



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),  
Ms Suzanne Orr MLA, Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Government Procurement (Secure Local Jobs) Amendment Bill 2018

**Submission Number: 04**

**Date Authorised for Publication: 5 September 2018**



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30<sup>th</sup> August 2018

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Dear Mister Hanson,

### **Government Procurement (Secure Local Jobs) Amendment Bill 2018**

United Voice members have too often suffered the consequences of procurement decisions. The decisions have been based on a weak or opaque assessment of value for money. The cost to workers of poor safety standards, unpaid superannuation, unpaid wages, threats and coercion has been enormous. The cost to government through increased contract management costs and remedial action including legal costs outweighs a contract price which does not take adequate account of labour costs.

That is why United Voice supports the *Government Procurement (Secure Local Jobs) Amendment Bill* (the Bill) currently before the ACT Legislative Assembly. United Voice members ask all members of the Assembly to support these important changes to the *Government Procurement Act 2001* so that an increased number of ACT citizens can enjoy decent and secure employment.

United Voice has participated in two consultations rounds conducted by the government in the lead up to the tabling of this Bill. In addition we made an extensive submission to the *Insecure Work Inquiry* (attached). Our members appreciate that many of the issues raised in these documents are addressed in this Bill.

United Voice members ask to be given the opportunity to appear before the Committee in order to speak to our submissions and answer any questions you may have.

Yours sincerely

  
Lyndal Ryan  
ACT Branch Secretary  
United Voice



## **United Voice Submission: Inquiry into the extent, nature and consequence of insecure work in the ACT**

### **7 July 2017**

#### **About United Voice**

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare and security.

United Voice members work in industries characterised by insecure and low paid work, and are frequently employed by labour hire companies or sham contractors. Our members are disproportionately impacted by practices that promote insecure work.

#### **Introduction**

This inquiry comes at an important time for Australia's lowest paid workers, as more and more cases come to light demonstrating how flaws in the industrial system create insecure work across Australia. The ACT is not immune from these practices.

United Voice has sought to comment on a number of the terms of reference outlined for this inquiry, with a focus on the issues surrounding labour hire, in addition to some of the wider issues around precarious employment, worker exploitation and the undermining by employers of worker rights. We have also provided extensive case studies relating to the terms of reference, and more broadly to the extent of insecure work in the ACT.

We remain committed to working constructively with government, employers and stakeholders to advance the matters concerning this Inquiry, and more broadly, to address stronger protection and a fairer safety net for Australian workers.

Lyndal Ryan  
United Voice ACT Branch Secretary

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## Summary of Recommendations

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### 1. Maximize Direct Government Employment

There is a marked contrast between those workers whose employment standards are protected by direct employment with the government and the collective agreements which cover them and those who are employed in the private service sector. The starkest contrasts exist between those in permanent employment in the public service and those who are at the bottom of the private sector labour market.

Greater social cohesion and equality can be created by insourcing employment where ever possible. In situations where direct employment by government is not possible, every level of government must be utilized to provide employment standards which are as close as possible to those which exist in permanent public service sector positions.

### 2. United Voice recommends that the ACT Government's tendering and procurement arrangements be revised in order to incorporate the following:

- Job security when contracts change
- Wages above award minimums
- Specific freedom of association provisions
- Workplace rights training, including union presentations during inductions

The most recent review of school cleaning tendering and contracting arrangements provide a model for tendering in relation to property services procured by government. These requirements could be expanded to ensure that companies engaged by government extend these standard to all work performed by them within the territory. Government is in a position to use its purchasing power to improve employment standards across the private sector service industry.

Further improvements could include a requirement to maximise permanent employment and ensure union delegates are provided with access to paid leave.

### 3. United Voice recommends that the ACT Government introduces conditions to licences issued in hospitality venues to improve workplace rights. This should include restaurant, gaming and Casino licences.

The conditions that have been incorporated into ACT School Cleaning contracts could also serve to help lift standards in hospitality if attached to licence requirements.

These standards could initially be adopted in relation to gaming and casino licences. This is particularly important because of the responsibilities staff hold in identifying and taking action against problem gambling.

- 4. Any new standard attached to procurement or licences must be rigorously enforced by an agency with sufficient resources and expertise to ensure that all contractual or licence obligations in relation to employment conditions are met**

The existing processes for ensuring compliance with contracts has lacked sufficient rigor, whether the issues have arisen to minimum service or employment standards. Disputes in relation to these issues have been protracted and expensive.

This need not be the case. A small investment by government in this area would reap significant benefits for the government, workers and industry.

- 5. United Voice recommends that the ACT Government acts as an employer of last resort for visa holders undergoing industrial disputes**

Given the extensive issues around the exploitation of overseas workers, outlined below, the ACT Government should act as an employer of last resort in cases where visa holders are engaged in industrial disputes, in order to properly examine those instances of worker exploitation and to properly hold unscrupulous employers to account.

- 6. United Voice recommends ACT Government extends portable long service leave to the entire private sector**

Portable long service leave rights now existing for a number of private service sector workers. The scheme has been an outstanding success but two of the largest service sector employers remain outside the scheme. Hospitality and retail must be included and once this is accomplished all private sector workers should be covered.

- 7. United Voice recommends that the ACT Government adopts labour hire legislation similar to that introduced and proposed by the Queensland and Victorian Governments.**

- 8. Existing rights for individuals and registered organisations to enforce their employment and safety rights through the courts that exist under the Fair Work Act (Federal Legislation) should be extended to included employment and safety rights that have their basis in ACT Legislation.**

## **1. The extent, nature and consequence of insecure work in the ACT, including but not limited to:**

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In 2012, the ACTU's Independent Inquiry into Insecure Work demonstrated that while 60% of all employed persons were in ongoing, secure work with leave entitlements, a large number of the remaining 40% - close to 30% if owner managers of incorporated enterprises are excluded – are in insecure work, whether on casual, fixed-term (particularly short-term) contracts, labour hire workers, or 'independent contractors'.<sup>1</sup> There is no sign that the trend to insecure work is slowing – quite the contrary when one considers the explosion of the so-called gig economy in the Australian economy. Platform work such as that being brokered by AirTasker, Foodora and Uber, among others, has propelled unknown numbers of workers into what we regard to be effective sham contracting, where the lines between employer and employee have been dissimulated intentionally so as to allow tech platforms to elude their employer status and its associated legal responsibilities.

### **i. the use of group training, labour hire and sham contracting in particular industries and in the supply chains of particular sectors;**

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United Voice has witnessed a steady increase in the use of subcontracting and labour hire arrangements across the private sector industries in which we represent workers, in particular in cleaning and security.

There are now very few cleaners and security officers in the ACT that are directly employed by the host institution which they clean or patrol. Across the entire ACT, there are less than two dozen directly employed cleaners. In 2016, the Australian National University outsourced its six remaining security officers, while Casino Canberra has recently replaced its directly employed cleaning staff with cleaners working for a contracted company. These sub-contracted staff perform almost identical work to that performed by their directly engaged predecessors. However, they receive substantively reduced levels of work security.

Once contracted out, cleaning and security work is often subjected to further levels of contracting and sham contracting arrangements. Past the second level of contracting supply chains, cleaners and security officers often face egregious forms of exploitation.

Labour hire companies play a major role in fostering precarious work conditions and exploitation in labour supply chains. Their employees are often second-class citizens in their workplaces. Almost never covered by enterprise agreements at the host workplace, they receive differentially lower

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<sup>1</sup> ACTU (2012) *Lives on Hold. Report of the Independent Inquiry into Insecure Work*, p. 14.

wages and conditions. They are frequently subject to unfair and ever-changing rostering arrangements. Overwhelmingly casual, labour hire employees miss out on many entitlements, and existing casual conversion clauses are ineffectual in enabling them to obtain permanent employment if they desire it.

## **ii. allegations that labour hire and sham contracting arrangements are being used to avoid workplace laws and other statutory obligations, such as underpayment of wages and entitlements and avoidance of payroll and income tax;**

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We have seen many examples of labour hire, franchising and sham contracting arrangements being used by host employers to avoid workplace laws and taxation obligations.

