INQUIRY INTO THE EXTENT, NATURE AND CONSEQUENCE OF INSECURE WORK IN THE ACT

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH AFFAIRS

MAY 2018

Report 3
COMMITTEE MEMBERSHIP

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Mrs Elizabeth Kikkert MLA  Deputy Chair
Mr Chris Steel MLA  Member
Mr Andrew Wall MLA  Member

SECRETARIAT

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Mrs Kristy Bryden  Acting Secretary (to 28 July 2017)
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RESOLUTION OF APPOINTMENT

On 13 December 2016, the ACT Legislative Assembly agreed by resolution to establish legislative and general purpose standing committees to inquire into and report on matters referred to them by the Assembly or matters that are considered by the committees to be of concern to the community, including:

A Standing Committee on Education, Employment and Youth Affairs (the Committee) to examine matters related to early childhood education and care, primary, secondary, post secondary and tertiary education, non-government education; industrial relations and work safety; and youth services.

The Legislative Assembly agreed that each committee shall have power to consider and make use of the evidence and records of the relevant standing committees appointed during the previous Assembly. ¹

TERMS OF REFERENCE

The Standing Committee on Education, Employment and Youth Affairs shall consider the following matters:

1. The extent, nature and consequence of insecure work in the ACT, including but not limited to:
   i. the use of group training, labour hire and sham contracting in particular industries and in the supply chains of particular sectors;
   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;
   iii. allegations of exploitation, harassment and other mistreatment of workers employed by group training organisations and labour hire companies;
   iv. the use of working visas, particularly in insecure, low paid, unskilled or semi-skilled jobs and trades;
   v. allegations related to the exploitation of vulnerable classes of workers including working visa holders, young people, the under-employed and migrants;
   vi. the impact of insecure work on workers, their families and relationships, and on the local community, including financial and housing stress; and
   vii. the impact of insecure work arrangements on vulnerable workers including young people, the unemployed and under-employed, migrants and short term visa holders.

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

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;

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

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

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

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

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;

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

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;

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

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

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

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**1 INTRODUCTION**

1.1 The Committee initiated this inquiry to find out more about how a range of work and employment arrangements operate in the ACT, including the labour hire industry, and the extent and nature of insecure work in the ACT.

1.2 The Committee wanted to explore the consequences for ACT workers, employers and the community of the shift away from traditional Australian full-time, ongoing employment structure to alternative forms of employment, such as casual employment and independent contracting.

**CONDUCT OF THE INQUIRY**

**SELF-REFERRAL**

1.3 On 28 March 2017, the Committee Chair, Mr Michael Pettersson MLA made a statement to the Legislative Assembly advising the EEYA Committee’s decision to conduct an inquiry into the matters set out in the Terms of Reference.

**SUBMISSIONS AND DISCUSSION PAPER**

1.4 The Committee advertised for submissions to the Inquiry, closing on 1 May 2017. In late April 2017 the Committee extended the closing date for submission to 30 June 2017. Two late submissions and two supplementary submissions received after 30 June 2017 were accepted by the Committee.

1.5 As part of the of the inquiry process, a Discussion Paper\(^2\) was prepared to provide additional information about the terms of reference and some of the key issues the EEYA Committee wished to address, with the aim of assisting individuals and organisations with the preparation of submissions. A listing of submissions received and published by the Committee is at Appendix A.

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HEARINGS

1.6 On Friday 8 September, Thursday 12 October and Thursday 19 October 2017 the Committee held public hearings and heard evidence from a range of witnesses. A list of all witnesses that appeared at the hearings is at Appendix B.

RELATED INQUIRIES

1.7 As identified in the Committee’s May 2017 Discussion Paper, this Inquiry follows a number of other parliamentary, government and industry inquiries into the labour hire industry and the issues of insecure work. Reports on these inquiries include the 2016 Victorian Inquiry into the Labour Hire Industry and Insecure Work, the South Australian parliamentary committee 2016 Inquiry into the Labour Hire Industry, the Queensland parliamentary committee 2016 Inquiry into the practices of the labour hire industry in Queensland and the 2012 Independent Inquiry into Insecure Work in Australia commissioned by the Australian Council of Trade Unions (ACTU) and chaired by former Deputy Prime Minister Brian Howe.

CONCLUSIONS

1.8 The Committee was unable to reach agreement on recommendations arising from this inquiry. Committee Members have presented additional comments in accordance with standing order 251 to allow for the differing views of the Committee to be recorded. Additional comments can be found in Appendix C.

Mr Michael Pettersson MLA

Chair

1 May 2018

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Appendix A  Submissions and additional information received by the Committee

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<th>Submission Number</th>
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<tr>
<td>1</td>
<td>Maritime Union of Australia</td>
<td>28 April 2017</td>
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<td>2</td>
<td>Shop, Distributive and Allied Employees' Association NSW &amp; ACT</td>
<td>14 June 2017</td>
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<td>4b</td>
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<td>21 November 2017</td>
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<tr>
<td>5</td>
<td>Enabled Employment</td>
<td>28 June 2017</td>
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<td>6</td>
<td>1300 Apprentice</td>
<td>29 June 2017</td>
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<td>Maurice Blackburn Lawyers</td>
<td>30 June 2017</td>
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<td>Women's Centre for Health Matters</td>
<td>30 June 2017</td>
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<td>10</td>
<td>Master Builders Association ACT</td>
<td>30 June 2017</td>
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<td>Canberra Business Chamber</td>
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<td>21</td>
<td>ACT Council of Social Service</td>
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<td>24</td>
<td>Abigail Nelson</td>
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<td>25</td>
<td>Beck Edwards</td>
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<td>26</td>
<td>Tracey Yurtbiliar</td>
<td>20 June 2017</td>
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<td>27</td>
<td>Charles Campbell Macknight</td>
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<td>28</td>
<td>Linda Mitchell</td>
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<td>Construction, Forestry, Mining and Energy Union (ACT Branch)</td>
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<td>34</td>
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<td>36</td>
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<td>37</td>
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<td>39</td>
<td>David Allen</td>
<td>24 February 2018</td>
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Tabled Documents


- RCSA, StaffSure, a single point of trust for buyers and users of workforce services, available at: https://www.rcsa.com.au/documents/products/RCSA_StaffSure.pdf [provided in response to a Question Taken on Notice, 19 October 2017, transcript p.193.]

Answers to Questions Taken on Notice

Friday 8 September

- Minister for Workplace Safety and Industrial Relations – Asked by Mr Pettersson – Workers’ compensation data.
- Minister for Workplace Safety and Industrial Relations – Asked by Mr Steel – Job outcomes for traineeships/apprenticeships.
- Minister for Workplace Safety and Industrial Relations – Asked by Mr Wall – ACT Government use of Labour Hire.
- ACT Public Sector Standards Commissioner – Asked by Mr Pettersson – ACT Public Service employment statistics.
- ACT Public Sector Standards Commissioner – Asked by Mr Steel – Health and Education Directorate non-ongoing positions.

Thursday 12 October 2017

- Master Builders Association – Asked by Mrs Kikkert – female participants in the Kids Assist.
STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH AFFAIRS

- Master Builders Association – Asked by Mr Steel – mandatory casual conversion clauses.
- Master Builders Association – Asked by Mr Steel – labour hire firms in the ACT and casual labour hire employment.
- Legal Aid ACT – Asked by Mr Steel – Number of young people seen by Legal Aid ACT in relation to employment matters.
- Legal Aid ACT ACT – Asked by Mr Steel – justifiable reasons for reduction in shifts for casual workers.
- Legal Aid ACT ACT – Asked by Mrs Kikkert – Legal Aid ACT client numbers from culturally and linguistically diverse backgrounds (including copy of Cultural Liaison Officer’s Progress Report).

