

Inquiry into the Independent Contractors Bill 2006 and the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006

Submission to the  
Senate Employment, Workplace Relations and Education Legislation  
Committee

Communications, Electrical and Plumbing Union (CEPU)

July 2006

The Communications, Electrical and Plumbing Union represents workers involved in the provision of telecommunications, postal, electrical contracting, electronics, power, plumbing, construction and other building services. Our membership spans both public and private sectors. Within certain areas of our coverage (plumbing and electrical), a mixture of employment forms has long been common, with some working as independent contractors and others being directly engaged as employees. Within other areas – most notably telecommunications – the last decade has seen a transformation of employment patterns, with a significantly larger proportion of the industry workforce now being engaged as contractors and sub-contractors than has traditionally been the case.

The CEPU thus has a close experience of the issues affecting the working conditions of contractors, both those who have actively chosen to work as independent agents and those who have found themselves placed in this position by virtue of the preferences and strategies of employers. It is this latter phenomenon, in particular, that the legislation before the Senate so notably fails to address. Irrespective of the legal status of the thousands of working people who are now leaving direct employment and returning to the workforce (sometimes to their own jobs) as contractors, the reality of economic dependency remains. The Bills before the Senate not only fail to acknowledge this fact – they seek to remove what limited protections these workers have available to them under State legislation and to thwart any attempts they may make to act collectively to better their conditions.

The Communications Division of the CEPU forwarded a submission to the inquiry conducted by the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation into independent contracting and labour hire arrangements last year. We have attached it (Attachment A) in support of this submission to the Senate.

In that submission we examined the changes that have occurred in employment forms favoured by Telstra in recent years and their impacts on the wages and conditions of the company's labour force. We provided detailed case studies to support our contention that contractors and sub-contractors engaged by Telstra cannot, in the main, be said to enjoy any economic independence from or leverage over the company. Telstra itself admits as much. This, together with the prospect of avoidance of costs associated with superannuation, health and safety and compensation, is the reason such employment forms are increasingly favoured by employers. That they do not necessarily arise from the preferences of employees is evidenced by the readiness of workers to take up less precarious forms of employment when they are offered.

The Union believes that the concentrated nature of the telecommunications industry, especially at the infrastructure level, confers a particular advantage on employers vis-a-vis those they engage, especially if the latter cannot bargain collectively. However, the difficulties facing contract workers are, of course, by no means confined to this sector. Ongoing wage/remuneration pressures, absence of superannuation entitlements and lack of health and safety and compensation protections are conditions experienced by contractors in all areas of the workforce in which the union operates. The legislation under consideration does nothing to mitigate these ills, despite the attention devoted to them during last year's inquiry and in the subsequent inquiry report.

## **2. The Independent Contractors Bill 2006**

### **2.1. Definitions**

The CEPU notes that despite the discussion of the question in the Explanatory Memorandum<sup>1</sup>, the Independent Contractors Bill offers no direct definition of the person who is the subject of the legislation (i.e. the independent contractor), hence neatly avoiding the questions that are at the heart of this inquiry viz. the degree to which contracting has become simply a means of disguising the employment relationship in order both to avoid employer obligations and to push down the price of labour by inhibiting collective bargaining. Instead, the Bill relies on the common law distinction between a contract of service (an employment contract) and a contract for services, the latter being defined (with a certain circularity) as *inter alia* one to which an independent contractor is a party.

Unfortunately, this distinction is by no means robust and may lead in practice to contradictory findings. The ACTU has cited one such case (that of Crisis Couriers) in its submission to this inquiry and the CEPU will not rehearse its details here. We do, however, concur with the ACTU that the effect of the legislation will simply be to send more cases to the courts as workers are obliged to establish their employment status (and hence entitlements) on a case-by-case basis. The State-based deeming provisions which the legislation seeks to override offered a way out of this costly and essentially anti-egalitarian process, which favours those who have the time and resources to pursue such a course.

### **2.2. State-based “deeming” provisions**

It may be argued that the State laws themselves produce unequal outcomes, in that the categories of contract workers who are “deemed” to be employees vary from one jurisdiction to another and, moreover, do not fully reflect the rapid increase in this form of employment across the whole economy. However, the laws do extend minimum protections to at least some contract workers, including those in areas

---

<sup>1</sup> Independent Contractors Bill 2006, Explanatory memorandum, p.3

historically characterised by low pay rates and poor conditions such as contract cleaning and delivery.

It is difficult to see how the removal of such protections can be said to be in the interests of these workers. That this is not, in fact, the chief objective of the legislation is evident from the discussion of this issue in the Regulation Impact Statement which forms part of the Explanatory Memorandum. The Statement is tentative in its estimate of the benefits that overriding State laws will bestow on contractors and candid in its acknowledgement that certain of them will “no longer benefit from conditions and protections” they currently enjoy.

Whether, in aggregate, the gaining of an abstract freedom to contract will outweigh the loss of concrete benefits is indeed hard to determine through this form of cost-benefit analysis, not least because the Government, by its own admission, can make no estimate of the number of workers who will be affected by these new circumstances and hence of the impact its legislation will have on actual working conditions. From its own experience, however, the CEPU would argue that for increasing numbers of workers, the “freedom” to contract is an illusion, whereas the benefits of current State-based protections are real.

The Statement is, at any rate, much less equivocal about the advantages this legislation will confer on employers, from whom a “significant regulatory burden” (e.g. the requirement to provide award wages and entitlements) will be removed. This language is surely revealing. To the Union’s mind, it points to what is intended as the real benefit of this legislation – not so much the freeing of contractors as the freeing of employers from their entirely proper obligations to those who perform work for them.

### **2.3. Unfair contracts**

In addition to overriding State “deeming” provisions, Part 2 of this legislation will also override State-based unfair contracts laws and establish, in their place, a national regime under the jurisdiction of the Federal Magistrates Court.

The CEPU has not, to date, had extensive experience representing members in the relevant state jurisdictions. We note, however, ACTU concerns that the provisions of the *Workplace Relations Act 1996* (WRA) on which the new arrangements will be based are weaker than those in state legislation. Moreover, in the course of transferring the WRA provisions to the ICB, a further narrowing of avenues open to contractors has occurred. Under s12(2) contractors seeking a review of a contract they consider unfair must now make the application themselves and a union (or any other association) cannot make it on their behalf.

Again, such provisions appear to us to have little to do with protecting the interests of contractors, who may legitimately wish to seek the assistance of unions in work-related matters, and more to do with the Government's determination to quarantine all such workers from the industrial relations system. Like the parallel provisions of the Trade Practices Amendment Bill 2005, which would prevent a union or union official (or a person acting on the direction of a union) giving the ACCC a collective bargaining notice (proposed new s93AB (9) of the *Trade Practices Act 1974*), s12(2) of the ICB reflects an ideological agenda rather than a will to assist the small contractor to challenge exploitative terms of engagement.