We are concerned that the normalisation of outsourcing and the cementation of complex labour supply chains in our industries is facilitating illegal behaviour by employers keen to eschew their employment and tax obligations. We are frequently obliged to bring litigation against cleaning and security contractors that engage workers through webs of shifting entities and on sham contracting arrangements. We have pursued a number of companies engaging in these practices, on behalf of our members, including Phillips Cleaning, ECS, and Programmed Facilities Management.

Like labour hire and contracting supply chains, franchising is another mechanism that can be misused by employers to avoid employment obligations. Some well-known franchises, such as 7/11, Grill'd, Domino's and Caltex, have been revealed to have wage theft as part of their business model. There are a number of ACT-based businesses who have followed suit.

The Crust Pizza franchise, for instance, was found to have underpaid their workers significantly.

When franchise head offices are pushed to take action, they ensure that individuals that raise underpayment claims are compensated, but franchisors on the whole fail to undertake compliance checks to redress more systematic wage theft, denying countless vulnerable workers justice. Indeed, 7/11 is the only franchise that has undertaken widespread audits and remedies, and it had to be compelled to do so.

The delinquencies in the franchise, labour hire and contracting supply chains models reflect a situation in which labour hosts outsourcing of their labour needs in order to reduce costs is being done at the expense of workers' legal wages and entitlements.

## **iv. the use of working visas, particularly in insecure, low paid, unskilled or semi-skilled jobs and trades;**

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Several of United Voice's industries are typically those in which newly arrived migrants work, namely cleaning, security and hospitality. Across each wave of new arrivals, our union has welcomed an extraordinarily diverse mix of workers into our industries, assisting them to achieve dignity at work and social integration into the community. Unfortunately, as the cultural make-up of the cleaning

industry has evolved over the past decades, the quality of the jobs available to these workers has degraded. As Australia has gradually shifted from a model of permanent migration towards one of temporariness, jobs have become highly insecure and frequently characterised by exploitation. Many workers are now working for contractors who flagrantly breach the Fair Work Act and award and enterprise agreement provisions on wages, overtime, leave entitlements, length of shifts, and health and safety.

In some industries such as hospitality, the skilled visa programme (ex 457 visa subclass) has been used in order to avoid improving job quality. It is common for cooks and chefs to be paid salaries well below the average wage, despite years of training and experience, and to have to work 80 hours per week while only being paid for 40. Temporary migrant workers escaping poverty in their home country are more likely to accept these exploitative conditions than are local workers; it is, however, a constrained choice, and United Voice finds it unacceptable that Australian businesses' profits are being fattened with the unpaid labour of vulnerable workers.

The temporariness of today's migrant workers is undoubtedly increasing their vulnerability in the workplace<sup>2</sup>. The conditions of their visa status which links their ability to stay in Australia with their employer, denies the workers the power to uphold their rights, and creates a second-class workforce. This workforce is effectively being deployed to undermine decent work conditions and workers' voice across entire industries.

## **v. allegations related to the exploitation of vulnerable classes of workers including working visa holders, young people, the under-employed and migrants;**

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There are a number of industries that are widely regarded to be hubs for worker exploitation; these include horticulture, and meat and poultry processing.<sup>3</sup> The NUW and the AMIEU, respectively, have been active in exposing how workers on temporary work visas are particularly vulnerable to exploitation in those industries, while United Voice has been doing the same in hospitality, cleaning and security.

### **Vulnerable workers and unpaid training**

United Voice is particularly concerned about the normalisation of unpaid training in the private service sector, where vulnerable, frequently young, unemployed, and migrant workers are forced to accept working for free, under the guise of so-called training.

<sup>2</sup> Berg, L. (2015) *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, Routledge: London and New York; Mares, P. (2009) 'The Permanent Shift to Temporary Migration', *Inside Story*, 17 June 2009, accessible at: <http://insidestory.org.au/the-permanent-shift-to-temporary-migration>  
Tham, J.-C. (2009) *Multiculturalism and temporary migration: where does justice fit?*; Deegan, B. (2008) *Visa Subclass 457 Integrity Review: Final Report*;

<sup>3</sup> *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, Senate Education and Employment References Committee: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report); pg 297;

The FWO has recently placed an increased focus on the issue of unpaid training, in response to an upward trend in this illegal practice by employers keen to avoid paying proper wages.<sup>4</sup> Unpaid training shifts have unfortunately been prevalent in the hospitality industry for many years; recently, however, we have seen this practice creep into other service sector jobs. Frequently, the worker is not told about it being unpaid training until after he or she has completed the work. If the worker is successful in ultimately obtaining employment they are often so relieved to have a job that they do not complain about the unpaid shifts; many workers, however, work in an unpaid capacity for several employers before obtaining employment. Given the generally small sums of money involved, the vast majority of workers who experience this practice simply cut their losses and never seek repayment. There is little, if any, training and direction associated with these shifts. It is simply unpaid labour.

### **Young workers' lives on hold**

Young workers are often only able to obtain casual or temporary employment; the prospect of permanent, secure employment is becoming an elusive prospect for the new generation of workers.

One of the impacts on young workers is to put their lives on hold. Many cannot live independently as result of low wages or uncertainty of ongoing employment. They delay making decisions or commitments until they are eventually able to secure permanent work. In the meantime they are juggling casual and temporary engagements in the hope that they will eventually find permanent employment that has some level of personal satisfaction.

### **Migrant worker exploitation**

Stakeholders working at the coal face of worker exploitation – from unions and the FWO, to NGOs and community legal services – recognise that workers on temporary work visas are particularly vulnerable to exploitation. Language barriers, lack of economic and social capital, and frequently the young age of temporary migrant workers in United Voice's industries conspire to accrue the vulnerability they face in the workplace.

The power asymmetry that exists in any employer/employee relationship is exacerbated in the case of temporary migrant workers, because their right to remain in the country is contingent on them not being found to be in breach of the work conditions on their visa. Any legal irregularity in the employee-employer relationship, whether the fault of the employee or not, can trigger a chain of events that leads to a grievous result for the worker (detention and deportation) that is disproportionate to any negative outcome potentially faced by the employer (a fine).

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<sup>4</sup> See for example: <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/unpaid-work/unpaid-work>

## **vi. the impact of insecure work on workers, their families and relationships, and on the local community, including financial and housing stress; and**

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Workers in the bottom of the labor market have less access to housing, health care and education. They experience greater stress and uncertainty in every aspect of their lives.

United Voice members work across multiple jobs in unsociable hours, rarely able to spend time with their family and loved ones. They are not only poor in terms of income and the ability to save but they are also time poor. There is next to no time for anything other than work. Our members have to deal with financial pressures throughout their lives.

A 2013 survey of 26,000 United Voice members showed that concerns about superannuation and retirement are widely felt by our members, particularly those approaching retirement age. Many of our members feel they do not adequately understand superannuation and do not have the knowledge or expertise to make the right decisions. They are worried they are not contributing enough to their super and are concerned about not being able to afford to retire. Members also expressed concern about the adequacy of retirement incomes, particularly in the context of cost of living pressures (especially housing and utility costs). Many expressed concerns that they would have to rely on the inadequate age pension, and are worried that the age pension might not be provided to them or their children in the future.

Older refugee and migrant workers have not been working in Australia long enough to accumulate even moderate levels of superannuation savings.

Recent studies have also shown that low socioeconomic status and the low income population of Australia, have had their life expectancies reduced by 2.1 years. This is such a cause for concern that a number of researchers believe that this should be treated like other health risk factors<sup>5</sup>.

Whilst the ACT Government has adopted progressive policies in relation education, housing and social inclusion the greatest overall benefit to the community can be derived from the creation of permanent jobs that pay living wages.

## **vii. the impact of insecure work arrangements on vulnerable workers including young people, the unemployed and under-employed, migrants and short term visa holders.**

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The ACT tertiary institutions and embassies attract many people who have employment rights falling under a myriad of visa conditions.

<sup>5</sup> Low Socioeconomic Status Affects Life Expectancy More Than Obesity, Cayla Dengate.

[http://www.huffingtonpost.com.au/2017/01/31/low-socioeconomic-status-affects-life-expectancy-more-than-obesity\\_a\\_21704449/](http://www.huffingtonpost.com.au/2017/01/31/low-socioeconomic-status-affects-life-expectancy-more-than-obesity_a_21704449/).

The reputation of these institutions and our community is frequently marred by the exploitation of workers who are either studying, married to someone who is studying, working in an embassy or related to embassy staff.