Thursday 19 October 2017

- APSCo – Asked by Mr Wall – Payroll tax changes.
- RCSA – Asked by Mr Steel – labour hire licensing and StaffSure Certification.
- FECCA – Asked by Mr Steel – Refugee Council reports of relevance.
Appendix B  Public hearings - witnesses appearing

Friday 8 September 2017

Unions ACT

- Alex White, Secretary

ACT Regional Building and Construction Industry Training Council

- Vince Ball, Executive Director

ACT Council of Social Services (ACTCOSS)

- Susan Helyar, Director
- Geoff Buchanan, Research Manager

Private individual

- Linda Mitchell

Private individual

- Tracey Yurtbilir

Apprentice Employment Network (AEN) NSW & ACT

- Jason Sultana, Executive Officer AEN
- Jim Whiteside, Treasurer AEN & General Manager – Australian Training Company.

Women’s Centre for Health Matters

- Ms Emma Davidson, Deputy CEO

Youth Coalition of the ACT

- Hannah Watts, Sector Development Director
- Rebecca Cuzzillo, Policy Director
- Taylor Kenny, Sector Development and Policy Officer

Minister for Workplace Safety and Industrial Relations

- Rachel Stephen-Smith MLA, Minister for Workplace Safety and Industrial Relations
- Mr Michael Young, Executive Director, Workplace Safety & Industrial Relations, CMTEDD
- Mr George Tomlins, Executive Director, Capital Works, CMTEDD
- Mr David Miller, Director, Skills Canberra, CMTEDD
- Mr Greg Jones, ACT Work Safety Commissioner, Director, Construction, Environment and Workplace Protection, CMTEDD

ACT Public Service Standards Commissioner

- Ms Bronwen Overton-Clarke, ACT Public Sector Standards Commissioner, CMTEDD
- Mr Russell Noud, Director, Public Sector Workplace Relations, CMTEDD
Standing Committee on Education, Employment and Youth Affairs

- Mr George Tomlins, Executive Director, Capital Works, CMTEDD

Maritime Union of Australia
- Nicola Maher-Boyle, Executive Legal Adviser

Thursday 12 October 2017

Master Builders Association of the ACT (MBA)
- Michael Hopkins, Acting CEO
- Cameron Spence, Director Industrial Relations

Enabled Employment
- Jessica May, CEO

Community and Public Sector Union (CPSU)
- Amy Knox, Field Organiser, Political and Community Campaigning
- Alistair Waters, CPSU National President

Legal Aid ACT
- John Boersig, CEO

National Tertiary Education Union (NTEU)
- Lachlan Clohesy, Organiser, ACT Division

Private individual
- Mr Robert Easterbrook

Housing Industry Association (HIA)
- Greg Weller, Executive Director, ACT & Southern NSW
- David Humphrey, Senior Executive Director, Business Compliance and Contracting
- Kristie Burt, Workplace Advisor, ACT & Southern NSW

Thursday 19 October 2017

Federation of Ethnic Communities’ Councils of Australia (FECCA)
- Dr Emma Campbell, Director
- Dr Janecke Wille, Policy and Project Officer

CFMEU
- Dean Hall, ACT Branch Secretary
Australian Industry Group (Ai Group) [Via Phone hook-up]

- Mr Stephen Smith, Head of National Workplace Relations Policy

Canberra Business Chamber

- Mrs Robyn Hendry, CEO
- Mrs Lucie Hood, Workplace Relations Manager

The Association of Professional Staffing Companies in Australia (APSCo Australia)

- Ms Julie Mills, Managing Director
- Ms Anna Elliott, Partner, Squire Patton Boggs

Recruitment and Consulting Services Association (RCSA) [Via Phone hook-up]

- Mr Charles Cameron, CEO
Appendix C Dissenting reports/additional comments

Additional comments

- Additional comments presented by Mr Pettersson MLA and Mr Steel MLA.

Dissenting report

- Dissenting report presented by Mr Wall MLA and Mrs Kikkert MLA.
INQUIRY INTO THE EXTENT, NATURE AND CONSEQUENCE OF INSECURE WORK IN THE ACT
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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;

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

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

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

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RECOMMENDATIONS

RECOMMENDATION 1

3.14 The Committee recommends that the ACT Government collect data that allows for the identification of the prevalence and nature of labour hire employment and insecure work within the ACT.

RECOMMENDATION 2

3.53 The Committee recommends that the ACT Government advocate to the Australian Government that there should be no impediments to parity clauses in enterprise agreements that would prevent labour hire employees being covered by the hosts enterprise agreement.

RECOMMENDATION 3

3.89 The Committee recommends that the ACT Government join the Victorian and South Australian Governments in advocating via the Council of Australian Governments (COAG) process for the national adoption of a labour hire licensing scheme.

RECOMMENDATION 4

3.90 Acknowledging that a national labour hire licensing scheme may take time to develop, or not occur at all, the Committee recommends that the ACT Government introduce an ACT-specific labour hire licensing scheme. This should take into consideration the arrangements in other states.

RECOMMENDATION 5

3.107 The Committee recommends that, to obtain a license under the proposed ACT labour licensing scheme, the labour hire operator would need to provide identifying details of the business in which they operate. They would also need to demonstrate they meet the below criteria:

- The business/company and its key personal must pass an objective ‘fit and proper person test.’ Such a test would consider if the company or key personnel had any previous breaches of occupational health and safety laws, any past convictions involving fraud, dishonesty or violence, and any past involvement in insolvent businesses.

- The business must demonstrate via administrative records that it pays its employees in accordance with at least the minimum rates specific in the relevant industrial instrument.
- The business must be registered with the Australian Tax Office and be deducting taxation and remitting superannuation on behalf of employees.
- If the business provides accommodation, the business must demonstrate the accommodation meets standards required under the applicable laws and regulations.
- The business must be registered with WorkSafe ACT and paying any required premiums.
- The business must demonstrate its systems for complying with workplace health and safety legislation and ensuring the safety of workers provided to host organisations.
- The business must be able to demonstrate they have the necessary capital requirements to meet any liabilities that might be induced as a result of their operations.
- The business must demonstrate compliance with federal migration laws.

**Recommendation 6**

3.108 The Committee recommends that, in establishing the veracity of the above criteria, the ACT Government should consult with relevant stakeholders, including by not limited to the relevant employer groups and trade unions.

**Recommendation 7**

3.109 The Committee recommends that a labour hire operator meeting the licensing criteria would have to pay an initial license fee and an annual renewal fee for their license.

**Recommendation 8**

3.110 The Committee recommends that, accompanying the introduction of a labour hire licensing scheme, host companies should be subject to a legal obligation to use only licensed labour hire providers.

**Recommendation 9**

3.111 The Committee recommends that the ACT Government maintain a public register of all licensed labour hire operators so as to assist host companies with identifying if a labour hire provider is licensed.

**Recommendation 10**

3.112 The Committee recommends that ACT Government establish a statutory authority with responsibility for all ACT industrial relations matters. This authority would be responsible for administering the labour hire licensing
scheme and could take responsibility for other industrial relations inspection and compliance powers, such as long service leave and workers compensation.

**Recommendation 11**

3.113 The Committee recommends the ACT Government request WorkSafe ACT to prepare a report dealing with existing legal or practical obstacles to the effective enforcement of workplace health and safety duties as they relate to labour hire.

**Recommendation 12**

3.118 The Committee recommends that the ACT Government ensure all agents licensed under the *Agents Act 2003* (ACT) have a ‘Working with Vulnerable People’ clearance where they are likely to be working with clients who fall within the definition of Vulnerable People under the *Working with Vulnerable People (Background Checking) Act 2011*.

**Recommendation 13**

3.169 The Committee recommends that the ACT Government introduce mandatory health and safety requirements for any Group Training Organisations receiving ACT Government funding.

**Recommendation 14**

5.31 The Committee recommends that the ACT Government act as a sponsor of last resort for visa holders employed in the ACT undergoing industrial disputes.

**Recommendation 15**

5.53 The Committee recommends that the ACT Government introduce licensing or certificates to protect charity collection workers.

**Recommendation 16**

6.30 The Committee recommends that ACT Government consider creating a new criminal offence of wage theft in the cases of deliberate underpayment of wages.

**Recommendation 17**

7.20 The Committee recommends that the ACT Government extend portable long service leave arrangements to additional sectors and industry groups.

