.26	371.56	832.15	53.70	15496
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**Cultural and recreational services**

1996-97	99.92	1500.00	95.20	1695.12	34.78	48745
1997-98	125.32	2087.97	107.12	2320.42	35.48	65410
1998-99	77.44	1351.37	201.65	1630.46	32.78	49747
1999-00	85.11	1664.68	98.53	1848.33	36.45	50709
2000-01	86.89	1889.73	104.48	2081.10	39.33	52921
2001-02	102.13	920.03	108.84	1131.00	38.80	29150

**Personal and other services**

1996-97	161.39	182.00	137.69	481.08	65.88	7303
1997-98	183.10	195.36	139.20	517.65	72.63	7128
1998-99	154.09	180.74	264.58	599.41	76.33	7853
1999-00	148.43	147.91	148.12	444.46	72.13	6162
2000-01	155.79	209.20	143.54	508.54	67.55	7528
2001-02	140.61	208.15	147.73	496.50	72.38	6860

**All industries**

1996-97	2117	5020	5389	12526	981	12763
1997-98	2333	5910	5849	14092	1025	13748
1998-99	2254	5385	12567	20205	1004	20119
1999-00	2524	5994	5605	14124	1022	13823
2000-01	1937	5873	6984	14795	1032	14330
2001-02	2455	4346	7577	14378	1035	13897

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