Many employers have held out to vulnerable workers the prospect of getting permanent residency as a means of silencing complaints. They say things like "I do not have the money to pay you right now, but if you stay, I can help you get PR one day."

The impact of insecure work is being felt to an increasing degree by our members and is having damaging effects on their relationships and the local community. Our members are under considerable strain in the housing market due to unpredictable hours of work and flat-lining wages, and our older members in particular are facing a precarious retirement due to insufficient superannuation balances.

Workers who are vulnerable in the labour market due to their age, educational attainment, skills, or migration status are typically those trapped in insecure work arrangements.

The strongest motivator for some workers to endure abuse, underpayment and/or unsafe working conditions is the need to provide for their families. In the case of the Filipina massage workers referred to in the attachment to this submission; it was the need to pay for the education of their children living in some of the poorest parts of the Philippines.

#### **Low wages**

The most pernicious consequence of insecure work is low wages.

The wages in insecure work frequently do not meet the basic cost of living; this in turn means a search for additional work. For many workers at the lower-paid end of the labour market, it means working 12 and 14 hour days at least five days per week, but often more than that. Rather than working to live, many insecure workers are living to work.

Wage stagnation is having a devastating impact on those at the lower-paid end of the labour market. United Voice members frequently report not being able to pay bills on time, having to borrow from family members in order to avoid disaster, cutting back on medications or on visiting the doctor, never taking a proper family holiday and not being able to spend time with love ones and always feeling worried about money.

Many of our members are approaching retirement age and are increasingly concerned they will not be able to make ends meet when they retire. Members who rent their homes are particularly concerned how they will manage financially when they can no longer work. They are forced to delay retirement until their late 60s and 70s. But working in aged care and contract cleaning, for example, is physically demanding, it's hard work and it takes its toll on the body.

Finally, the intersection of low wages and insecure work functions to retain those workers in their precarious position. Our members' low pay means that they often have no savings to fall back on if they lose their job or choose to leave it due to being exploited. These workers have no buffer to mitigate the financial burden of sudden illness or changed caring responsibilities. The increasing

dearth of quality jobs, furthermore, means that the prospect of improving their work circumstances is a distant reality.

The mechanisms for allowing low paid workers to benefit from the income generated from local investment do not work.

The Reserve Bank Governor Phillip Lowe this month observed the negative impact low wages growth is having on the economy. He has encouraged workers to ask their employers for more money. As observed by a number of commentators since insecure work and anti-union laws have combined to create record low wages growth<sup>6</sup>.

Cuts to weekend penalty rates will exacerbate this situation for thousands of hospitality workers in the ACT with at least one local ACT employers leading the charge to lower wages.

### Casualisation

The definition of casual employment has changed over the past decade. Casual staff were intended to be engaged for the purpose of replacing permanent staff or to deal with short term spikes in demand. Across many industries but particularly hospitality Australia has seen this type of employment completely replace permanent positions.

High levels of casualisation in the workforce correlate with:

- Lower levels of training and development<sup>7</sup> – thwarting career progression and social mobility
- Higher levels of workplace injury.<sup>8</sup>
- Lower levels of job satisfaction and loyalty.
- Housing insecurity. Casual and temporary workers are less likely to be approved for a mortgage and less likely to have their rental applications accepted.<sup>9</sup>
- Lower levels of self-reported overall life satisfaction.<sup>10</sup>

Worker voice is drastically reduced for workers employed as casuals, something which is aggravated by lower levels of union membership (6.5% compared to 21.8% for ongoing employees).<sup>11</sup> They are less prepared to raise concerns out of fear that they will no longer be rostered for work – a fear that is by no means unfounded: the rostering arrangements for casual workers are often used as punishment for minor transgressions or to keep workers in a constant state of competition with each other. This was experienced by one of our members employed in a club in the ACT:

<sup>6</sup> Tough Rules on Unions have stifled Australian wages, Josh Bornstein, July 2017, <http://www.smh.com.au/comment/tough-rules-on-unions-have-stifled-australian-wages-20170704-gx44rg.html>

<sup>7</sup> Wooden, M and Warren, D (2003) 'The characteristics of casual and fixed-term employment: Evidence from the HILDA survey' Melbourne Institute Working Paper No 15/03, June

<sup>8</sup> Safe Work Australia (2012) 'Australian Work-related Injury Experience By Sex and Age, 2009-2010'. Safe Work Australia, Canberra.

<sup>9</sup> Burgess et.al, 2008 Pathways from Casual employment to Economic Security, 163.

<sup>10</sup> Scherer, S. (2009) 'The Social Consequences of Insecure Jobs', *Social Indicators Research*, vol. 93(3): 527-547.

<sup>11</sup> [http://www.aph.gov.au/%20About Parliament/Parliamentary Departments/Parliamentary Library/pubs/rp/rp1415/Quick Guides/CasualEmploy](http://www.aph.gov.au/%20About%20Parliament/Parliamentary%20Departments/Parliamentary%20Library/pubs/rp/rp1415/Quick%20Guides/CasualEmploy)

"I had worked regularly at a club for six months. I then needed to take a week off work. I had given my employer heaps of notice, at least six weeks, but when I got back I wasn't rostered for another full week. I am sure it was to punish me for taking one week off. I know as a casual they can't actually stop me taking time off because I'm not getting paid anyway but they can punish you in other ways."

When even ostensibly community-focused, not for profit businesses are using casual work in such a punitive manner, it is clear that there is a major problem. But the very fact that these community organisations are employing so many workers on casual contracts is, of itself, a significant concern. Major employers in the ACT such as our large licenced clubs and our casino have the capacity to provide permanent part-time and full-time employment at wages higher than the bare minimum.

### **Underemployment**

Even permanent workers are being victimised by employers' preference for a "flexible" – insecure – workforce. Increasingly, workplaces are shifting from a majority of full-time workers with a minority of casual workers to meet demand at times of increased need, to a workforce model that consists of a stable of permanent part-time and casual workers vying for enough shifts to secure a basic wage on a weekly basis. This is happening at high levels in hospitality, cleaning and security, but also in government-funded aged care services, where employers prefer to have a large supply of part-time workers ostensibly for ease of rostering; this model, however, means that workers have to manage the difficult feat of combining multiple jobs in the context of shifting rosters just to survive.

We are also seeing employers preferring casuals over permanent part-time staff, which contributes to the latter's experience of underemployment. For instance, one permanent part-time member told us:

"I don't know why they want to employ so many casuals? I have been working regularly for fifteen hours per week in this job and I have to work somewhere else to get enough pay. What I would really like is full-time work here but instead of giving more hours to the workers who want it they just keep hiring more casuals."

### **Frequent contract changes**

For some workers, changes in government policy combined with contract changes can result in a sudden drop in workers' wages. In 2011 the Commonwealth Government scrapped the Cleaning Guidelines which delivered higher than minimum wages to cleaners. With each change of contract, cleaners have suffered a wage cut, sometimes up to 20%. Hundreds of cleaners have been working in buildings occupied by the Commonwealth not knowing:

- when the contract will change,
- whether they will secure ongoing employment with the new contractor,
- and whether that employment will be at lower rates of pay.

Wage cuts also affected the cleaning staff in two of Canberra's major shopping centres when Westfield cut cleaners' wages as a part of contract negotiations with the contract cleaning company. One of the cleaners impacted by the cuts lives alone and supports herself. She is a public housing

tenant. She was forced to manage her sudden drop in income by having her rent adjusted but it also meant other adjustments to her meager spending. There were likely other workers who did not have public housing with adjustable rent who would have been affected even more severely than she.

### The undermining of freedom of association

Insecure work is also aggravated by the lower levels of union membership and severely reduced rights for unions to undertake workplace inspection, organising, and industrial action with their members.

Over the past two decades employers and neoliberal governments have attempted to reduce the ability for workers to exercise their rights to freedom of association and representation.<sup>12</sup>

The impact upon workers who volunteer their time as union representatives in the workplace has been noticeable. In 2015 United Voice renegotiated its enterprise agreement at Casino Canberra. In all agreements negotiated in the past those employees working shift work who had to return to work in order to attend bargaining meetings were paid for their time to attend. In 2015 management refused the union's request marking a significant shift in the willingness of employers to respect the role of union representatives and to support them in their work.