### **3. Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006**

#### **3.1. Sham arrangements**

As the Union observed above, the backdrop to this legislative package is the extensive restructuring of the labour force which has occurred in recent years and which has seen a growing number of workers engaged as contractors rather than as permanent employees, even when the functions the two groups carry out are identical. The amendments to the WRA contained in this Bill are ostensibly designed to address some of the more egregious abuses that have characterised this process. The CEPU questions whether they do so effectively.

Schedule 1 of the Bill (Sham arrangements) will prohibit certain conduct by employers aimed at disguising an employment contract as a services contract or

transforming existing employees into contract staff. Under the proposed provisions an employer will not be able to:

- Knowingly represent an employment contract as a contract for services (i.e. engage a person as a contractor when the employer knows, or could be reasonably expected to know, the relationship to be that of employer/employee
- Dismiss or threaten to dismiss an employee for the sole and dominant purpose of re-engaging the person as a contractor
- Knowingly make a false statement with a view to pressuring an employee to become a contractor.

Over the last decade, the CEPU has seen a significant number of its members turned unwillingly into contractors. Section 4 of our earlier submission to the House of Representatives inquiry documented the specific case of Visionstream, a former subsidiary of Telstra, which decided to restructure its workforce in this manner.

Visionstream made no attempt to disguise the fact that this restructuring was being driven by costs considerations and that it viewed retention of its existing permanent full-time workforce as uneconomic. The implications of this assessment were obvious enough to staff. While acceptance of the offer to become a sub-contractor was nominally voluntary, the company clearly signalled that the future of those who did not take it up was bleak. Indeed, by April 2000, when Visionstream indicated it would introduce sub-contracting to perform broadband installations in multiple dwelling units (MDUs), the explicit alternative facing affected staff was retrenchment.<sup>2</sup>

Nothing in the provisions of this Bill would stand in the way of such a process. There was no attempt on Visionstream's part to disguise the change in employment status involved and even if it could be shown that the company's April 2000 statements constituted a threat of dismissal, they would not, under proposed s902(1) (b) of the

---

<sup>2</sup> CEPU, Submission to the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation Inquiry into independent contracting and labour hire arrangements, 2005, p. 13ff.

WRA, trigger any penalty unless they could be shown as having as their “sole and dominant purpose” the re-engagement of the affected staff as independent contractors. This proviso, especially when combined with the new leeway given to employers by the WRA to dismiss staff for “operational reasons”, is likely to provide a sufficiently wide escape route for employers wishing to avoid formal contravention of the Act.

The Union’s submission also documented the gap that emerged between the benefits Visionstream claimed would accrue to its sub-contractors and the actual conditions they faced.

Even in 1999, however, the claimed rewards of sub-contracting were largely illusory. Visionstream had originally indicated to its employees that they could gross up to \$150,000 a year as sub-contractors (based on an average of six jobs a day). Actual sub-contracting trials conducted in early 2000 produced the more modest (but still superficially attractive) of \$70,000 p.a. for a 52-55 hour week, after deducting costs of materials. On the face of it, this compared very favourably with the earnings of an equivalent permanent staff member who would have been receiving \$38,063 p.a. for a 39 hour week.

Apart from the cost of materials, however, the sub-contractor was liable for a range of expenses which the CEPU estimated as being upwards of \$12,582 p.a. and Telstra itself had suggested could be as high as \$17,400 p.a., leaving effective (pre-tax) earnings of \$53-58,000. At that time, a permanent employee’s total package (including superannuation, leave, redundancy entitlements and allowing for equivalent overtime) was, at the Union’s estimation, worth over \$76,000. Even allowing for different tax treatments of these two gross sums, it is hard to see how the sub-contracting arrangement represented a better option.

More fundamentally, the sub-contractor was not, of course, guaranteed the hours that would produce this income. Nor were the piece work rates fixed or subject to negotiation. In these circumstances, it is not surprising

that many Visionstream sub-contractors found themselves financially squeezed as time went on.<sup>3</sup>

Did the rosy picture painted by Visionstream of the sub-contracting life constitute “a statement that a person knows is false” [s903(1)(a)], made with the intention of persuading or influencing its employees to become contractors? The CEPU believes that Visionstream would have easily been able to side-step such a charge, especially given the uncertainties intrinsic to the contractor’s position.

Nor, of course, do these provisions address the more fundamental issue that any disinterested examination of the current conditions faced by such telecommunications contractors reveals. Whether or not the original process which led to their becoming contractors was patently fraudulent, the position they now occupy in relation to a company such as Telstra (or its major contractors, as was Visionstream) is one of economic dependency. This is particularly the case for contractors working on piece rates, which is now the standard form of engagement in this section of the industry.

Lastly, we note that while the “sham arrangements” provisions of the Workplace Relations Legislation Amendment (Independent Contractors) Bill potentially expose employers to certain civil penalties, they do not offer any avenues for redress – either compensation or re-instatement – for employees who have been subject to these arrangements. Employees sacked and then offered their jobs back as contractors would still have to rely on the very narrow provisions of the WRA to challenge their dismissal.

### **3. Implications**

In the CEPU’s view, the Bills which are the subject of this inquiry form part of a larger legislative agenda, which includes the recent changes to the *Workplace Relations Act 1996* (i.e. WorkChoices) and certain provisions of the Trade Practices Amendment Bill 2005. The explicit aim of this agenda is to separate decisively the regulation of employment (‘workplace’) relations from the regulation of the other

---

<sup>3</sup> Ibid p. 14ff



modes of engagement of labour now common within the workforce. The implicit aim is the individualisation of the labour contract. This aim in turn has both an ideological and economic dimension. At one level, the Government seeks to create a constituency committed to a philosophy of competitive individualism. At the other, it wishes to provide employers with the “flexibility” they purportedly need to compete in a globalised marketplace. In practice, this means lower wages and poorer conditions for thousands of Australian working people. This, at any rate, has been the experience of the CEPU in those areas where permanent employment has been contracted out and/or casualised in our industries.

The degradation of the conditions of working life which the Government’s programme encourages can be expected to bear most heavily on the most vulnerable members of the labour force – women, older workers, more recent migrants, the unskilled and semi-skilled. But skilled workers, such as form the greater part of the CEPU’s membership, are by no means immune to its effects.

It might be thought, for instance, that the skill shortages that are now commonplace throughout the economy would provide leverage to those telecommunications contractors whose experience the Union documents in its attached submission. In the absence of an ability to bargain collectively, however, even skilled contract workers will find their conditions eroded and/or find themselves replaced with less skilled workers whose labour can be purchased at a lower price. This trend is observable, for instance in the customer cabling area of the communications industry, as are its consequences for work quality and regulatory compliance.