**Recommendation 18**

7.39 The Committee recommends that the ACT Government implement a certification system for employers who employ five or more young people to improve work health and safety standards.

**Recommendation 19**
7.63 The ACT Government should advocate for the Australian Government to implement its 2016 election commitments to increase the Fair Work Ombudsman’s investigatory powers and to increase penalties under the *Fair Work Act 2009*.

**Recommendation 20**

7.65 The Committee recommends that the ACT Government request additional Fair Work Ombudsman inspectors be based in the ACT.

**Recommendation 21**

7.66 The Committee recommends that the ACT Government request that the Fair Work Ombudsman undertake a compliance audit of the ACT residential building sector to determine the level of compliance and to identify the likely existence of sham contracting.

**Recommendation 22**

7.77 The Committee recommends the ACT Government implement, as matter of urgency, the Getting Home Safely recommendation regarding public register of Notices/infringements related to workplace health and safety/workers compensation for all sectors, not just construction.

**Recommendation 23**

7.87 The Committee recommends the ACT Government advocate via the Council of Australian Governments (COAG) process for the Australian Government to ratify the International Labour Organisation, Labour Clauses (Public Contracts) Convention, 1949 (No.94).

**Recommendation 24**

7.88 Acknowledging that it may take time for the Australian Government to ratify Convention 94, or that it may not occur at all, the Committee recommends that the ACT Government amend the *Human Rights Act 2004* (ACT) to incorporate the standards articulated in this convention.

**Recommendation 25**

7.89 The Committee recommends the ACT Government amend the *Human Rights Act 2004* to explicitly include rights relating to industrial relations. This should give particular consideration to the eight fundamental conventions outlined by the International Labour Organisation, which include:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Recommendation 26

8.22 The Committee recommends that the ACT Government work with unions, teachers and curriculum professionals to include workplace rights and workplace safety in the ACT senior secondary curriculum.

Recommendation 27

8.23 The Committee recommends that, at point of arrival or engagement, the ACT Government require employers and/or universities to provide compulsory ACT Government approved information sessions to migrants on 457 visas and international students on their workplace rights and the industrial relations framework.

Recommendation 28

8.24 The Committee recommends that the ACT Government consider further funding measures to provide assistance to temporary visa workers, including the provision of employment rights information to international students via an entity with relevant experience providing employment rights information.

Recommendation 29

8.75 The Committee recommends that the ACT Government trial a full time relief teacher role.

Recommendation 30

8.98 The Committee recommends that the ACT Government, in conjunction with affected employees and their representatives, should review available data on the use and extent of labour hire, casual and fixed term employment arrangements in the ACT Public Service in order to identify areas where these employment arrangements can be minimised, and implement alternatives.

Recommendation 31

8.99 The Committee recommends that the ACT Government should not use labour hire.

Recommendation 32
8.100 The Committee recommends that the ACT Government cease using fixed-term contracts.

**Recommendation 33**

8.101 The Committee recommends that the ACT Government introduce stronger policies to limit keeping ACTPS employees on multiple non-ongoing contracts and create clear pathways for permanent employment and career progression.

**Recommendation 34**

8.117 The Committee recommends the ACT Government utilise direct employment as a default for service provision such as school and hospital cleaning.

**Recommendation 35**

8.152 The Committee recommends that ACT Government establish a procurement code that lays out standards and principles that must be met by successful tenders for a range of contracts with ACT Government directorates and agencies.

**Recommendation 36**

8.169 The Committee recommends that the ACT Government, in consultation with the community sector, act to reduce the prevalence of insecure work within the community services sector as a central part of implementing the ACT Community Services Industry Strategy 2016-2026.

**Recommendation 37**

8.175 The Committee recommends the ACT Government institutionalise genuine tripartite mechanisms with unions and business across its various initiatives and public institutions to strengthen dialogue and cooperation.
1 INTRODUCTION

1.1 The Committee initiated this inquiry to find out more about how a range of work and employment arrangements operate in the ACT, including the labour hire industry, and the extent and nature of insecure work in the ACT.

1.2 The Committee wanted to explore the consequences for ACT workers, employers and the community of the shift away from traditional Australian full-time, ongoing employment structure to alternative forms of employment, such as casual employment and independent contracting.

FOCUS OF THIS REPORT

1.3 Whilst the Committee has outlined matters raised in evidence that go beyond the remit of the ACT Government, the Committee has focused its substantive commentary only on areas in which the ACT Government could affect change.

RELATED INQUIRIES

1.4 As identified in the Committee’s May 2017 Discussion Paper, this Inquiry follows a number of other parliamentary, government and industry inquiries into the labour hire industry and the issues of insecure work. Reports on these inquiries include the 2016 Victorian Inquiry into the Labour Hire Industry and Insecure Work, the South Australian parliamentary committee 2016 Inquiry into the Labour Hire Industry, the Queensland parliamentary committee 2016 Inquiry into the practices of the labour hire industry in Queensland and the 2012 Independent Inquiry into Insecure Work in Australia commissioned by the Australian Council of Trade Unions (ACTU) and chaired by former Deputy Prime Minister Brian Howe. That material has informed the Committee’s deliberations on the matters raised in evidence.
1.5 The Committee does not intend to cover the same material again and has reviewed the material with a focus on concerns relevant to the ACT.

1.6 Below the Committee has provided an update on the progress of legislative changes in other Australian jurisdictions in relation to labour hire regulation.

LABOUR HIRE LICENSING

1.7 Following local inquires, Bills for the implementation of labour hire licensing were introduced into the Queensland, South Australian and Victorian parliaments.

1.8 As at February 2018 the Victorian Labour Hire Licensing Bill 2017 had passed the Victoria Legislative Assembly and was introduced into the Victorian Legislative Council.\(^6\) Both Queensland and South Australia have passed Labour Hire Licensing Acts with legislation due to commence in April 2018 and March 2018 respectively.

1.9 In regards to coverage, the Queensland and South Australian schemes apply across all industries in those States. The proposed Victorian scheme goes further than recommended by the Victorian Inquiry, imposing licencing requirements on all labour hire firms, not just those in the meat, horticulture and cleaning industries.

1.10 The terms of the licences vary from one year in Queensland to three years in Victoria and indefinitely (until surrendered or cancelled) in South Australia. Reporting requirements also vary from six monthly in Queensland to 12 monthly.

1.11 All three licensing systems require a public register, however South Australia requires (and Victoria proposes) public notification of applications to which certain persons may make an objection.

1.12 The transition periods for labour hire providers to register vary. The Queensland scheme allows 60 days from 1 April 2018 for providers to lodge an application. The South Australian scheme allows six months from 1 March 2018 for labour hire providers to obtain a licence.

DEFINING INSECURE WORK

1.13 There is no legislated definition of ‘insecure work’. It is a contested term used by some to describe employment outside of traditional ongoing permanent employment.

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The Committee notes that the Australian Bureau of Statistics (ABS) defines insecure work as people who were not entitled to paid holiday leave or paid sick leave in their main job.\(^7\)

The International Labour Organisation (ILO) considers that insecure work often fails to satisfy the terms of ‘decent work’ which it defines as:

> Opportunities for work that is productive and delivers a fair income, with a safe workplace and social protection, better prospects for personal development and social integration, freedom of people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.\(^8\)

The 2012 Independent Inquiry into Insecure Work defined insecure work as:

> ... poor quality work that provides workers with little economic security and little control over their working lives. The characteristics of these jobs can include unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and/or uncertainty over the length of the job; and a lack of any say at work over wages, conditions and work organisation.\(^9\)

The 2012 report stated that insecure work can be experienced by all workers. It noted, however that some forms of employment, particularly non-permanent or non-ongoing employment, are more often associated with insecure work, including casual work, fixed-term contracts, seasonal work, independent contracting and labour hire.\(^10\)

Legal Aid ACT proposed that insecure work be defined by reference to characteristics rather than particular employment arrangements.\(^11\) It lists the key characteristics as:

- Poor or irregular pay
- Unpredictable hours
- Unpredictable length of employment
- Substandard or no access to entitlements including paid and unpaid leave
- Poor working conditions.\(^12\)

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\(^11\) Legal Aid ACT, Submission 4.