The benefits of paid time for delegates' union activity are considerable -- particularly so for low wage workers who have the most to lose from unions being weakened. Upholding workers' right to organise in the workplace and to participate in collective bargaining is fundamental if we are to have a sustainable monitoring and enforcement of employment standards. Worker-driven compliance is far more effective, sustainable, and cost-effective than anything that the FWO can hope to achieve. As a United Voice delegate explains:

"I have been a union delegate at my workplace for 5 years. When I first joined the union and then agreed to be the delegate I didn't really know what to expect and what was expected of me. It has been fortunate for me that the collective agreement that I am employed under makes provision for union training and some paid time from work to attend meetings. I have learnt an enormous amount about the industrial relations system and how to represent my co-workers. It's much more difficult for some workers to participate in their union in situations where there is no right to paid delegates' leave at all."

Confusion and fear is often felt by workers who do not understand their rights at work, have no effective means of learning about them or their unions and/or a deliberately discouraged from learning.

Bargained agreements are being systematically undermined by contractors in the cleaning industry, who are forcing employees to sign statements that directly undermine their pay and working conditions.

<sup>12</sup> McAlpine, K. S. Roberts (2017) *The Future of Trade Unions in Australia*, <http://www.aierights.com.au/wp-content/uploads/2017/02/Future-of-unions.pdf> ; Cooper, R. and B. Ellem (2013) 'The State against Unions: Australia's Neo-liberalism, 1996-2007' in G. Gall and T. Dundon (eds) *Global Anti-Unionism: Nature, Dynamics, Trajectories and Outcomes*, Palgrave Macmillan, Basingstoke, UK, pp. 163-83.

In 2016, two cleaning companies attempted to remove cleaners' rights to their collective agreement by coercing them to sign statements that they did not understand. The cleaners mostly worked by themselves and were individually approached. The employer would not let them take copies of what they were signing. They were so scared and intimidated that almost all of them signed without understanding the document: "You feel completely powerless when you know something isn't right but you have no choice but to do what you are told."

## **2. The nature and consequence of insecure work arrangements in the ACT, including but not limited to:**

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### **i. the legal rights and obligations of group training organisations, labour hire companies, host organisations and employees, along with any ambiguity that exists between these entities;**

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At present, many of our members are being exploited by the ambiguity that exists in their employment. While they may be wearing a uniform with the Wilson Security logo on it, guarding a site for which Wilson has the contract, they are actually legally employed by a sub-contractor two levels down from Wilson, at lower, often sub-standard wages, and with none of the entitlements and job security the directly employed officers receive. Having different classes of workers performing the same job alongside each other but receiving different treatment is now commonplace in many industries, and this should not be allowed to continue. Host employers and lead contractors must be held responsible for ensuring equal pay and decent work conditions throughout their labour supply chains.

### **ii. the effectiveness of existing industrial relations laws and instruments and their enforcement in the group training and labour hire industries, including occupational health and safety laws and workers' compensation laws;**

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United Voice over the past three years has increased the number of officials dedicated to enforcing workplace rights. This increased resourcing is a direct response to the flouting of laws in the ACT in the private service sector. We are finding ourselves having to commence legal action around the recovery of even the most basic of entitlements on behalf of our members, with some workers not being paid at all. Unfair dismissals are on the rise, as are employers who are prepared to engage in conduct designed to obscure the employment relationship. This is happening at levels we have not previously experienced.

There are considerable costs incurred in undertaking this work, and these go beyond the financial realm. Rather than being able to focus on work that would advance the interests of our members, we are instead caught in a cycle of defending their most basic, existing rights. This evidently places an enormous burden on our members whose rights are violated by employers. For most of them, the experience of taking a matter to a tribunal or court is a frightening and uncertain one. This is combined with the financial stress experienced by the underpayment or dismissal itself. Furthermore, given that it can take many months or years to achieve justice through legal means, all too often by the time a tribunal or court has made a finding, the employer or employing entity no longer exists.

Achieving justice for exploited workers under the current system is, as such, a fraught task. There is little doubt that the current industrial relations laws and instruments are not fit for purpose, and it is the lowest-paid, most vulnerable workers who are bearing the brunt of this situation, as seen in the case study below.

United Voice will continue to use existing laws to pursue our members rights but the legislative framework in which we do so needs to be revised. The changes required are not only in relation to industrial law but also to immigration law and policy, taxation and corporation law.

Tribunals and courts that deal with industrial legislation matters require the necessary resources to deal with matters expediently.

The ACT does have obligations around enforcement in the areas of workplace safety and long service leave. Currently, however, unions are unable to bring prosecutions in relation to breaches of the legislation in these areas. It is often the case that employers who do not pay the correct wages to their workers have also neglected to pay their long service leave payments, and yet we are unable to enforce the latter under the current regime. Furthermore, we are unable to prosecute the abuse and bullying matters that often sit alongside the underpayment or unfair dismissal of workers covered by our union under health and safety legislation.

These impediments are at odds with our general enforcement rights and should be remedied so that we can properly represent our members when they have been treated unlawfully in the workplace.

### **iii. the impact of poor practices, including but not limited to workplace health and safety practices, in group training, labour hire and other insecure employment arrangements on competing businesses; and**

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Contracting industries are highly competitive. Employers who start with the full intention of complying with all relevant workplace laws start to infringe them when they find that they cannot win work in a market that is competing on the basis of wage theft and poor safety standards.

Poor service standards in relation to security and cleaning services have a negative impact upon public safety and amenity.

#### **iv. the impact on long-term workforce needs of replacing permanent employees, apprentices and trainees with casualised labour hire workers.**

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Employers are often very keen to divest themselves of the responsibility of employing a long-term workforce when savings can be made by embracing a rotating workforce of generally young, inexperienced, and otherwise vulnerable workers who are not in a position to demand better wages and conditions for the work they do.

With the crisis in our vocational training and apprenticeships system, we are creating a skills and qualifications gap that is beginning to pose a significant threat to our economy. The focus must be on improving job quality, security and dignity at work, and improving training opportunities so that we have a robust skilled and empowered workforce to meet the needs of our increasingly service-based economy into the future.

### **3. In making recommendations, the Inquiry should have regard to matters including:**

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#### **i. the limits on the ACT Government's legislative and regulatory powers in relation to industrial relations and related matters;**

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The ACT Government is constrained in creating legislation in the field of industrial relations. This does not mean however that it is completely powerless. The purchasing power and legislative powers of ACT Government can be used to improve employment standards in areas where existing protections are insufficient or absent.

All grants, licences and contracts issued by Government have conditions placed upon their issue. Employment standards impact upon the deliver to the provision of the service, licence or contract to which the grant, licence or contract relates.

There is scope therefore to attach particular requirements relating to employment standards to anything that our Government funds or regulates.

Registered organisations such as United Voice may take legal action to enforce the provisions of the Fair Work Act and the Awards and Agreements that are made in accordance with the ACT. We don't however have a right to enforce territory based legislation that relates to employment standards.

For example employee entitlements under the ACT Portable Long Service Leave Act and the Workplace Health and Safety Act. Workers have an expectation that their Union will be able to enforce their workplace rights where they are rights under federal or territory laws.

## **ii. the extent to which the ACT Government's tendering and procurement arrangements are and could be used to encourage best practice in industries where insecure work arrangements have become common;**

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The ACT Government has in the past and continues to place industrial relations obligations on companies tendering for work. The lack of the ability to audit and apply sanctions has been a significant gap which should be addressed.

The Commonwealth Cleaning Guidelines is one example of regulations that were attached by the federal government to procurement via the Financial Management Act but could had equally have been attached to any other piece of existing legislation.

The improvements contained in the Guidelines included above-award rates of pay, job security on contract change, union information during inductions, training provisions and provisions concerning equipment and supplies. A similar instrument could be introduced by the ACT Government to improve employment practices in the territory.

The recent review of ACT school cleaning contracts the Education Directorate increased its requirements to ensure safe workplaces, increased opportunities for the education of workers in relation to their rights and strong protections against tax avoidance and any labor scheme which would serve to obscure employment rights.