The Government’s failure to acknowledge the impact that changing employment forms may have on skill formation is, of course, just one of the lacunae that mark its approach to labour force questions. The report of the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation 2005 Inquiry drew attention, for instance, to the implications of contracting and labour hire arrangements for the enforcement of health and safety protections. Its recommendations find no echo in these Bills.

Nor, as we have emphasised above, do they address the fundamental issue facing individual contractors in many sections of the economy – the lack of any genuine economic independence and hence lack of leverage in any contract negotiations with employers. Ultimately, in our view, the abuses such dependency invites can only be redressed through collective, rather than individual efforts. Legislation that fails to acknowledge this reality and which seeks to frustrate such collective action should be opposed by the Senate.

## **APPENDIX A**

### **House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation**

#### **Inquiry into Independent Contracting and Labour Hire Arrangements**

##### **Submission by the Communications Electrical and Plumbing Union (Communications Division)**

**March 2005**

#### **Summary.**

The Communications, Electrical and Plumbing Union represents some 110,000 employees working in the telecommunications, postal, electrical contracting, electronics, power and building sectors. The Communications Division's membership is centred on the postal and telecommunications industries, both private and public sector.

The Union welcomes the opportunity to comment on forms of employment which, over the last decade, have become increasingly common in all areas of the Australian economy. In the telecommunications sector, which will be the chief object of our concern in this submission, the processes of liberalisation and privatisation have transformed corporate structures and practices and, with them, the terms and conditions of work of many thousands of Australians. At the centre of this change has been the restructuring of Telstra through the contracting out of a large range of functions previously performed by the company's permanent, full-time employees.

The CEPU contends that the position of contractors and labour hire workers in this sector cannot be properly understood if they are regarded, as a class of workers, as

having freely chosen these working arrangements in preference to permanent employment. Of course, a certain proportion of those who work as casuals or as independent contractors does so by choice. However, the Union's experience leads it to the view that, for many, such forms of work are a necessity.

It follows that an approach to contracting and labour hire which focuses on the abstract "freedom to contract" and not on the real choices and conditions of employment people face will not produce the kinds of protections actually needed by such workers.

Nor will such an approach allow an accurate assessment of the impact of contracting and labour hire practices on the Australian economy as a whole. Over and above our core concerns as to the conditions under which people work in our sector, we are concerned that the growth of contracting is eroding work standards, skill levels and hence service quality in the industry.

The issue of skill formation is now (belatedly) being recognised as one that requires urgent attention. It is the CEPU's belief that it cannot be addressed successfully unless government also addresses those corporate strategies and employment practices which have acted to undermine structured training over the last decade.

## **1. Background: employment in the Australian telecommunications industry.**

Historically, those working in the Australian telecommunications industry enjoyed stable employment, the great majority being permanent employees of the Commonwealth. From the end of WWII until the late 1980s, the Postmaster-General's Department (split into Telecom and Australia Post in 1975) and the Overseas Telecommunications Corporation (OTC) held a statutory monopoly over the delivery of telecommunications services within Australia and between Australia and the rest of the world.

In 1989, liberalisation of some activities, most notably customer cabling, opened the door to limited private sector activity in the industry and created some opportunities for independent contractors, most of whom would, at that time, have been licensed electricians. Further deregulation occurred in 1991, establishing a second general carrier (Optus) and three mobile operators (Telstra, Optus and Vodafone) and allowing full resale. This period saw some increase in the number of permanent employment opportunities in the sector but also the creation of new structural arrangements by the newer market entrants and, with them, new employment relations.

Neither Optus nor Vodafone, for instance, established an internal construction arm for the roll-out of their networks or employed substantial number of permanent staff on maintenance functions. These functions were performed by firms contracted by the carriers for this purpose. New practices were also introduced into the sales area. In the mid-1990s, for instance, Optus created a casual labour force, paid on piece rates, to do door-to-door sales – a practice which has now been largely superseded by call-centres. For its part, Vodafone operated through a number of franchisees, rather than directly employing staff for sales and service purposes.

While such new forms of employment were thus emerging in the industry, it was not until 1996 that they began to appear more widely. It has been the restructuring of Telstra in response to industry liberalisation and, more particularly, partial privatisation, that has led to the large scale use of labour hire and contract workers in the telecommunications sector.

## **2. The restructuring of the Telstra workforce.**

At June 30<sup>th</sup>, 1996, Telstra full-time employee numbers stood at 76,522. By June 2004, this number had been reduced to 36,159. Some part of the work performed by these 40,363 “redundant” staff has been automated, some has been absorbed by existing employees through an intensification of labour. A large part, however, is now being performed by the approximately 19,000 contract and labour hire workers which Telstra estimates it has available to it at any one time as an external labour force.<sup>4</sup>

This labour force has not come into being as a result of the individual employment preferences of telecommunications workers. It has been created through the conscious policies and decisions of Telstra management (and of that company’s head contractors) in response to cost-cutting pressures. The participants in this workforce are commonly employed on terms and conditions inferior to those enjoyed by Telstra’s permanent staff, even when they are performing exactly the same functions. These circumstances in turn put pressure on the conditions of those who are directly employed by the company.

### **2.1. Project Mercury**

Nor has the pool of “flexible” labour described above been created overnight or through one single mechanism. A number of separate, but complementary, processes have combined to produce this result. In some cases Telstra workers have been given the choice of changing their employment status or facing redundancy. In others, permanent employees have simply been made redundant and been replaced by labour hire staff. In the case of the field workforce, large contracting companies have been engaged to perform functions once carried out by permanent staff and they, in their turn, have sub-contracted the work.

---

<sup>4</sup> Testimony of Mr. Bill Scales, Senate Environment, Communications, Information and the Arts References Committee, Monday 19<sup>th</sup> May, 2003, Hansard p. 758

Nevertheless, these processes have a common starting point in the Telstra programme which began shortly after the election of the Liberal Government in 1996.

In April 1996, in anticipation of privatisation, Telstra established the Project Mercury taskforce to examine opportunities for labour shedding, largely through outsourcing and/or selling areas of operation which were not considered to be “core business”.<sup>5</sup> By June that year, the taskforce had identified some 24,000 potential staff cuts or transfers.

In September, 1996, Telstra publicly announced its intention of reducing its employee numbers by 22,000 by the end of financial year 1998-1999, a programme confirmed in the company’s prospectus. In fact, at June 1999 staff numbers stood at 52,840 – a reduction of 23,682 or just over 30% in three years. The pace of this labour shedding, well ahead of that made possible by genuine functional redundancy, caused considerable dislocation within the company and contributed directly to a decline in service standards. Consumer reaction to this trend was highlighted by Australian Communications Authority (ACA) in its 1997-98 *Telecommunications Performance Report*.<sup>6</sup>

The rate of staff reductions has (necessarily) slowed since 1999. Nevertheless, the process of replacing permanent employees with contractors and labour hire staff has continued. It is only in the last eighteen months that Telstra has shown some signs of re-thinking this strategy and has converted a small number of casual workers into permanent staff members.