\(^12\) Legal Aid ACT, Submission 4.
The Committee also received a range of evidence suggesting that ‘insecure work’ is a term that, in itself, establishes bias against non-ongoing and non-traditional employment options.\(^\text{13}\)

The Canberra Business Chamber (CBC), for example, described insecure work or employment as a catch-all term ‘encompassing all alternative forms of employment that fall outside the traditional concept of a permanent nine-to-five job’,\(^\text{14}\) which they note is not relevant or viable for businesses that operate in a globalised market.\(^\text{15}\) They advised that this approach: fails to reflect the changing and dynamic nature of work in today’s economic environment. The Chamber also believes that the term fails to recognise the real and important desires of employees who may not wish to undertake full-time employment or those employees who would prefer some work rather than no work, even if they would like more hours.\(^\text{16}\)

Similarly the Housing Industry Association (HIA) advised that the label of ‘insecure work’ creates a negative view of arrangements that do not fit into tradition of a directly, permanently-employed, full-time worker.\(^\text{17}\) The appropriateness of alternative forms of work need to be considered not only in the context of worker choice, but in light of the needs of various industries. They noted the importance of independent contracting and labour hire for the residential building industry, stressing that both are legitimate and legal forms of work.\(^\text{18}\)

**QUALITY OF NON-ONGOING WORK**

Legal Aid ACT highlighted that not all non-permanent or non-ongoing employment arrangements are insecure. Where ‘contracts are arranged, the relationships are clear and the duties and responsibilities are set out’;\(^\text{19}\) and if they are utilised appropriately and fairly, these employment arrangements and can allow flexibility for employers and employees.\(^\text{20}\)

The Committee was also advised that non-ongoing work ‘is not exclusively poor quality work’. Contract work can be highly skilled particularly in project or office environments, such as project management, IT roles, and executive assistant roles.\(^\text{21}\)

\(^{13}\) CBC, Submission 11; HIA, Submission 16; APSCo, Submission 16; Ms Mills, APSCo, *Proof Transcript of Evidence, 19 October 2017*, p.180.

\(^{14}\) Mrs Hendry, CBC, *Proof Transcript of Evidence, 19 October 2017*, p.166.

\(^{15}\) CBC, Submission 11.

\(^{16}\) Mrs Hendry, CBC, *Proof Transcript of Evidence, 19 October 2017*, p.166.

\(^{17}\) HIA, Submission 15, p.5.

\(^{18}\) HIA, Submission 15, p.4.

\(^{19}\) Dr Boersig, Legal Aid ACT, *Proof Transcript of Evidence, 12 October 2017*, p.116.

\(^{20}\) Legal Aid ACT, Submission 4.

\(^{21}\) Enabled Employment, Submission 5, p.11.
EXTENT OF INSECURE WORK IN THE ACT

1.24 The Minister for Workplace Safety and Industrial Relations highlighted to the Committee:

   How you scope the definition of “insecure work” affects how prevalent it is, and whether people are considered employees and whether you have to be considered an employee to be in insecure work. If you are in the gig economy\textsuperscript{22}, you are not necessarily an employee but you are probably in insecure work.\textsuperscript{23}

1.25 The ABS 2014 data indicated 33,000 workers in the ACT are in insecure work (based on their definition of employees with no leave entitlements).\textsuperscript{24}

1.26 The Committee was advised that in the ACT industries of particular interest include Group Training Organisations (GTO), trades, building and construction, the sex industry, small business, food vendors, clothing manufacture/retail franchises and other franchises.\textsuperscript{25}

1.27 The extent of various non-ongoing employment arrangements is explored further in Chapter 3, Employment Types of Interest.
2 NATURE OF INSECURE WORK IN THE ACT

2.1 In framing the concept of insecure work, it is necessary to consider other factors in the employment landscape including the availability of ‘suitable’ work, and the employment needs and choices of workers.

UNDEREMPLOYMENT AND CHOICE

2.2 The Committee was advised by the ACT Council of Social Services (ACTCOSS) that work is insecure if the hours offered are inadequate.  

2.3 2017 ABS statistics show the ACT had an underemployment rate of 6.2 per cent. ACTCOSS noted that combined with the unemployment rate, the ACT had an underutilisation rate of 9.7 per cent compared to 14 per cent nationally. Underemployment is particularly a concern for young people. 

2.4 CBC noted that there is only one entry level job in Australia for every 4.8 people who are looking for work. They highlighted that a stronger economy provides more opportunity for those looking for additional work. Those with some experience also have a greater chance of gaining more work. 

2.5 In this context, whilst some workers take on insecure work by choice, many engage in these employment arrangements as they offer the only viable employment option for those people. Their employment choices may be limited because of the workers’ need for flexibility or the education, skill or work experience requirements of the employer. 

2.6 The Committee heard that ‘many people who are really desperate for work will take anything.’ ‘I would say that for a lot of young people it [working for labour hire companies] probably would not be a preference, but if that is what they can get, that is what they can get.’

2.7 ACTCOSS noted that flexibility and secure employment need not be mutually exclusive:

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26 ACTCOSS, Submission 21, p.17.
27 ACTCOSS, Submission 21, p.17.
28 ACTCOSS, Submission 21, pp.17-18.
29 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.171.
30 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.171.
31 ACTCOSS, Submission 21, p.22.
32 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.57.
For many people, insecure work is not a choice or a preference in comparison to having secure employment with protection from employment termination, access to paid leave and other entitlements, and certainty and adequacy of hours and income.33

WORKPLACE FLEXIBILITY

2.8 The Committee received a range of evidence discussing workplace flexibility which presented differing viewpoints. As the Victorian Inquiry into the Labour Hire Industry and Insecure Work surmises:

many of the features of working arrangements which workers, unions, academics and other organisations attribute to an increase in insecurity of work are the very same features that business seeks to retain as essential flexibilities.34

2.9 The Committee was advised about the benefits of flexible and non-standard working arrangements for a variety of workers such as parents returning to the workplace and students structuring paid employment around study commitments.35

2.10 The CBC advised that ‘flexible work options such as casual employment can provide individuals with the ability to better manage family and personal responsibilities, and can also create other innovative opportunities for work arrangements.’36

2.11 The Committee also heard that businesses need the ability to respond to demand in a flexible way and respond to business peaks and troughs. If there is more rigidity around employment, businesses will be more cautious before investing in a full-time employment position because they need more certainty around business demand.37

2.12 The Committee was advised that Australia has a diverse workforce and a flexible labour market is ‘essential for companies striving to remain competitive’ as well as for workers to suit various work and other preferences.38

2.13 CBC also noted that flexibility is particularly critical to businesses and growth across the broader economy.39 They highlighted the difficulties for small businesses, especially during the start-up phase and the need for flexible conditions that keep the business viable and respond to external and internal challenges.40 Flexible working arrangements should remain a viable

33 ACTCOSS, Submission 21, p.16.
34 Victorian Inquiry into the Labour Hire Industry and Insecure Work, p.265.
35 Legal Aid ACT, Submission 4.
36 CBC, Submission 11.
37 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, pp.171-172.
38 AiGroup, Proof Transcript of Evidence, 19 October 2017, p.160
39 Mrs Henry, CBC Proof Transcript of Evidence, 19 October 2017, p.167.
40 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, pp.176.
and easily accessible option, with positive benefits for businesses including productivity, project specific flexibility and to meet operational requirement. \(^{41}\)

2.14 The Recruitment and Consulting Services Association (RCSA) advised that trying to stamp out non-traditional employment is unrealistic in a globalised world, with businesses looking for greater flexibility to address insecurities. \(^{42}\)

**One way flexibility**

2.15 Many of the vulnerable worker groups identified in evidence to the Committee have a greater need for flexible working arrangements that may not be accommodated in full-time permanent work. \(^{43}\) However, evidence provided to the Committee suggests that flexibility, particularly in casual work, is often afforded to employers not employees.