## **iii. regulation in other Australian jurisdictions and in other countries, including how other jurisdictions regulate group training and labour hire;**

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United Voice recommends the ACT enact labour hire reform including the institution of a licensing scheme covering labour hire and subcontracting operators. Such a scheme should include the capacity to undertake audits regarding compliance with employment standards, taxation and superannuation payments; and to investigate allegations of breaches and impose penalties. It should also include a 'fit and proper' persons test for all operators and directors. We invite the ACT government to consult our various submissions that deal with labour hire reform.<sup>13</sup>

## **iv. regulatory mechanisms to meet the objective of protecting the rights of vulnerable workers, and the potential impact of any regulatory regime on ACT businesses;**

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<sup>13</sup> Senate Education and Employment References Committee inquiry into Corporate avoidance of the Fair Work Act:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Avoidance\\_of\\_FairWork/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Avoidance_of_FairWork/Submissions), submission 203; Victorian inquiry into labour hire and insecure work:

<http://economicdevelopment.vic.gov.au/inquiry-into-the-labour-hire-industry/submissions>, submission 98

### **Address sham contracting**

The Government must address the longstanding issue of sham contracting. Over one million workers in Australia are employed as independent contractors, but approximately 40% of these admit that, in reality, they are dependent on their employers, with no real authority or control over their own work.<sup>14</sup> Although the *Fair Work Act* makes it unlawful for employers to knowingly misrepresent an employment relationship as a contracting relationship, the existing provisions are not adequate to stop the practice.

### **Restrict or abolish the use of ABNs by temporary migrant workers in industries where exploitation is rife such as cleaning and hospitality**

There should be greater scrutiny on the use of Australian Business Numbers (ABNs) in industries where high levels of sham contracting occur, such as the contract cleaning and security industries. In particular, more scrutiny should be given to holders of international student and holiday-making visas applying for ABNs. The purpose of these visas, to facilitate education and extended holiday-making, is not compatible with the establishment of an Australian business, and there are rarely legitimate reasons why holders of these visas should need to seek an ABN. More tightly regulating ABNs as a possibility for international students and Working Holiday Makers is a simple measure that will make it far harder for employers to coerce these migrant workers into sham contracting arrangements.

### **Institute a right of stay for temporary migrant workers who display indicators of exploitation**

Under the laws as they presently stand, the barriers to exploited temporary migrant workers receiving any sort of protection on a whistle-blower basis are significant: visa-holders must rely on either ministerial discretion or the high evidentiary hurdle presented by the statutory criteria for human trafficking or slavery. In practice, neither of these mechanisms are used with any regularity. Temporary migrant workers should be accorded a right of stay while they bring claims against an exploitative employer. This right of stay should come into effect even if the visa holder has breached a condition of their visa – it is important that employment rights not be erased by immigration law, particularly in light of the fact that employers strategically coerce their employees to breach visa conditions in order to silence them.

### **A communication firewall between the Department of Immigration and Border Protection (DIBP) and the Fair Work Ombudsman (FWO)**

A communication firewall should be enacted in such a way that the FWO (or any other government agencies – such as the ATO – or non-governmental organisation – such as a university) is not required to report visa breaches to the DIBP that could result in the unduly precipitated departure of a visa worker.

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<sup>14</sup> *Lives on Hold*, 35

## **v. the powers of the Commonwealth as they extend to work visas;**

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It is becoming increasingly common for employers to avoid both the spirit and the law of the Act by engaging workers on temporary visas. A string of inquiries into various aspects of Australia's visa system has unfortunately failed to initiate any real legislative change in this area.

Too often, migrants' rights in the workplace are subordinated by their immigration status. Temporary work visas are regulated in a way that places disproportionate restrictions on the visa holder, rather than on the employer. In turn, the penalties for breaching a visa condition disproportionately affect the worker rather than the employer in a manner that is insensitive to the power dynamics between these two actors. The punitive, rather than protective impetus of visa regulation in regard to workers themselves leads to situations in which exploited workers who have been compelled to breach a condition of their visa can lose the right to remain and work in Australia. A common instance of this is when student visa holders work more than 40 hours per fortnight on the orders of their employer, and are afraid to come forward out of fear that their visa will be terminated. Effectively, temporary migrant workers are punished for the illegal acts of their employers.

## **vi. the ability of any ACT regulatory arrangements to operate effectively in the absence of a national approach; and**

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The ACT was the first jurisdiction to legislate to create a portable long service leave scheme for the cleaning industry. It has been extended to cover the security industry, community service industries and most recently aged care. It has proved itself to be an outstanding success. Similar schemes have now been adopted in NSW and Queensland with Victoria and Tasmania soon to follow suit.

The ACT Government has shown a preparedness to lead the way in relation to range of issues renewable energy and stamp duty as recent examples. We should lead the way in creating secure and well paid employment.

## **vii. Australia's obligations under international law, including International Human Rights Conventions and International Labour Organisation Conventions.**

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Alongside our ratification of a number of key ILO treaties that enshrine workers' rights internationally, Australia has committed to the ILO's Decent Work Agenda. The characteristics of decent work include:<sup>25</sup>

- Productive and secure work
- Ensures respect of labour rights

<sup>25</sup> ILO (2006) *Decent Work: Objectives and Strategies*, cited in Skrivankova, K. (2010), p. 17.

- Provides an adequate income
- Offers social protection
- Includes social dialogue, union freedom, collective bargaining and participation

These characteristics are unfortunately not all being upheld in Australia, and the very necessity of the present ACT inquiry is evidence of that. Of particular concern to us is Australian governments' and businesses' failure to respect Conventions C87 (*Freedom of Association and Protection of the Right to Organise*)<sup>16</sup> and C98 (*Right to Organise and Collective Bargaining*)<sup>17</sup>.

Australian governments and businesses must take an active role in upholding the human rights of workers, consistent with the three pillars of the UN Guiding Principles on Business and Human Rights (UNGP) to which Australia is committed to implementing<sup>18</sup>:

- The State duty to protect human rights
- The Corporate responsibility to respect human rights, and
- Access to remedy for victims of business-related abuses<sup>19</sup>

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<sup>16</sup>

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312232:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO)

<sup>17</sup>

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312243:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO)

<sup>18</sup> AHRC (2016) 'Implementing the UN Guiding Principles on Business and Human Rights in Australia', *Australian Human Rights Commission*, 17 August 2016, accessible at:

<https://www.humanrights.gov.au/news/stories/implementing-un-guiding-principles-business-and-human-rights-australia>

<sup>19</sup> OHCHR (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, accessible at:

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Insecure Work Inquiry – Attachment 1

### Case Study 1 : Phillips Cleaning Service

Phillips Cleaning Service Pty Ltd (PCS) is a cleaning company which held around ten contracts with the ACT government. Its workforce is primarily composed of refugees with limited English literacy.

Through United Voice's engagement with the workers, it became apparent that many of the PCS workers were confused about who they worked for because of discrepancies between their pay slips, their bank account details and the name on their uniforms.

United Voice reviewed payslips, contracts, superannuation account statements and bank statements, and it became apparent to United Voice that PCS was engaged in a practice designed to avoid tax and workplace laws.

The set-up functioned in the following manner: workers would be employed by PCS but issued with pay slips stating that they were employed by a trust. The accountant for PCS would set up a second company. PCS would engage that company pursuant to a labour hire agreement. PCS would pay this company amounts in respect of the worker's wages which the company would pay onwards to the workers. At the conclusion of six to ten months the ATO would apply to wind up the company because of unpaid tax.

Throughout this period the true employer – PCS, underpaid the workers by a significant margin. The bulk of the underpayments were comprised by unlawfully standing workers down in school holiday periods while at the same time billing the Territory for work performed. United Voice instituted proceedings against PCS in the Federal Court of Australia in November 2015.

The rotation of entities allowed PCS to say, in response to any claim, that it was not the employer. When United Voice initiated proceedings to recover hundreds of thousands of dollars in unpaid wages this is precisely what they did. The concealment of an employment relationship exacerbates the vulnerability of workers.

Each site at which the workers were engaged was an ACT government site. The Education and Training Directorate was apprised of the entity rotation practice from June 2015 but was of the view that it lacked the power to address the practice. This case exposes the extent to which public procurement must be reformed to ensure that taxpayer dollars are not contributing to worker exploitation and tax fraud by unscrupulous contractors.