---

<sup>5</sup> The Majority Report of the Senate Environment, Recreation, Communications and the Arts Reference Committee inquiry into the initial partial privatisation of Telstra (*Telstra: To Sell or not to Sell*) contains a detailed account of Project Mercury’s activities.

<sup>6</sup> “An area of concern for the ACA is the apparent decline in service levels for the provision of telephone services and the repair of faults, particularly in the country. Results of a consumer satisfaction survey commissioned by the ACA showed that service provisioning and fault restoration levels were causing significant dissatisfaction among consumers.” *Telecommunications Performance Report 1997-98*, p.viii.

## **2.2. Outsourcing initiatives.**

Generally speaking, Telstra has followed the precedent established by Telecom New Zealand in the restructuring of its workforce, although it has proceeded at a somewhat more cautious pace, partly as a result of political pressures. For instance, whereas Telecom New Zealand outsourced the whole of its Operator Assisted Services (OAS) function (except the infrastructure) to Sitel in 1998, Telstra wound down its OAS operations over several years, gradually shedding permanent staff and replacing them with labour hire staff while also diverting a growing proportion of OAS traffic to non-Telstra call centres.

The end result, however, has been much the same. The CEPU estimates that there would not now be more than 1,000 Telstra full-time staff employed on what historically have been operator functions - a reduction of around 84% since 1996. The process of casualisation of this workforce, which is largely female, is discussed in more detail at 3 below.

It is in the Operator Assisted Services area that the union has most direct experience of the issues associated with labour hire staff. Similarly, it is predominantly in relation to the field workforce (installation and maintenance functions) that it has had to deal with the use of independent contractors. This submission will therefore focus largely on the nature and consequences of changing employment forms in these areas.

As a matter of record, however, it should be noted that Telstra's reorganisation of its labour force has left few areas of the company unaffected. Among the earliest functions to be outsourced under Project Mercury were those considered "non-core" such as property services (cleaning, security, maintenance of exchange air-conditioning). Other initiatives saw the sale of Visionstream (initially set up to roll out Telstra's pay-TV network) to Leighton Holdings (December 1996), the restructuring and eventual sale of Telstra's business Small Business Systems operation (1998) and the attempted sale of its construction arm, NDC; the contracting out of most pit and pipe work (1997), of fleet services (1998), of warehousing and distribution (1998), of exchange battery maintenance (2000) and the progressive outsourcing of operator assisted service and field workforce functions (1997 onwards).



### **3. Case Study: The use of labour hire and contract staff in Operator Assisted Services (OAS) and related areas.**

The operator designation within Telstra has historically encompassed workers employed handling fault reports and directory inquiries and providing manual assistance for call connection. The great majority of these workers are women.

Over time, changes in technology have eliminated some of the functions once performed by operators (e.g. most manual connections) and opened up others (e.g. messaging, simple testing). Specialised areas of work, such as telehire (provision of operator services to corporates), paging, teleconferencing and telemarketing, accounted for a growing proportion of employment during the 1980s and 1990s. Since the closure of manual exchanges, however (completed by the early 1980s), the largest areas of employment have been fault reporting and directory assistance.

In June 1996, Telstra reported that it employed a total of 7,303 staff under the operator designation, 6,433 of whom were full-time. A little over half of these were employed within Operator Assisted Services (OAS) in some 63 call centres in both urban and rural locations. The greater part of OAS's work by this time was directory assistance, fault reporting having been transferred to another section of the company.

As noted above, Operator Assisted Services (OAS) was identified during Project Mercury as a potential outsourcing target. At the same time, a rationalisation of OAS call centres was considered, with a possible reduction of the 63 centres to between 2 and 6 centres.

In the event, Telstra did not choose to outsource its operator functions *in toto*. Instead it adopted a strategy which involved

- shifting a portion of its business (particularly work outside core hours, which attracted penalty rates) to other service providers, including its own joint venture partner, Stellar

- winding down and/or selling off certain lines of business (e.g. paging)
- replacing many of its directly employed staff with labour hire employees.

In line with the terms of reference of this inquiry, the following discussion will centre on Telstra's use of labour hire workers. It should be noted, however, that this was only one element of a broader strategy which had always as its aim the reduction of costs to Telstra itself.

### **3.1. First steps: the Adecco experience**

In January, 1997, OAS announced that all casual staff employed on Directory Assistance were to be transferred to Adecco, a multinational labour hire company. Conditions and pay were to remain the same as they had been when Telstra was the direct employer – at least during an “interim” period which was not closely defined.<sup>7</sup>

Adecco's contract with Telstra commenced in March 1997. It was not long before the impacts of the new arrangements began to be felt by the casual employees. Some early difficulties experienced by the transferred staff (e.g. late pay advice) were administrative in nature and could therefore perhaps be dismissed as teething problems. More fundamental were such issues associated with work allocation/organisation. There were no guaranteed minimum hours of work (one three hour shift a week was not uncommon) and operators complained of insufficient notice being given for shifts and of apparent favouritism in shift allocations.

Employees also soon found themselves subject to more intense performance requirements. By June 1998, Adecco was requiring staff to reach speed of answer targets of 19 seconds per call, with ongoing employment dependent on maintaining these statistics. (Telstra permanent staff were subject to no such requirements.)

---

<sup>7</sup> These conditions were governed by the Australian Telecommunications Commission Telephone and Phonogram Staff (Salaries and Specific Conditions of Employment) Award 1978 and by the Telstra OAS Enterprise Agreement 1993-95.

These wage and performance pressures on staff reflected the terms of the Telstra contract with Adecco which was, of course, designed to shift the cost of uncertainties of demand onto the labour hire agency and, by extension, onto labour hire workers. The Telstra contract required, for instance, that Adecco be able to supply supplementary labour within one hour of a Telstra request. Hence the prevalence of the weekly three hour shifts, a work pattern that could lead to staff spending more time on travelling (with no payment for this time) than they did at work. Such conditions tend to produce high employee turnover and consequently raise training costs.

At the same time, Telstra sought to exact performance levels that were well above the average being achieved by its own permanent workforce. Under the terms of the contract, Adecco was required within six months to meet call answering times that matched the upper levels of Telstra's own performance. Failure to meet targets also triggered financial penalties for Adecco. Individual employees who did not meet such targets were not to be supplied to Telstra.

Needless to say, such requirements were at odds with the irregular nature of the employment of most of the Adecco operators – the less consistent is the work, the less consistent is performance likely to be. The cost of this contradiction was ultimately carried by Adecco staff in the form of increased workplace stress and employment uncertainty.