2.16 Evidence suggest that employees can be subject to punitive responses for speaking up about workplace safety or pay issues, including being terminated or not offered further shifts/contracts. Whilst dependent on the individual employer, the power imbalance between employers and employees in insecure working arrangements leaves employees more open to exploitation. \(^{44}\) This issue explored further under ‘Casual Employment’ in Chapter 3 of this report.

2.17 Many young people, for example, want flexible working arrangements that work in with their study hours but not the other conditions that come with casual or insecure work. Unions ACT advised the Committee that flexibility is often one way with casual employees asked to come in at times that are not convenient for them. Workers are often forced to choose between paid work and future paid work, and their studies. \(^{45}\)

**Transition to permanency**

2.18 The Committee was advised that many of those in insecure work are also looking to transition to permanent working arrangements.

2.19 Evidence to the Committee emphasised that workers want decent, permanent (not necessarily full time) employment that pays a living wage. They want predictability, security and the ability to genuinely negotiate the terms of employment. \(^{46}\)

2.20 Enabled Employment advised:

\(^{41}\) CBC, Submission 11.
\(^{42}\) Mr Cameron, RCSA Proof Transcript of Evidence, 19 October 2017, p.192.
\(^{43}\) ACTCOSS, Submission 21, p.22.
\(^{44}\) Youth Coalition of the ACT, Proof Transcript of Evidence, 8 September 2017, p.58.
\(^{45}\) Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.7.
\(^{46}\) WCHM, Proof Transcript of Evidence, 8 September 2017, p.46.
Every candidate we have aspires to permanent work, and we do advertise permanent roles. However, casual or labour hire roles may be a gateway to permanent work for our candidates, and we recognise the value of having work and breaking into the workforce via an ‘insecure’ job. If there were more permanent positions available for unskilled and part time work, with trainee and apprentice positions, and attitudes towards our inclusion groups changed, there would be less need for insecure work.47

2.21 The Committee also heard there is a lack of workplace flexibility around permanent work. ACTCOSS noted a need for permanent part-time work.48 The Committee heard that flexibility is possible in permanent working arrangements, either part-time or full-time.49 ACTCOSS noted that ‘although there is more awareness across communities about the need for inclusive workplaces, in reality this does not translate into action’. They stated that effectively vulnerable worker groups are either excluded or nominally included provided they do not require too much flexibility in either hours or tasks’.50

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47 Enabled Employment, Submission 5, p.18.
48 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.16.
49 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.7.
50 ACTCOSS, Submission 21, p.22.
3 EMPLOYMENT TYPES OF INTEREST

3.1 Below, the Committee examines the evidence submitted to this Inquiry on the nature and extent of insecurities experienced by workers in a range of different employment types including labour hire, group training, casual employment, fixed term arrangements and independent contracting. The Committee also examines the reasons those employment types may be utilised by employers.

LABOUR HIRE

DEFINITION

3.2 Labour hire [sometimes referred to as on-hire] arrangements typically involve a ‘triangular relationship’ in which a labour hire business (the supplier) supplies the labour of a worker (the worker) to a third party (the host) in exchange for a fee. There is no direct employment or contractual relationship between the host and the worker. Instead the worker is engaged by the supplier, either as an employee or as an independent contractor.51

3.3 The Minister for Workplace Safety and Industrial Relations noted that defining what constitutes a labour hire company was not straightforward and questions exist around whether gig economy platforms would fall within the definition.52 Unions ACT maintain that they are no different to existing labour hire services, however RCSA advised that gig-economy platforms are not labour hire in that there is no party being engaged by an intermediary.53

3.4 A 2016 Fair Work Commission (FWC) decision outlines how labour hire arrangements may operate in real terms:

The business model of labour hire companies is generally that they employ persons (usually on a casual basis), and place those persons in the businesses of other companies with which the labour hire agency has a contractual relationship (host employers). In some cases the labour hire employees will work intermittently or for specific periods of time at the premises of the host employer – for example to replace the employee of a host employer temporarily absent from the workplace for a specified period, which is ascertained in advance of the placement or which may be extended or terminated during the period of the placement if circumstances change. The labour hire employee may have been required by the host employer to meet a

52 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.64.
53 Mr Cameron, RCSA Proof Transcript of Evidence, 19 October 2017, p.194.
seasonal or operational fluctuation. In other cases, labour hire employees may be required to work at the host employer’s premises for lengthy periods; under the supervision and management of the host employer; integrating with the employees of the host employer; and for all intents and purposes forming part of the host employer’s workforce.54

EXTENT OF LABOUR HIRE EMPLOYMENT ARRANGEMENTS IN THE ACT

3.5 The Committee was advised that the number of firms operating as labour hire businesses in the ACT is difficult to determine due to limited available data.55

3.6 Based on data about wage and employee numbers from the ACT’s private sector worker’s compensation scheme, the ACT Government submission advised that there are eight employers identifying as labour hire businesses in the ACT representing around 4,320 workers. They noted that there are likely to be additional labour hire businesses who are declaring a different industry class on their workers’ compensation policies.56

3.7 Unions ACT advised that over 13 per cent of all workers in the ACT are employed in labour hire arrangements.57 They noted at least 8,200 ACT workers are in ‘some form of contingent labour or body hire.’58

3.8 In contrast the RCSA pointed to the Productivity Commission report on the workplace relations framework which outlines that at 1.8 per cent, only a small magnitude of Australia’s employed workforce are employees on labour hire arrangements.59

3.9 ABS data indicates that around 5 per cent of all employed persons in Australia found their job through a labour hire firm/employment agency. Of those persons who had found their main job through a labour hire firm/employment agency, 22 per cent were paid by a labour hire firm/employment agency.60

DATA LIMITATIONS

3.10 The ACT Government advised that it is working with the workers’ compensation insurers to improve data on labour hire businesses.61

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55 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.65.
56 ACT Government, Submission 25, p.2.
57 Unions ACT, Submission 34, p.12.
58 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.2.
60 Australian Bureau of Statistics, 2016, Characteristics of Employment, Australia, cat. no. 6333.0.
3.11 The Committee heard that the ACT was not currently able to cross reference workers compensation information with other datasets such as the portable long service leave database, payroll tax and commonwealth Australian Tax Office (ATO) datasets. Access to those datasets would give the Workplace Safety and Industrial Relations group in the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), the workplace relations regulator and other regulators ‘greater capacity to target compliance activity and to form a greater view around what may potentially be going on’ in respect to organisational structure, potential tax avoidance or avoidance of other employer obligations. Such access would require a legislative change. The Executive Director, Workplace Safety and Industrial Relations advised:

We are limited in our ability to look at them at the moment by a combination of privacy and laws around commercial information. So we would need to work through those legal processes in order to gain access.62

3.12 The Committee heard that access to better datasets was also being considered in the context of ACT Government procurement requirements.64 The Committee was told that the ACT Government’s Contractor Central arrangements will start to provide more centralised data as 80 per cent of labour hire arrangements with ACT Government directorates are now going through the Contractor Central system.65

COMMITTEE COMMENT

3.13 The Committee notes that the local labour hire industry is present in most sectors that exist within the ACT. There are deficiencies in the available data relating to labour hire and insecure work.

Recommendation 1

3.14 The Committee recommends that the ACT Government collect data that allows for the identification of the prevalence and nature of labour hire employment and insecure work within the ACT.

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62 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.65.
63 Mr Young, Proof Transcript of Evidence, 8 September 2017, pp.65-66.
64 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.65.
65 Mr Tomlins, Proof Transcript of Evidence, 8 September 2017, p.66.
NATURE OF LABOUR HIRE ARRANGEMENTS

INDUSTRIES WHERE LABOUR HIRE IS USED

3.15 ABS data indicates the most common industries and occupation groups in Australia who found jobs through a labour hire firm/employment agent are as follows:

The industry division with the most males who found their job through a labour hire firm/employment agency was Manufacturing (21 per cent) followed by Construction (10 per cent). For females, the most common industry divisions were Health care and social assistance (16 per cent) followed by Public administration and safety (11 per cent).66

The most common occupation groups for males who had found their job through a labour hire firm/employment agency were Machinery operators and drivers (21 per cent), Technicians and Trades workers (19 per cent) and Labourers (18 per cent). For females, the most common occupation groups were Clerical and administrative workers (38 per cent) and Professionals (22 per cent).67

3.16 In the ACT, labour hire appears to be most commonly used in the construction,68 cleaning, security,69 professional staffing, administrative roles, warehousing and distribution centres70 and IT industries.