In late April 2017, United Voice's action in the Federal Court elicited a belated confession from the owner of the company that he was in fact the true employer at all times and a Court decision in favour of each of the employees<sup>1</sup>.

<sup>1</sup> *United Voice v Phillips Cleaning Services Pty Ltd* [2017] FCA 392

## Insecure Work Inquiry – Attachment 1

### **Case Study 2 : Overseas students in the cleaning industry**

United Voice has encountered widespread exploitation amongst the members of vulnerable migrant worker communities. One of these is the Bhutanese international student population in the ACT. Most of these workers' visas allow them to work a maximum of 40 hours per fortnight. Before encountering United Voice, these workers have usually had no experience of unions from their home country and possess only scant knowledge of Australian workplace laws. United Voice has assisted dozens of Bhutanese workers who have faced illegal treatment at work in the ACT.

#### **Pema's Testimony**

"The first job I worked in Australia was cleaning. It is hard physical work. I wasn't trained properly. I was only shown what to do by the other cleaner I was working with. It was very hard to get all the work done in the time we had. If we couldn't get the work done the supervisor would threaten us.

He would say hurry up and get that work finished or I'll have you deported. We knew he didn't have the power to do that but it was very awful to have someone make those sorts of threats.

After I had been working permanently with a cleaning company I had to go home to Bhutan as a family member had died. I told my employer.

Instead of offering his condolences or showing any consideration at all he just said, "Are you sure you are going back for a funeral?" as if I would make something like that up. My employer said that if I wanted to go I would have to resign. I did not know my rights so I resigned.

When I returned I got another job with a different company. The second cleaning company didn't pay our superannuation and told us not to join the union as it was a waste of money."

### **Case Study 3: Outback Jack Restaurant Chains**

Last year United Voice was approached by a worker from Outback Jacks, a franchised restaurant. This worker had been engaged as a chef under a 457 visa. The worker was made to pay a considerable sum to cover the full cost to sponsoring employer, ostensibly to cover the costs of his visa application. This cost is, by law, meant to be borne by the sponsoring employer.<sup>2</sup>

After a year or so the franchise business was sold. The worker had to reapply for sponsorship with the new franchisee. The new employer handed the matter to a migration agent engaged by Outback Jacks' head office. Once more, our member was wrongfully made to pay \$2000 for sponsorship application costs.

<sup>2</sup> The Migration Amendment (Charging for a Migration Outcome) Act 2015 introduced a criminal offence and civil penalty provisions for sponsors and other third parties who engage in "payment for visas" activity.

## Insecure Work Inquiry – Attachment 1

As the sponsorship application was in process, our member's wage payments became irregular. Underpayments and non-payments were happening to other staff too, which resulted in some people leaving their jobs at Outback Jacks. As a result of the understaffing prompted by the franchisee's wage theft, our member was coerced into performing more and more unpaid hours so that the business could keep operating. This coercion was perpetrated by the employer by him threatening to wind up the business – a scenario that would have resulted in our member not receiving his wages and entitlements at all. This situation ended with our member having to return to his country of origin, Indonesia, as he was simply accumulating debts by staying in the ACT and being underpaid.

In the Outback Jacks case, the employer was able to instrumentalise the conditions of our member's immigration status and that of his former colleagues in order to avoid having to pay them. In this case, as in many others that have come to light through numerous national and state-based inquiries into migrant worker exploitation, our labour and immigration systems' entrenchment had the effect of posing insurmountable barriers to seeking remedies against exploitation.

The Outback Steakhouse franchise has been embroiled in another wages scam, this time targeting young workers through an unscrupulous registered training organisation. In April 2017, a Fairfax investigation revealed that the restaurant chain was signing up its young workers – many of them school leavers – to government-subsidised bogus hospitality traineeships that were deployed to reduce their wages to half that of the award.<sup>3</sup>

In May 2017 United Voice learnt that the Outback Jacks restaurant at the centre of our member's complaint was again sold. No monies owed to the workers have been recovered.

### Case Study 4: 457 Visa workers – Thai and Foot Massage

United Voice has also witnessed vulnerable workers being subjected to particularly serious forms of forced labour in the ACT.

In March 2016, United Voice provided industrial assistance to four workers from the Philippines who were working at a massage shop in Belconnen (another four were assisted by pro bono lawyers). The workers had been recruited in Cebu and Manila by a Canberra businessman who arranged their sponsorship under the 457 visa programme. They were promised a salary of \$52,000 per year plus superannuation, and their contract stipulated working hours of 38 hours per week. Upon their arrival in Australia, however, they encountered substantially different conditions.

When they arrived in Canberra, they were transported by van to a house owned by the businessman's family. On arrival their passports were taken. The property had a second house in the backyard. The workers were directed to reside in the main house and were not permitted to enter the backyard or leave the premises. Their accommodation was crowded, with multiple workers sharing rooms. They understood that there was another group of workers staying in the house at the rear and were not allowed to interact with them.

<sup>3</sup> Patty, A. (2017) 'Outback Steakhouse accused of using training scheme to underpay staff', *The Sydney Morning Herald*, 20 April 2017, accessible at: <http://www.smh.com.au/business/workplace-relations/outback-steakhouse-accused-of-using-training-scheme-to-underpay-staff-20170404-gvdb3.html>

## Insecure Work Inquiry – Attachment 1

These instances of retention of identity documents and isolation corresponds to workers is one of the eleven indicators of forced labour as stipulated by the ILO.<sup>4</sup>

They commenced work as massage therapists on 25 June 2012. They were driven to and from work by a Minder who resided in the house. Each of the workers worked six days per week from 9am until 10:30pm. This amounted to 81 hours per week, or 162 hours per fortnight. On paper, each worker was paid the same fortnightly flat rate of \$1,800 after tax for 76 hours of work, a rate that did not reflect the excessive overtime they performed. Once each worker had received their pay they were driven to an ATM and made to withdraw \$800 to hand over to either the businessman or the minder. The cash back practice – most notoriously associated with the 7-11 wages scandal – operated for between nine and eighteen months. During the cash back period, each worker earned around \$6.17 per hour for 162 hours per fortnight – a significant underpayment. Of the remaining \$1000 the workers generally sent between half and two-thirds back to their families in the Philippines. We can see from this that the employer's treatment fulfils further indicators of forced labour, namely excessive overtime, withholding of wages, and abuse of vulnerability.

Eventually United Voice in collaboration with the Salvation Army assisted the workers to escape their employer and obtain bridging visas.

The company went into liquidation soon after the workers escaped many any recovery action for the underpaid wages impossible.

### Case Study 5: Crust Pizza franchise

United Voice has assisted delivery drivers working for a Crust Pizza franchise store in Gungahlin to recover thousands of dollars in unpaid wages.<sup>5</sup> The majority of these drivers are international students on temporary work visas. This case received extensive media coverage, and the head office of the Crust Pizza franchise publicly committed to undertaking an audit of its franchisees' stores, after which it assured the community that the Gungahlin incident was an isolated case.<sup>6</sup>

Months later, however, a similar incident of wage theft was raised at the Kingston, Conder, and Erindale Crust Pizza franchises, with workers being paid \$15/hour cash in hand<sup>7</sup> Here again, most of the workers affected were international students and young local workers, who are particularly vulnerable in the labour market.

<sup>4</sup> ILO (2012) *ILO Indicators of forced labour*, Special Action Programme to Combat Forced Labour, accessible at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)

<sup>4</sup> Peake, R. (2015) 'Gungahlin pizza store accused of underpaying drivers', *The Canberra Times*, 14 September 2015, accessible at: <http://www.canberratimes.com.au/act-news/gungahlin-pizza-store-accused-of-underpaying-drivers-20150907-gih2gl>

<sup>7</sup> Raggatt, M. (2016) 'Crust driver underpayment widespread in Canberra stores, assistant manager says', *The Canberra Times*, 2 April 2016, accessible at: <http://www.canberratimes.com.au/act-news/crust-driver-underpayment-widespread-in-canberra-stores-assistant-manager-says-20160323-gnpnld.html>

## Insecure Work Inquiry – Attachment 1

### **Case Study 6: The Canberra Southern Cross Club**

In October 2016, the Canberra Southern Cross proposed a new workplace agreement that would cut club workers' penalty rates down to the minimum rates in the Clubs Award. This agreement was voted down by the staff.