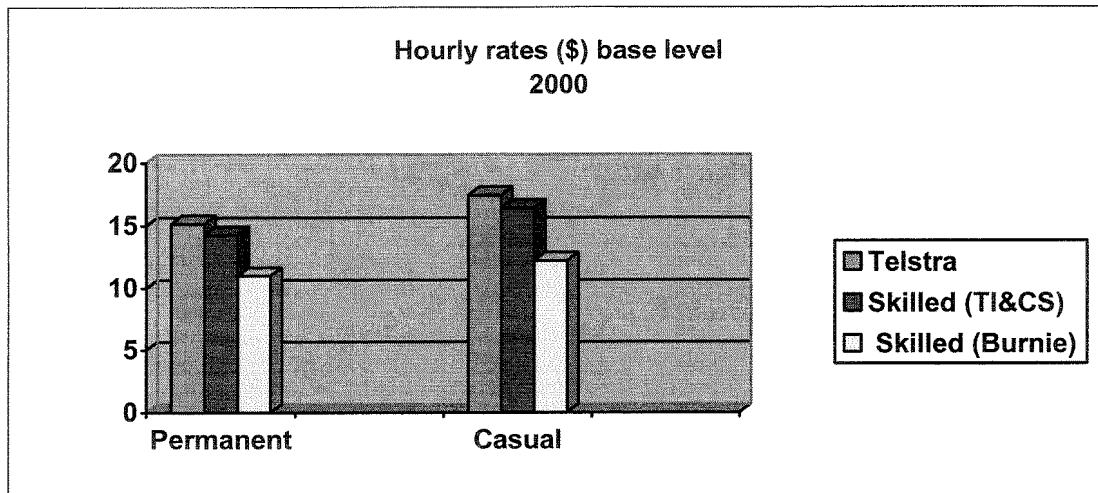
In short, while Telstra had ostensibly offered Adecco an opportunity to share the “risks and rewards” of its operator business, in practice the aim was to transfer the cost of any risk to Adecco and its employees. By mid 1998, Adecco was arguing that Telstra's requirements were not realistic. Traffic volumes being handled by Adecco were halved during the first half of the year, driving down gross margins and reducing the company's capacity to invest in measures aimed at increasing productivity (e.g. training, supervision). Inaccuracies in Telstra's traffic forecasting further undermined Adecco's capacity to plan its business and manage costs. Finally, the requirement that Adecco supply 24 geographically dispersed locations, when combined with low and uncertain traffic volumes, meant Adecco was denied economies of scale and density.

By late 1998 it was becoming clear that, in its existing form, the outsourced OAS business was uneconomic. In January 1999, Adecco operators were due to receive a 4% wage increase, in line with that flowing to Telstra OAS employees under the 1998-2000 Enterprise Agreement. In February, Adecco indicated that it would not seek renewal of the Telstra contract. On the 25<sup>th</sup> of that month, Telstra announced it had transferred this work to Skilled Communications.

### **3.2. Skilled Communications.**

While taking over the Adecco employees on existing terms and conditions, Skilled made it clear that it would not pay the 4% now flowing to Telstra casuals performing exactly the same work (and for the same company) as the Adecco/Skilled labour hire employees. Nor did they receive the further 2% that Telstra operators received during 1999. The first increase in basic pay rates (as opposed to incremental rises) for Skilled casuals did not occur until February 2001, when Skilled granted a 3% wage increase. This rise still left the labour hire rates nearly 10% below those enjoyed by Telstra's directly employed staff, both permanent and casual.

Pressure on operator wages was further increased by Skilled decision in April 2000 to establish its own call centre in Burnie, Tasmania. Under a "greenfields" agreement supposedly exclusive to the centre, trainee casuals received \$12 an hour (including 20% casual loading) and base rate staff \$13.2 per hour. Shortly afterwards, in late May 2000, Skilled began approaching its employees working in Telstra call centres offering them permanent employment on conditions which, while not mirroring those in Burnie, were nevertheless significantly worse than those under which they were then working, including a lower hourly rate, reduction of overtime provisions and payments and reduced meal break and rest break times.



As indicated above, the initial Adecco contract had seen the transfer of fixed term and casual Directory Assistance operators only. During the course of the contract, however, Telstra’s use of casual labour began to increase. A pattern that was to dominate the next five years began to emerge, with permanent staff being made redundant and their places being filled by labour hire workers. By March 2000, Telstra’s operator business ( by then renamed Telstra Information and Connections Services –TICS) was using some 850 Skilled labour hire workers across a range of functions including emergency calls (E000), International Directory Assistance and Conferlink. Up to 30% of national Directory Assistance traffic was being handled by Skilled Employees.

### **3.3. Labour Hire in Service Advantage**

As noted above, Operator Assisted Services (OAS) and its successors employed the majority of operators in 1996. Another major area of work for operators, however, was fault reporting and, to a lesser extent, testing. By 1996, operators performing these functions were employed within the Commercial Consumer and Business and Government Business Units. In 2000, the work was brought together in one unit (Service Advantage) within Infrastructure Services and Wholesale (IS&W).

The nature of this work, which involves the operator interacting with multiple internal systems, made it less suitable for outsourcing than Directory Assistance. In line with its overall cost-cutting agenda, however, Telstra began introducing labour hire staff into this area in 1998-99. Since then, Telstra has progressively shed its permanent Service Advantage employees and replaced them with labour hire. The Union estimates that labour hire now accounts for at least 50% of all Service Advantage employment.

These staff typically work on lower rates and in inferior conditions to those of Telstra permanents. In the Launceston Service Advantage centre (Telstra's largest), for instance, labour hire employees work nine hour shifts with only one rest break a day other than lunch. Telstra permanent employees work 7 hours and 21 minutes a day and have five rest breaks, two fifteen minutes and three ten minutes, other than lunch.

It must be stressed that these employees are performing exactly the same work functions as the Telstra permanents but at much greater risk to their health and for lower remuneration. The Union regards such a circumstance as fundamentally unjust. Such, however, is the logic of labour hire arrangements.

#### **4. Case Study: Contracting out of field workforce functions**

The appearance of individual "independent" contractors in Telstra's field workforce was, broadly speaking, the result of the same processes as have been outlined above.

In 1996, when Telstra began its major workforce restructuring, the company had two major groups of employees available to perform network installation and maintenance functions (as opposed to network design and construction, largely the preserve of a business unit by the same name, NDC). Telstra's Commercial and Consumer Business Unit (and its predecessors) historically employed some 40% of Telstra's total workforce and provided "fix and fit" services to the small business and residential sectors. Visionstream, a smaller group, had been set up in 1994 for the

purpose of rolling out Telstra's pay-TV network. Project Mercury identified Visionstream and as an immediate outsourcing target. It also suggested the outsourcing of some of the more specialised functions (pit and pipe) performed within Commercial and Consumer. This, however, proved to be only the beginning of the process of contracting out Commercial and Consumer work.