3.17 United Voice highlighted the extensive use of labour hire and subcontracting arrangements in the cleaning and security industries. They advised that most directly engaged cleaners in the ACT have been replaced by cleaners working for contracted companies.71

3.18 The Australian Nursing and Midwifery Federation ACT Branch (ANMF) advised that labour hire and midwifery employees are used in the ACT, however it seems employers choose to utilise their services in a very limited number of circumstances.72

3.19 Labour hire is also used in professional staffing, although the Committee heard that labour hire may not be the right descriptor for this role.73 The Committee heard from the Association of Professional Staffing Companies in Australia (APSCo) who represent the professional contracting and staffing sector in Australia, that Australian Government and ACT Government departments/directorates are the main clients of APSCo members in the ACT. They are using

68 Mr Hall, CFMEU, Proof Transcript of Evidence, 19 October 2017, p.149.
70 SDA, Submission 2, p.11.
72 ANMF, Submission 13, p.6.
contracting to supplement their workforces, particularly where they do not have the budgets or authorisation to employ permanent staff.74

The ATO is a classic example every year, when, at a particular time in the year—we all know when that is—there is a huge need for a temporary casual contracting workforce.75

3.20 The Committee was advised that labour hire arrangements are not commonly used in the detached housing industry. For multi-residential projects that need additional capacity or specialised skills, labour hire may provide effective short-term labour solutions.76

3.21 Labour hire agencies can operate across multiple industries and many work across more than one Australian State or Territory.77

3.22 The use of labour hire by the ACT Government is addressed further in Chapter 8.

3.23 RCSA advised the Committee that on-hire workers are recognised in modern awards and receive associated pay, conditions and protections.

RMIT University research found that the majority of on-hire workers are employees and that on-hire workers engaged as independent contractors are primarily professionals.78

LABOUR HIRE IN THE ACT – CURRENT REGULATION

3.24 There is no specific requirement for licensing of labour hire businesses in the ACT, nor are there any other special regulations that apply to only labour hire businesses.79

3.25 Labour hire businesses are subject to the same business regulation as any other, including work health and safety and workers’ compensation laws.80 Compliance with these requirements is regulated by WorkSafe ACT (Access Canberra, a business unit of CMTEDD).81

3.26 Labour hire workers are covered by the relevant modern award and National Employment Standards (NES) or industrial instruments and therefore have access to the same legislative protections and certain minimum entitlements as other employees.82 As the employer, the labour hire business would usually be responsible for pay and entitlements.

74 Ms Elliott, APSCo, Proof Transcript of Evidence, 19 October 2017, p.178.
75 Ms Mills, APSCo, Proof Transcript of Evidence, 19 October 2017, p.180.
76 HIA, Submission 15, p.9.
77 Unions ACT, Submission 34, p.15.
78 RCSA, Submission 20, p.7.
80 ACT Government, Submission 25, p.2.
81 ACT Government, Submission 25, p.2.
82 HIA Submission 15, p.10; Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.160
3.27 The Committee was advised that ‘particularly where government agencies are contracting with labour hire companies, we are keen to ensure that any labour hire entities that the ACT Government is using are compliant with all ACT and Australian Government requirements.’

LABOUR HIRE AS AN EMPLOYMENT OPTION

3.28 Evidence to the Committee reinforced that labour hire arrangements, like other non-traditional employment forms, offer a legitimate employment option in a flexible Australian labour market.

3.29 Ai Group advised the Committee that ‘flexibility is essential for companies that are striving to remain competitive and it is also needed by workers in an increasingly diverse workforce.’

3.30 The Master Builders Association (MBA) noted that labour hire firms play an important role in managing employment needs of businesses and government. They highlighted the importance of labour hire companies to the construction industry because of work fluctuations and the contract based nature of the industry. They noted that more regulation is not required, although some labour hire firms have a bad reputation, adequate enforcement of existing laws and regulations should be sufficient to ensure compliant work practices.

3.31 Similarly the Committee heard about the importance of labour hire arrangements to people from disadvantaged backgrounds such as those with a disability, seniors, carers, veterans and Aboriginal and Torres Strait Islanders to get ‘a foot in the door’, particularly in public service jobs. Enabled Employment advised that businesses utilise labour hire and other short-term contract employment to try out employees which also has positive flow on effects, changing preconceived notions and ideas of what those employees are capable of in the workplace. It also provides workers the opportunity to have paid work experience on their resume.

3.32 RCSA advised that the majority of workers who work for their members would not necessarily use ‘insecure’ to describe the way they are engaged. Many choose this type of employment to suit their lifestyle. Further, RCSA highlighted that on-hire creates job opportunities that do not necessarily replace direct hire opportunities:

RMIT University research [2003] found that 51 per cent of organisations using on-hire employees would not necessarily employ an equivalent number of employees directly if they were unable to use on-hire employees. In fact, 19 per cent of organisations said...
they would rarely do so. Furthermore, 19 per cent of RCSA Members’ on-hire employees eventually become permanent employees of the host organisation they are assigned to work for.\(^{90}\)

3.33 The Committee heard from the Ai Group that the majority of labour hire companies are reputable, noting ‘they not only comply with the law; they have progressive and sophisticated employment practices and often provide superior wages and conditions.’ \(^{91}\)

**CONCERNS ABOUT LABOUR HIRE ARRANGEMENTS**

3.34 The Committee was advised that the impacts of labour hire employment on workers mirror those faced in other types of insecure work including unpredictable hours and pay, financial impacts, underpayments, unpaid superannuation and poor health and safety practices.\(^{92}\) These are discussed further in Chapter 6 of this report.

3.35 The Committee also received mixed views on the prevalence of unscrupulous labour hire practices and issues specific to this type of employment.

3.36 The Committee was advised by Unions ACT that in every industry that involves labour hire there are attempts by employers to use that to avoid their obligations.\(^{93}\) They advised that labour hire workers cannot access unfair dismissal protections, have no minimum hours of work and are expected to be available at short notice every day of the week.\(^{94}\)

3.37 The Committee was advised that labour hire systems create ‘structural institutional risk of exploitation’.\(^{95}\)

3.38 The Construction, Forestry, Mining and Energy Union (CFMEU)\(^{96}\) advised that many labour hire businesses establish and trade through multiple corporate entities, in many cases as a way of avoiding various taxes and liabilities.\(^{97}\) They raised concerns that in the construction industry, traditional labour hire companies have morphed into a business model about minimising employer liability.\(^{98}\) They note that labour hire structures have been linked to phoenixing\(^{99}\) in

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\(^{91}\) Mr Smith, Ai Group, *Proof Transcript of Evidence, 19 October 2017*, p.160

\(^{92}\) Unions ACT, Submission 34, p.12.

\(^{93}\) Mr White, Unions ACT, *Proof Transcript of Evidence, 8 September 2017*, p.8.

\(^{94}\) Unions ACT, Submission 34, p.13.

\(^{95}\) Unions ACT, Submission 34, p.12.

\(^{96}\) The Committee notes that the Maritime Union of Australia has merged with the CFMEU and the Textile, Clothing and Footwear Union of Australia (TCFUA) as of March 2018.

\(^{97}\) CFMEU, Submission 33, p.6.

\(^{98}\) Mr Hall, CFMEU, *Proof Transcript of Evidence, 19 October 2017*, p.149.