In February 2017, the Club drafted a second agreement that had some improvements and addressed some – but not all – of the workers' and the union's concerns. This agreement delayed any cut to penalty rates until July 2018. Despite the union's concerns, this agreement was voted up by the staff, who understood they had the option between cuts in 2017 or cuts in 2018.

United Voice informed the Fair Work Commission in May 2017 that it objected to the approval of the agreement, and in retaliation the Southern Cross Club made an application to the Fair Work Commission to terminate their current workplace agreement which would mean an immediate pay cut for club staff.

The Club then informed staff that if the new agreement is not approved, they would terminate their current agreement – in effect forcing them to support the new agreement, which cuts penalty rates from the level of the old agreement, and contains provisions that would mean further cuts if the Clubs Award is absorbed into the Hospitality Award – which Clubs ACT has applied to have done. The Club is a community club that receives grants from the ACT Government, and claims to care about its staff.

We are awaiting the decision of the Fair Work Commission.

### **Case Study 7 : Hospital Cleaning Contractor – Freedom of Association**

Earlier this year a woman who had been working for several years as a cleaning manager at Calvary Hospital came forward to officials from United Voice to discuss her experiences. She talked about the hard working cleaners that she worked with and their experience of being denied union representation by the contract-holder. She also explained the employer's response to United Voice providing the twenty four hours' notice as required by law to visit the workplace:

"The whole place was put on some sort of high alert. I'm not a union member myself but I didn't have an issue with anyone who wanted to join or to at least get some information. All of the cleaners were born overseas and I am sure that they didn't know much about the laws in Australia. The owner of the company would come to the hospital to try in some way to intimidate the officials.

The cleaners were told not to meet with the officials but if any of the cleaners did come to meet with the union officials the boss's sister-in-law who sometimes did casual work would sit in the meeting to act as a spy. It was awful and I hated it but I had to go along with it. It became clear to me why my employer didn't want anyone to know their rights or join the union, a little while later when I was instructed to cut the hours of hardworking and long standing employee without any legitimate reason what so ever. She had been told to clean a whole extra area as well as her own without any training in that area or any extra time allowed. When she couldn't do it they just sacked her on the spot."

## Insecure Work Inquiry – Attachment 1

### Case Study 9: TTM Security<sup>8</sup>

United Voice a United Voice member was employed by National Corporate Group Pty Ltd, trading as TTM Security, in February and March 2016 to work as a security guard at the Canberra Show and at the Mitchell racecourse. He received no site induction, superannuation forms or TFN declaration.

On 25 February 2016 the member worked a 12.5 hour shift from 8pm to 8:30am the following day. He was not given a meal break and had to insist on being allowed to go to the toilet. Further, he was given one 300ml bottle of water and was not shown where to refill it or given the opportunity to refill it.

On 28 February 2016 the member commenced work at the Canberra Show at 12pm and was expected to finish at 12pm. Towards the end of his shift he was advised that his replacement hadn't arrived so he was required to stay back until 7:30am. This shift lasted 21.5 hours in total.

He worked a further 7.5 hour shift on 5 March 2016 at short notice following an urgent request from the employer. On 8 March 2016 he set a time to come in to the office to sign the paperwork so that he could be paid. On 9 March 2016 he attended the office at the agreed time and was told the manager was not in. The employer offered to pay him in cash but he insisted on payment into his bank account.

The member returned to the office on 31 March 2016 to chase up his pay. He was told the manager didn't want to speak with him. Following a letter from the Union, he was finally paid a portion of the wages owed. Following the failure to pay wages in full United Voice commenced proceedings against National Corporate Group T/A TTM Security in the ACT Magistrates court.

Shortly after the commencement of the proceedings and service of process National Corporate Group changed its share structure and the owners sold it to a person in Queensland. The Registered office has since changed and the company has had no engagement in the proceedings. On 22 February 2017 the ACT Magistrates Court gave judgment against National Corporate Group Pty Ltd.

United Voice is advised that TTM Security provided security guards to the Canberra Show in 2017

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<sup>8</sup> *United Voice v National Corporate Group Pty Ltd* [2017] ACTMC (CS604/2016, Magistrate Morrison)  
*Canberra Times* 26 August 2016 Raiders, Hockey ACT Prominent Sponsor TTM Security in Liquidation

## United Voice Submission - Secure Local Jobs Package

### **Introduction**

United Voice represents the interests of workers employed in a wide range of industries and occupations including cleaners, security officers, early childhood educators, aged care workers and hospitality staff. We welcome the opportunity to comment on the ACT Government's proposed Secure Local Jobs Package on behalf of those we represent.

In addition to the comments we have included in this submission, as an affiliate of UnionsACT, we have been provided with a copy of the submissions made by them. We fully endorse their comments and the issues identified by it.

Given successive Governments' policy of outsourcing cleaning and security services, United Voice members have too often suffered the consequences of poor procurement decisions. Without a strong legislative framework, wages, employment conditions and safety are given insufficient weight in contract assessment. This assessment is particularly important given the labour intensive nature of the work that is covered by our members and is currently outsourced by Government.

Procurement officers and agencies purchasing services have selected contracts without proper regard to the impact on the workers engaged to provide services, as well as to a broader consideration of value for money.

The risk of engaging with companies with inadequate financial backing, a history of phoenixing and failure to allow for wage and legislative oncosts have been underestimated or ignored. These decisions have ultimately failed to produce value for money.

The additional costs to Government resulting from the need for increased contract management and remedial action have been significant. Furthermore, the impact that this has had on workers as a result of the poor decisions carried out in relation to poor safety standards, unpaid superannuation, unpaid wages, threats and coercion has been unconscionable.

We fully support the Introduction of the Secure Local Jobs Package as a means to provide a firm and transparent approach of not only ensuring compliance with current employment law, but to encourage a higher standard of ethical and safe business practices.

## **Coverage**

United Voice is pleased to see that two industries covered by our Union have been identified as industries which require coverage. We understand that these contracts will be covered by the Package irrespective of a threshold contract value.

The work for cleaners and security offices is ongoing. Cleaners and security officers often work the same pattern of work, in the same workplace and performing the same or very similar duties for many years, the only variable is companies they work for and therefore their employment conditions. Whether they work for an ethical and legally compliant employer or not comes about as a direct outcome of a procurement decision.

## **Local Jobs Code**

A strong and clear legislation is required to provide clarity and rigour. United Voice supports the establishment of a legislated Code.

We support the obligations that are anticipated by the legislation. These obligations will provide opportunities for vulnerable workers to learn about their rights and access union officials trained to assist them.

The provisions that bring about a central means of identifying and locating staff engaged to deliver services to Government provide obvious benefits to Government in meeting its own obligations relating to public and workplace safety.

## **IRE Certification**

United Voice supports the extension of the IRE Certification system and its inbuilt incentives for employer compliance with Code requirements.

It is in our members' interest that employers who comply with the legal obligations are rewarded for their conduct. It is also in their interest that a good employer record assists in the retention of current contracts or the ability to win new work.

The checking of information provided in the IRE at multiple points is an important element. It is also important to ensure that those carrying out the verification are able to obtain this information from a variety of sources.

The integrity of the audit process is vital. Auditors engaged under the Package have to operate completely independently from the companies that may be subject of the audit.

### **Labour Relations, Training and Workplace Equity Plan**

United Voice supports the proposal of the development of the Plan as well as the appointment of any successful contractors compliant with the Plan once submitted.

Too often the commitments made in the tender process do not ultimately form part of contractual obligation. Taking companies “at their word” has been a trap that clients have often fallen into during the assessment and contract execution processes.

The Plan must be incorporated into the terms of the final contract.

### **Compliance Unit**

This is in our Union’s view the most important element of the Package. For any measure to be effective it must be enforceable and must create both disincentives as well as incentives in relation to contractor performance.

#### **- Administrative Stream**

A well-functioning administrative stream will assist businesses in understanding their obligations and the processes involved. This element of the Package has the potential to produce savings for the Government and businesses by reducing duplication.

#### **- Policy Stream**

A constant understanding of the governmental policy that sits behind the Local Jobs Package and an ability to ensure its implementation are important ongoing functions.

### **Compliance and Enforcement**

To date this has been a major area of weakness for Government. For years the seeming inability by the Government to terminate contracts in relation to breaches of employment law has left many of our members in dispute with their employer.