#### **4.1. Visionstream**

Visionstream was sold to Leighton Holdings in December 1996 with staff transferring on (broadly) the same terms and conditions as those they had enjoyed when the company was a stand-alone subsidiary of Telstra.<sup>8</sup> Subsequent Enterprise Agreements largely preserved these conditions. In late 1999, however, Visionstream decided to restructure its operations and began progressively turning its permanent workforce into sub-contractors. The company at that time employed some 1200 permanent workers as well as making limited use of labour hire staff in specialised areas.

Visionstream's decision reflected changing conditions in the industry. Full liberalisation in 1997 had led initially to an increase in construction opportunities which Leighton's had hoped to exploit. However, as the pace of new network build slowed towards the end of the decade, Visionstream came to be increasingly dependent on Telstra for work. At the same time, other contracting companies were beginning to compete for work being outsourced from Commercial and Consumer. The result was a downward pressure on contract prices which companies of course sought to pass on to employees.

Visionstream made no attempt to disguise the fact that this restructuring was being driven by costs considerations and that it viewed retention of its existing permanent full-time workforce as uneconomic. The implications of this assessment were obvious enough to staff. While acceptance of the offer to become a sub-contractor was nominally voluntary, the company clearly signalled that the future of those who did not take it up was bleak. Indeed, by April 2000, when Visionstream indicated it would

---

<sup>8</sup> Visionstream was covered by a separate EBA negotiated by the CEPU in 1994. It largely reflected Telstra conditions but with some variations designed to achieve the rapid roll-out of the Telstra pay-TV network.

introduce sub-contracting to perform broadband installations in multiple dwelling units (MDUs), the explicit alternative facing affected staff was retrenchment.

The Union wishes to stress this point because the issue of contracting is often discussed as though the choice of this form of work were entirely voluntary and the small contractor were truly independent. In the Union's experience, such forms of employment have become prevalent in the installation/maintenance area of the telecommunications industry because of the employment preferences of the major contracting companies rather than those of telecommunications workers themselves.

Nor are the individual sub-contractors truly independent. The concentrated nature of the industry, especially at the infrastructure level, means that work opportunities are controlled by a relatively small number of companies who are themselves dependent largely on Telstra for ongoing work. In this environment, the sub-contractor is a price-taker.<sup>9</sup> In practice, such workers have found themselves facing increasing pressure on their working conditions and incomes as head contractors bid against one another for Telstra work. The results of this process are discussed at 4.3 below.

Even in 1999, however, the claimed rewards of sub-contracting were largely illusory. Visionstream had originally indicated to its employees that they could gross up to \$150,000 a year as sub-contractors (based on an average of six jobs a day). Actual sub-contracting trials conducted in early 2000 produced the more modest (but still superficially attractive) of \$70,000 p.a. for a 52-55 hour week, after deducting costs of materials. On the face of it, this compared very favourably with the earnings of an equivalent permanent staff member who would have been receiving \$38,063 p.a. for a 39 hour week.

---

<sup>9</sup> Telstra itself is well aware of the vulnerability of sub-contractors. See Telstra testimony to the Senate Environment, Communications, Information technology and the Arts References Committee, Monday 14th February, 2005. Hansard p. 131ff

**Senator McLucas** – The trouble is, Mr. Scales, if you have a large subcontractor providing a contract over a geographic region, these people are at the behest of that operator.

**Mr. Scales** – Sure

**Senator McLucas** – They have very little power in the situation.

**Mr. Scales** – I understand that ...



Apart from the cost of materials, however, the sub-contractor was liable for a range of expenses which the CEPU estimated as being upwards of \$12,582 p.a. and Telstra itself had suggested could be as high as \$17,400 p.a., leaving effective (pre-tax) earnings of \$53-58,000. At that time, a permanent employee's total package (including superannuation, leave, redundancy entitlements and allowing for equivalent overtime) was, at the Union's estimation, worth over \$76,000. Even allowing for different tax treatments of these two gross sums, it is hard to see how the sub-contracting arrangement represented a better option.

More fundamentally, the sub-contractor was not, of course, guaranteed the hours that would produce this income. Nor were the piece work rates fixed or subject to negotiation. In these circumstances, it is not surprising that many Visionstream sub-contractors found themselves financially squeezed as time went on.

#### **4.2. Evolution of Telstra's outsourcing strategy.**

As discussed above, the sale of Visionstream, and the subsequent contracting of the company to perform Telstra field workforce functions was part of a larger programme designed to reduce Telstra employee numbers and company costs. As the single largest employer of labour within the company, Telstra's Commercial and Consumer Business Unit was a key target for such a programme. Figures tabled in the Senate in May 1998 showed that of the 16,139 staff losses between April 1996 and March 1998, 10,155 or nearly two thirds were from this area.

As has been the case in other sections of Telstra, automation accounts for some of the staff reductions that have occurred in this area.<sup>10</sup> But since the initiatives of the late-90s, there has been no major workforce reorganisation or technological advance such as would markedly increase the labour productivity of the field workforce. Since that time, replacement of permanent staff with contract labour has been the central method through which Telstra has attempted to lower its field workforce costs.

---

<sup>10</sup> This period saw, for instance, the introduction of the automated work management system, Director.

As noted above, the decision to outsource pit and pipe functions from Commercial and Consumer was made during 1996. By the following year, much more extensive use of contract labour was being considered, with proposals to outsource some 10-20% of field work during 1997-8 and 1998-9. Contractors were to be used across a range of external plant work (plant upgrades, new estate provisioning, aerial plant maintenance etc), though not in network cutovers. In country areas, some more highly skilled work (e.g. installation and maintenance of radio equipment and CPE, payphone maintenance) was also included. The greater part of the work was to be outsourced to Visionstream and to Skilled Engineering.

During the same period, a major initiative by Telstra to upgrade its copper Customer Access Network (CAN 2001) provided a further opportunity for use of contract labour. The project was allocated \$400 million nationally (over three years) and involved the total outsourcing of all related field activity. In this case, the number of major contractors was expanded to six, with each specific geographical area being the responsibility of one company.

Looking back over this period, it is evident that Telstra's strategy involved the active creation of a contracting sector, firstly through allocating enough work to individual firms for them to develop expertise and, secondly, supporting enough firms to establish competitive conditions in the market. As more work was outsourced the number of contractors multiplied, so that by 2000, Commercial and Consumer had some 60-70 contracting firms providing services.

These firms in turn contracted, in many instances, to second level companies who then farmed out work to individual sub-contractors. There thus came into being a multi-tiered pyramid with Telstra at the top and innumerable "independent" contractors at the bottom.