\(^{99}\) Illegal phoenix activity or ‘phoenixing’ is when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements. [ATO, ‘Illegal phoenix activity’, available at: https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/].
the construction industry, with many labour hire businesses establishing and trading through multiple corporate entities which they advise is little more than a device to minimise or avoid liabilities in many cases\textsuperscript{100}

3.39 United Voice outlined some supply chain risks with labour hire cleaning and security arrangements:

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.\textsuperscript{101}

3.40 Like other vulnerable workers, those employed in labour hire face structural barriers to reporting breaches of workplace safety or other industrial relations laws due to concerns about the impact on future employment at the host or placements with the agency.\textsuperscript{102}

\textbf{Responsibility and liability of the host}

3.41 Enabled Employment emphasised that the host organisations should have some responsibility for ongoing wellbeing of workers, such as providing support to get an injured worker back into the workplace. Labour hire firms can also be selective of which hosts they choose to supply labour to.\textsuperscript{103}

\textbf{Workplace health and safety}

3.42 The Committee was advised that both the construction and cleaning industries have a prevalence of labour hire and independent contracting arrangements as well as significant work health and safety issues.\textsuperscript{104}

3.43 Unions ACT noted poor health and safety practices were a significant impact of labour hire arrangements.\textsuperscript{105}

3.44 A labour hire worker advised the Committee that he raised concerns with his employer about safety on a job but the ‘matter was dropped because it was understood that these unsafe conditions were simply part of the deal’. He noted that had he made a complaint about health and safety to a government agency he felt he would certainly have lost his job.\textsuperscript{106}

\textsuperscript{100}CFMEU, Submission 33, p.6.
\textsuperscript{101}United Voice, Submission 35, p.6.
\textsuperscript{102}Unions ACT, Submission 34, p.12.
\textsuperscript{103}Ms May, Enabled Employment, \textit{Proof Transcript of Evidence, 12 October 2017}, pp.104-105.
\textsuperscript{104}ACTCOSS, \textit{Proof Transcript of Evidence, 8 September 2017}, p.15
\textsuperscript{105}Unions ACT, Submission 34, p.12.
\textsuperscript{106}Submission 37.
IRREGULARITY OF WORK

3.45 The Committee was advised that there is no obligation on the labour hire agency to provide regular work so many workers gain only intermittent or short-term work.\textsuperscript{107}

3.46 In addition United Voice advised that labour hire workers are subject to unfair and ever-changing rostering arrangements.\textsuperscript{108}

3.47 One labour hire worker submitted his experience to the Committee, highlighting lack of penalty rates and short minimum shifts as key concerns. Upon being offered a five-hour shift and being advised that he would be paid for at least four hours, the job turned out to be three hours. Since complaining about that incident he had not been offered further shifts.\textsuperscript{109}

DIFFERENTIAL TREATMENT

3.48 The Committee received concerns around differential treatment, where workers engaged via labour hire receive lower pay and conditions compared to direct hire workers at the host firm.\textsuperscript{110}

3.49 The CFMEU advised:

\begin{quote}
Labour hire is often seen as providing a cheaper alternative to full-time direct employment. Labour hire workers are regularly brought in to work alongside direct employees. They perform the same work but can be engaged on different, and usually inferior, rates and conditions of employment. This presents a serious challenge to the employment security of full time employees of the host.\textsuperscript{111}
\end{quote}

3.50 The CFMEU further advised that:

\begin{quote}
Unions in the construction industry have developed clauses in enterprise bargaining agreements that seeks to ensure that labour hire workers are paid at least the equivalent rate of those employees that they are working alongside. The Federal Government’s recent \textit{Code for the Tendering and Performance of Building Work 2016} has deliberately undermined these efforts by stipulating that an enterprise agreement which includes a term that prescribes the terms and conditions on which the
\end{quote}

\textsuperscript{107} Unions ACT, Submission 34, p.12.
\textsuperscript{108} United Voice, Submission 35, p.7.
\textsuperscript{109} Submission 37.
\textsuperscript{110} United Voice, Submission 35, pp.6-7; CFMEU, Submission 33, p.8.
\textsuperscript{111} CFMEU, Submission 33, p.8.
employees of subcontractors can be engaged can attract a penalty for the employer including disqualification from federally funded work.112

3.51 The Australian Industry Group (Ai Group) emphasised to the Committee that enterprise agreements and awards should not be permitted to restrict labour hire or impose requirements relating to the conditions of their engagement. They advised that prior to the *Fair Work Act 2009*, the *Workplace Relations Act 1996* and associated Regulations prohibited such terms being included in enterprise agreements. The Ai group advised that the Productivity Commission, Harper Competition review and Heydon Royal Commission into Trade Union Governance and Corruption recommended similar prohibitions.113

**COMMITTEE COMMENT**

3.52 The Committee believes that labour hire employees should, if they so wish, be covered by the enterprise agreements (EA) applying at the host’s workplace.

**Recommendation 2**

3.53 The Committee recommends that the ACT Government advocate to the Australian Government that there should be no impediments to parity clauses in enterprise agreements that would prevent labour hire employees being covered by the hosts enterprise agreement.

**ABSENCE OF BARRIERS TO ENTRY AND LACK OF VISIBILITY OF ‘ROGUE’ OPERATORS**

3.54 The Committee was advised that the absence of barriers to entry for the labour hire industry and the lack of visibility of ‘rogue’ operators who operate in the informal economy have led to a number of rogue operators in the ACT. These operators have led to the exploitation of vulnerable workers and resulted in the underpayment, and in some cases, non-payment of wages and conditions.

3.55 RCSA highlighted its concerns around the difficulties for purchasers/hosts to undertake due diligence checks as to whether suppliers are compliant with industrial relations, work health and safety and superannuation requirements.114 They advised that in more sophisticated buyer markets unscrupulous operators would not be able to operate.115 The RCSA has developed its StaffSure certification program to ‘provide a high level of visibility and transparency for a buyer of workforce, contracting and recruitment services that they are dealing with a reputable and

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112 CFMEU, Submission 33, p.8.
113 Ai Group, Submission 2.
114 Mr Cameron, RCSA *Proof Transcript of Evidence*, 19 October 2017, p.191.
115 Mr Cameron, RCSA *Proof Transcript of Evidence*, 19 October 2017, p.191.
proven provider.'\textsuperscript{116} The certification program appears to address similar checks to labour hire licensing being implemented in other Australian jurisdictions.\textsuperscript{117}

**WHAT WORKERS WANT**

3.56 The ABS considered the characteristics of people who found their job through a labour hire firm\textsuperscript{118} and found:

The most common reason cited for employees using a labour hire firm was the ease of obtaining work (71 per cent). Other reasons included:

- a condition of working in the job or industry (9 per cent)
- flexibility (7 per cent)
- the inability to find work in their line of business (7 per cent)
- a preference for short-term work (3 per cent)
- to gain more experience (3 per cent)
- a lack of experience prevents finding permanent job (2 per cent).\textsuperscript{119}

3.57 Anecdotal evidence relayed to the Committee suggests that the majority of casual labour hire workers would prefer more regular and permanent working arrangements.

3.58 Unions ACT advised that, from their surveys and those conducted by ACTU and other unions, the majority of labour hire workers take on that type of employment because they require work to financially support themselves and there is nothing else available, rather than as a first preference.\textsuperscript{120} The Committee heard that workers would prefer more permanent, secure employment with flexible working arrangements.\textsuperscript{121}

3.59 In contrast, Ai Group advised based on its own research that ‘employees of labour hire companies generally said they were very happy with that form of employment and it gave them the flexibility they were looking for.’\textsuperscript{122}

\textsuperscript{116} RCSA, Submission 20, p.21.

\textsuperscript{117} RCSA, Submission 20, p.3.

\textsuperscript{118} Note: The ABS uses the term ‘Labour Hire Firm’ to include people who obtain work through labour hire firms and employment agencies. The majority of employees who found their job through a labour hire firm were not paid by the labour hire firm (78%). Once their job commences, some of these employees effectively cease involvement with the labour hire firm. They become employees of, and are therefore paid by, the ‘host employer’.


\textsuperscript{120} Mr White, Unions ACT, *Proof Transcript of Evidence, 8 September 2017*, p.7.