The implementation of clear procedures for identifying breaches, and subsequently the application of proportionate sanctions without frustrating the regulatory powers which exist under current legislation, are welcome proposals.

This measure is far superior to the messy and ineffectual case-by-case approach historically taken when issues arise.

Neither the workers engaged to deliver the services to Government nor their employers have been sure of what to expect or the timeframes in which investigations might occur or action taken.

United Voice is concerned that breaches of employment law have not been given sufficient weight. Employment law cannot be treated as guidelines by employers or by those who are responsible for ensuring compliance with the contractors' obligations.

The details of the proposed legislation, the resources available to the compliance unit and an understanding of both industrial as well as contract law will be important to the overall success of the Secure Local Jobs Package.

Lyndal Ryan

ACT Branch Secretary

United Voice



## **United Voice Comments:** **Secure Local Jobs Code** **June 2018**

Thank you for providing us with the opportunity to comment on the drafted Secure Local Jobs Code Bill.

The ACT government has a long history of utilizing contractors to provide cleaning and security services to government, rather than directly employing public servants to perform these roles. Having taken the decision to outsource this work, the government has obligation to ensure that not only legal minimums are adhered to but that it uses its purchasing power to create secure local jobs as well as a level playing field for businesses.

The property services industry has a poor record of complying with even the minimum legislative standards in relation to employment and safety.

The workers in these industries are residents of the ACT region. Not only do they want to see their government translate its moral obligation to enhance their working lives but also for it to empower itself by delivering legislation in workers' interests.

### **Objectives of the Legislation**

A key objective of the legislation must be the creation of secure jobs for the citizens of the ACT and its region.

Local businesses will thrive in an environment which rewards ethical companies that create stable, well-paid jobs, rather than a situation in which a "race to the bottom" attitude is rewarded, and companies that short change workers in relation to safety and wages, win and retain government contracts.

### **Code Oversight, Compliance and Enforcement**

Regardless of the legislation that is ultimately created through this process, it will have no effect if it is not enforced.

The legislation identifies a number of industries that have a poor record of compliance with existing laws. The workers engaged in these industries are particularly vulnerable and need not only strong legislation, but effective enforcement mechanisms.

The compliance and administration unit must have the ability to investigate breaches of the Code, draw conclusions and take appropriate action. An ability to bring contractors and unions together to resolve industrial matters through conciliation may be of benefit to both parties to avoid sanctions or litigation.

There must be sufficient powers vested with the compliance unit to compel contracting agencies to provide the necessary information or to take the required action to ensure the effectiveness of the legislation.

### **Workers Need Union Access**

Many workers engaged in industries contemplated by the legislation, namely cleaners and security officers, are migrants to Australia. They work unsociable hours often in multiple jobs. English is often spoken as a second language.

Others face additional vulnerability because of their visa status. They need to not only know their rights but feel confident that any attempts they make to exercise those rights will not result in victimisation by the employer.

#### **a) Visits to the Workplace**

*"There were many problems at our workplace but we were too scared to contact the union's office in case our employer found out. When an official came to see us we were so relieved. All the problems just came flooding out."*

The Fair Work Ombudsman recently commented in a press release (29<sup>th</sup> May 2018) on a similar experience when meeting with cleaners in Melbourne.

*"The Fair Work Ombudsman commenced its investigation into the MCG's supply chain for cleaning staff in 2014 in response to media reports and intelligence suggesting significant compliance issues."*

*A key part of the investigation was a team of six Fair Work inspectors making a surprise visit to the MCG after the AFL preliminary final between Hawthorn and Port Adelaide in September 2014 to speak to cleaners."*

*Once inspectors made cleaners aware of their presence and the purpose of the visit, the workers inundated inspectors with their desire to tell their stories".*

#### **b) Workplace Meetings**

Existing workplace legislation has often been drafted with the notion that one workplace is controlled by one employer, where workers start work at the same time in the morning and finish at the same time in the afternoon. It is often assumed that workers have a common lunchbreak and access to a lunch room.

Traditional working hours do not apply in many modern workplaces and this is particularly true for cleaners and security officers. Isolation from other workers is common. Workers who generally work in isolation from one another need the opportunity to meet and share information and ideas with each other.

It is not unreasonable for workers to have a right to hold paid meetings during work hours at least once a year but more frequently where possible.

#### **c) Inductions**

Many issues can be avoided if workers are introduced to their union representatives as soon as they are employed. Unionized workplaces are better paid and safer. Workers need to be able to make an informed choice about joining their union at the earliest opportunity. This is particularly true for those workers who may not understand freedom of association rights under Australian Law.

The Australian Human Rights Commission in its 2015 Report Rights and Responsibilities noted the following:

*“At the Canberra Rights & Responsibilities public meeting, a cleaner who was originally from Angola told of her experience cleaning a Commonwealth building for over 30 years. She explained that during this time she had seen the treatment of cleaners get much worse, particularly in terms of knowing and understanding their right to join a union. Cleaners attending the meeting also stressed the importance of having this right set out in the Guidelines. This was especially important as many cleaners are women from culturally and linguistically diverse backgrounds who work at the bottom of the labour market and do not have ready access to information about freedom of association.*

*As noted by United Voice, while ‘rights may exist they are useless if they are not accessible rights.’*

Many cleaners and security officers are working under various types of visa arrangements. Information about the role of unions from their home countries and upon arrival in Australia is sparse or non-existent. It is vital that they are provided with the opportunity to join their union once they have commenced work.

*“We do not have unions in the country I come from. For many years we were treated badly by our employer who threatened us. He told us if we don’t work really hard he would have us deported. I was lucky enough to meet a security guard who was a member of the union and he helped me to learn about my union but I wish I had information about the union when I first started.”*

Pema – Cleaner, ACT

#### d) Paid Delegates Leave

The most effective means of workers having direct information regarding their rights and work as well as the means to enforce those rights is through the appointment of a workplace delegate. Once elected the delegate must have access to paid training in order to effectively fulfil this role. Too often employers fail to agree to the provision of paid leave for delegates to attend training or meetings that would enhance their skills. The ACT government allows time for elected delegates to participate in their respective unions and it is reasonable for the government to expect that contractors engaged in the provision of services to government adopt this standard.

### **Bargaining Rights**

Earlier this year, health unions learned that a company sub-contracted to provide services to the ACT government had made an application for an agreement, voted for by a small group of employees, to apply to a group of workers, yet to be employed, in a separate workplace. This is just one of the many ways employers have learnt to “game” the bargaining provisions of the Fair Work Act.

The proposed legislation must improve upon the current inadequate provisions of the Fair Work Act.

### **Delegates’ Rights**

For workers to build effective unions they need to be able to elect and support workplace delegates. Individuals who put their names forward as workplace delegates require support and training in order to meet the obligations of their roles.

Currently even minimum entitlements for paid delegates’ leave are difficult to obtain through bargaining. Employers resist providing paid leave where profit margins are low. A legislative requirement for companies to provide paid leave would ensure that all cleaning and security companies will include this leave requirement as a part of their costs.

### **You Can't Be Half Ethical**

Governments should not continue co-operating with companies that exploit, injure or fail to meet the standard of the Code across their entire business.

There are companies willing to be held to higher standards if in doing so their business is allowed to prosper through the ability to win government work. The client sets the standards for companies seeking to do businesses with it.

Employees working for the same company experience completely different approaches to industrial relations depending on the standards set by terms of the contract set by each client. There have been many instances of companies being recognised for the high standards of employment in some worksites, while they are being investigated or indeed facing prosecution, for their employment practices in a different worksite.

The community expects ethical and consistent conduct from companies holding contracts with the government. Workers engaged by companies should not have to experience variable employment standards under the same employer.

Companies seeking to win or retain ACT Government contracts must be willing to commit to the application of the standards of the Code across their entire business.

### **Penetrating the Supply Chain and the Corporate Veil**

Multitier contracting, phoenixing, sub-contracting, sham-contracting and engagement through labour hire companies are common employment practices used by contracting companies to obscure employment relationships and avoid obligations.

Complex corporate structures are often established to avoid tax obligations or other liabilities.

The Code legislation must be robust enough to work throughout the supply chain and hold the genuine controllers of contracted supply companies accountable.