This process however, had its limits. In mid-2000, Telstra decided to seek efficiencies through rationalising its contracting arrangements, reducing the number of contractors and enlarging the areas and range of functions for which they were responsible. The number of lead contractors to emerge from this process was eight .

At the same time, Telstra moved to limit the extent of sub-contracting by its lead (or prime) contractors. The proliferation of contracting layers in the late 1990s meant that those at the base faced very slim margins and streamlining became necessary to ensure the viability of the total system.

In 2003, a further review by Telstra reduced the number of prime contractors to five, with the bulk of the work going to large multinational operators such as Siemens Thiess, ABB and Alstom.

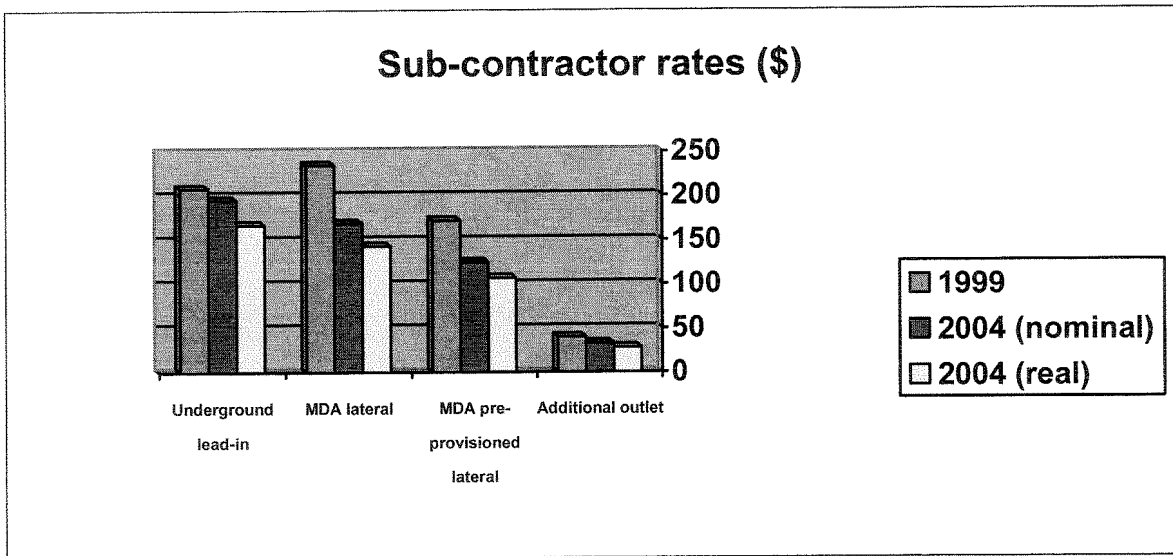
#### **4.3. Impacts on sub-contractors.**

Rationalisation of the contracting sector by Telstra was essentially designed to achieve efficiencies that would allow reduced contract prices. The corollary of this was a reduction of the rates the lead companies paid to their sub-contractors. In late 2003, sub-contractors were facing proposed cuts of some 15-20% on existing piece rates.

Even when these proposed reductions were modified as a result of sub-contractor resistance, both nominal and real rates being offered in 2003 were well below those available in the late 1990s.

Figure 2 compares piece work rates for categories of pay-TV cabling in 1999 (Visionstream sub-contractors) and 2004 (Siemens Thiess). The 2004 rates represent a reduction in real terms of some 20-40% (depending on the task) on the 1999 levels. Increases in CPI of around 14.4% over the same period added to the costs of materials and on-costs borne by sub-contractors. The result has been an intolerable squeeze on sub-contractors margins.

Figure 2.



These figures relate to pay-TV work. The pattern of rate reductions here is, however, replicated in other areas.

Other negative impacts of sub-contracting on working life cannot be as readily quantified but are equally significant. Health and safety practices – or the absence of them – have been a matter of growing concern for the Union. As the Union stated in its presentation to the Senate inquiry into the Australian telecommunications network

Today the person doing a “fix and fit” job for Telstra may arrive at a pit with no safety gear, no gas detectors and no proper test equipment.<sup>11</sup>

In Tasmania recently we had contractors being pulled up for doing road crossings in the middle of the night, with no guards, no barriers and no people on traffic patrol et cetera, and police have closed these down. These are the same people Telstra are getting to do their work at cut prices.<sup>12</sup>

<sup>11</sup> Hansard, Environment, Communications, Information Technology and the Arts References Committee, Monday 19<sup>th</sup> May, p.736

<sup>12</sup> Ibid p.739.

## **5. Implications for service quality.**

The impact on service delivery of Telstra's rapid "downsizing" during the 1990s was noted above at 2.1. The extent to which Telstra has since been able to rectify the problems arising from this reduction of labour resources and skills continues to be a contentious issue.

In recent years, Telstra has been able to lift its performance against those regulatory benchmarks that have become central to the privatisation debate i.e. the Customer Service Guarantee (CSG) standards. Yet customers' satisfaction levels have not always been in accord with such trends. In 2001-02, for instance, when Telstra's reported fault repair performance was either stable or on the rise (depending on geographic area) consumer satisfaction with this service was at its lowest level since the inception of the Australian Communications Authority (ACA) surveys (59% for households, 55% for businesses).

The CEPU has discussed this issue at length elsewhere<sup>13</sup> and examined the apparent paradox of improvements in CSG compliance over a time when staff numbers have still been falling and network fault rates rising.<sup>14</sup> We do not wish to revisit these questions here. However, the Union remains of the view that very considerable problems exist within the Public Switched Telephone Network (PSTN) and that Telstra's increasing use of contract labour for installation, maintenance and other network functions has contributed to these problems in identifiable ways:

- increased cost pressures on sub-contractors leading to short cuts being taken with individual jobs
- inadequately trained (or indeed untrained) staff performing work

---

<sup>13</sup> See CEPU submission to the Senate Australian Telecommunications Network Inquiry, August 2002; CEPU submission to the Senate Inquiry into the Telstra (Transition to Full Public Ownership) Bill 2003, September 2003.

<sup>14</sup> The ACA reported a 13.2% increase in Telstra's Customer Service Guarantee (CSG) type faults in 2000-01 and a 1.2% in 2002-03.

- contract prices driving reactive rather than proactive maintenance practices (e.g. exchange battery maintenance)
- lack of co-ordination between functions and dispersal of accountabilities.

In one of its appearance before the Senate Australian Telecommunications Network Inquiry, the Union cited the instance of the Telstra employee sent to rectify a fault which had been initially assigned to a contractor company. The fault had been cleared by the sub-contractor, but the service was still not working. In fact, the employee found no evidence that the relevant section of cable had even been examined by the first worker.

This kind of experience sheds some light on the relationship between service statistics and actual service performance. The sub-contractors's cleared fault would make a positive contribution to CSG compliance rates but not to customer satisfaction levels.

The Union believes that pressures for such "quick fixes" (or even no fixes) are increasingly felt by all employees working on the Telstra network and have contributed to service problems such as those that led to the Boulding incident (which involved Telstra permanent staff). However, piece work of its nature invites such practices. At the time the Union drew attention to this problem, sub-contractors were getting around \$12-15 a fault, irrespective of its complexity, which of course might not be known to the sub-contractor until he/she began to address it. A sub-contractor unlucky enough to have a string of more difficult faults might only be able to do two or three a day properly – not enough to cover the day's costs. Such circumstances obviously encourage short-cuts.

More broadly, the Union believes that the contracting out of so many Telstra functions has created significant problems of coordination for the company. In its submission to the Australian Telecommunications Network Inquiry (2002), the CEPU cited an incident in Kyneton, Victoria, as an example of the dysfunctional character of the new order. Having been (incorrectly) sent to repair a severed cable in the area, a Network Design and Construction employee found that the problem lay not in the external plant but within the Kyneton exchange and that the whole town was without

service. He attempted to enter the exchange, but his swipe card would not work. He contacted the company with the contract to maintain the exchange building, Transfield (which did not have a presence in Kyneton) and was told he did not have security clearance to enter the building. Had he not forcibly entered the building, the town would have remained without service for many more hours.

Such evidence is, of necessity, anecdotal and it is difficult to quantify the number and the impacts of such incidents as those described above. The Union receives many reports from the field, however, and is convinced that such episodes are by no means a-typical.

## **6. Contracting out: impacts on skill formation.**

The Union has argued that the growth of sub-contracting in the telecommunications industry has occurred largely as a result of companies' desires to shift costs (including the cost of risk) from their own bottom line to those of their labour force. One of the significant costs in this industry is the cost of training.

Historically, Telstra, as a public sector monopolist, delivered the greater part of the specialised training for the telecommunications workforce (supplemented to a degree by technical colleges and universities). Through the 1990s, as Telstra began reducing its workforce, it also progressively reduced its training activity. For its part, the rest of the industry was generally happy to rely on well trained ex-Telstra staff to supply its labour needs.

Visionstream, in the initial phase of its operations, undertook some structured training of its staff. However, it soon found that they were being poached by companies unwilling to make their own training investment. At any rate, the decision to move to a sub-contracting structure in 1999 implied an end to training activity.

The CEPU does not regard it as an exaggeration to say that for the last decade the industry has been living largely off the fat of Telstra's historic training investment. As the Telstra-trained workforce ages, skill shortages will arise. They are already evident in radiocommunications. They are also apparent in the customer cabling area where

the Union believes work is increasingly being performed by workers who are not technically competent.

As was noted at 1., customer cabling was liberalised in 1989, with the result that workers other than Telstra staff were able to perform cabling work in a customer's premises beyond the boundary of the Telstra network (the first socket in a domestic context, the customer side of the Main Distribution Frame (MDF) in the case of commercial and/or multi-tenanted premises. The workers taking up these new opportunities tended to be electrical contractors.

Since the mid-1990s, full industry liberalisation, coinciding broadly with the growth of data services, has brought a considerable expansion of such opportunities. Telstra's contracting out of its own customer premises installation work (which it no longer considers core business) has further enlarged the pool of work. However, the growth of a cabling workforce, as a distinct sub-set of the telecommunications labour force, has not, in our view, been accompanied by an equivalent investment in training.

There has long been resistance among electrical contractors to the additional requirements (over and above electrical licensing) involved in acquiring telecommunications cabling accreditation.<sup>15</sup> Such resistance was one of the chief factors that led to a simplification of the training requirements underpinning cabling licensing in 2000, the argument being that small independent contractors could not afford the training costs involved in the then-existing system. As a result, there is currently no obligation for cabling contractors to be trained in (for instance) running fibre optic or coaxial cable – a situation that in the Union's view is at odds with national interest requirements.

However, it is the combination of this relaxation of regulatory standards with the growth of a sub-contracting workforce that presents the most potent threat to actual cabling standards. Many sub-contractors now coming into the workforce to perform

---

<sup>15</sup> Regulation initially required cabling contractors to be licensed by the then AUSTEL. More recently, customer cabling contractors have been covered by a class licensing system (Cabling Provider Rules) which still, however, imposes training requirements.



Telstra work have not been even been trained up to the much simplified levels required by current regulation. This situation both compromises service quality and poses a health and safety risk to customer, cablers and others working on telecommunications networks.

The Australian Communications Authority (ACA) has recently been investigating ways of lifting compliance rates and promoting skill development in the customer cabling area. However, neither the current regulatory ethos (which emphasises self-regulation) nor the structure of the sector (which is increasingly characterised by sub-contracting) favours such initiatives.

## **6. Remedies**

As indicated at the outset of this submission, the CEPU believes that the spread of labour hire and contractor labour in the telecommunications industry is chiefly an expression of the strategies of major employers, especially Telstra, rather than of the preferences of those employed on these terms. In our experience, casual employees are generally keen to accept permanent positions, with the certainties and protections these offer, if they are offered.

It follows, in our view, that government should try to strengthen the protections available to labour hire, casual and contracted workers while at the same time considering measures which could stem the growth of these precarious forms of employment.

Such measures should include:

- Ensuring that individual contractors and sub-contractors are not prevented from jointly pursuing their industrial interests through forms of collective negotiation.
- Ensuring that labour hire workers are brought within the award system and are subject to the jurisdiction of the Commission.

- Strengthening the laws governing transmission of business to discourage employers contracting out work as a way of driving down wages and entitlements
- Encouraging unions and large employers to find ways of meeting flexibility requirements within the firm without resorting to contracting out.

In relation to this last point, the CEPU draws the Committee's attention to a recent agreement between Telstra and the CEPU on the creation of a new form of employment within the company. The Telstra 2002-05 Enterprise Agreement created the category of "supplementary worker" in an attempt to see whether modifications to current employment forms would allow the company to effectively manage peaks and troughs in demand without relying on contract labour. The supplementary worker arrangements created a permanent employee, with all entitlements other than sick leave, who is guaranteed a minimum of 500 hours work a year. Importantly, the worker is also covered by the Telstra Redundancy Agreement.

Although there has been limited use of supplementary workers by the company to date, the new category has been used to offer some casual employees permanent positions, largely in call centre work areas. Where this has occurred, management is finding that the use of supplementary workers helps reduce staff turnover and hence reduces the costs associated with labour "churn" (e.g. training, administration). At the same time, the high take-up of this opportunity by those to whom it was offered confirms the Union's view as to the true preferences of employees in our industry.