\textsuperscript{121} Mr White, Unions ACT, *Proof Transcript of Evidence, 8 September 2017*, p.7; Unions ACT, Submission 34, p.12.

\textsuperscript{122} Mr Smith, Ai Group, *Proof Transcript of Evidence, 19 October 2017*, p.162.
Licensing and Other Regulatory Responses

3.60 The Committee was advised that any additional regulation of the labour hire industry needs to be supported by facts and evidence within the ACT.123

Opposition to Licensing

3.61 The Committee received a range of evidence opposing the introduction of labour hire licensing.124

3.62 Some evidence noted that the current regulatory framework is strong and adequately addresses health and safety, phoenixing, and other concerns around labour hire arrangements.125 The Ai Group advised:

We do not think there is a need for a licensing scheme because the laws that apply to every company and the rights that every employee enjoys apply equally to labour hire companies.126

3.63 The Committee was advised that ‘genuine on-hire worker service firms demonstrate high levels of compliance and, in fact, are commonly better performers in workplace relations and workplace health and safety compliance than direct hire employers.’ 127 The Committee also heard that most labour hire companies operate nationally and operate as recruitment companies as well as labour hire, therefore most would already be registered recruitment agents.128

3.64 RCSA advised that ‘there is no justification for the introduction of restrictive regulation’, with some evidence noting licensing would create another layer of regulation, adding to already onerous compliance work and increasing costs for legitimate companies who are already compliant.129

3.65 Licensing may also make non-compliant labour contractors comparatively cheaper and more attractive to unsophisticated end-users,130 therefore consumer education and compliance activity would be essential.131

123 HIA, Submission 15, p.13.
124 Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.160; Ms Elliott, APSCo, Proof Transcript of Evidence, 19 October 2017, p.179.
125 Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.163-164.165.
126 Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.164.
127 RCSA, Submission 20, p.3.
129 RCSA, Submission 20, p.3; Ms Elliott, APSCo, Proof Transcript of Evidence, 19 October 2017, p.179; Ms May, Enabled Employment, Proof Transcript of Evidence, 12 October 2017, p.101, 105.
130 RCSA, Submission 20, p.3.
131 Enabled Employment, Submission5, p.8.
3.66 The Committee was advised that the regulatory burden of labour hire licensing has the potential to act as a barrier to entry for people looking to do business in the ACT, noting that recruitment and professional staffing businesses are generally small and entrepreneurial.  

3.67 If the ACT did introduce labour hire licensing, the Committee heard that labour hire businesses would also need to contend with un-harmonised schemes particularly if operating nationally.  

3.68 In terms of compliance and enforcement, the Committee was advised the Fair Work Ombudsman is well resourced and tough penalties apply for all companies that don’t meet their legal requirements. However, the Committee heard that adequate compliance and enforcement action is required at State and Commonwealth level, as well as better cooperation in compliance activity across the different levels of government to deter and catch unscrupulous operators.  

3.69 A number of witnesses and submissions noted that in Queensland, South Australia and Victoria, the licensing schemes apply across the board, despite evidence of non-compliance with industrial relations requirements being limited to certain industries. The RCSA advised that the broad-based nature of licensing schemes being introduced into other jurisdictions will add significant potential liability and cost on reputable providers in industries with high levels of compliance.  

3.70 The Queensland scheme also applies to Group Training Organisations which will the Committee was advised would increase the cost of employing apprentices and potentially affect apprenticeship commencements and completions.  

3.71 The Committee was advised that the Queensland labour hire licensing legislation affords an unwarranted level of power to unions to oppose a licence being granted.  

\section*{Support for Licensing}

3.72 In addition to the general concerns raised around labour hire practices, the Committee received a range of evidence specifically in support of labour hire licensing in the ACT.

\footnotesize

\begin{itemize}
\item \textsuperscript{132} Ms Elliott, APSCo, \textit{Proof Transcript of Evidence}, 19 October 2017, p.179; Mr Smith, Ai Group, \textit{Proof Transcript of Evidence}, 19 October 2017, pp.163-164.
\item \textsuperscript{133} Ms Elliott, APSCo, \textit{Proof Transcript of Evidence}, 19 October 2017, p.179.
\item \textsuperscript{134} Mr Smith, Ai Group, \textit{Proof Transcript of Evidence}, 19 October 2017, p.165.
\item \textsuperscript{135} Enabled Employment, Submission 5, p.6; Ms May, Enabled Employment, \textit{Proof Transcript of Evidence}, 12 October 2017, p.105.
\item \textsuperscript{136} Ms Elliott, APSCo, \textit{Proof Transcript of Evidence}, 19 October 2017, p.179; Mr Cameron, RCSA \textit{Proof Transcript of Evidence}, 19 October 2017, p.191; HIA, Submission 15, p.13.
\item \textsuperscript{137} Mr Cameron, RCSA \textit{Proof Transcript of Evidence}, 19 October 2017, p.191
\item \textsuperscript{138} HIA, Submission 15, p.13.
\item \textsuperscript{139} Mr Smith, Ai Group, \textit{Proof Transcript of Evidence}, 19 October 2017, p.164.
\end{itemize}
3.73 The Committee heard from the ACT Regional Building and Construction Industry Training Council (CITC) that its membership would most likely support licensing noting that such proposals are usually driven by industry to ensure compliance and ‘a level playing field’.140

3.74 Advising that labour hire is used by employers to avoid obligations to their workers, Unions ACT supports the implementation of labour hire licensing in the ACT and outlined details of its proposed scheme.141

3.75 United Voice supports labour hire reform including a licensing scheme covering labour hire and subcontracting operators.142

3.76 The CFMEU advised that labour hire licensing was necessary to curb the existence of phoenix companies, particularly in the construction industry.143

3.77 The St Vincent de Paul Society recommended that the ACT Government monitor the implementation of the proposed Victorian scheme for licensing labour hire companies with a view to considering a similar scheme in the ACT.144

3.78 Maurice Blackburn Lawyers supports the establishment of a licence scheme for the ACT labour hire industry to ensure labour hire providers are financially stable and occupational health and safety obligations are being met.145

**ALTERNATIVES**

**CODE OF CONDUCT**

3.79 The Committee notes that RCSA would like to see a legislated code of professional conduct that would cover contractors and the workplaces that engage them rather than a licensing scheme.146 The RCSA already has a voluntary code for its members and has released an Employment Services Industry Code for public consultation.147

**LEVERAGING EXISTING LICENSING**

3.80 United Voice recommended incorporating standards into existing licensing regimes such as gaming and liquor licences to improve workplace rights in hospitality venues.148 They note that

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140 CITC, Proof Transcript of Evidence, 8 September 2017, p.12.
141 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, pp.4-5.
143 CFMEU, Submission 33, p.6; Proof Transcript of Evidence, 19 October 2017, p.163.
144 St Vincent de Paul Society, Submission 18.
145 Maurice Blackburn Lawyers, Submission 8, p.1.
146 CITC, Submission 14, p.2.
147 CITC, Submission 14, p.2.
conditions similar to those recently included into ACT School Cleaning contracts, such as disclosure of rates paid to all personnel including sub-contractors and six monthly audits on industrial relations matters, could also help lift standards in hospitality. 149

NATIONAL APPROACH TO LICENSING

3.81 The Committee receive a range of evidence in support of a national approach to licensing. 150

3.82 The Committee heard from the Minister for Workplace Safety and Industrial Relations that a national licensing scheme was the preference amongst her Labor colleagues at a recent Commonwealth State Ministers meeting. 151 She advised that the ACT Government is watching those States that are moving towards licensing labour hire businesses and noted that, if the ACT follows suit, it would seek to achieve a consistent approach with those other States that are licensing. 152

3.83 The Committee notes that all three jurisdictions that are implementing, or proposing to implement, labour hire licencing showed a preference for a national approach but proceeded individually in the absence of Australian Government interest in a national system.

3.84 The Committee heard that a consistent approach was particularly important in light of the ACT’s ‘permeable’ borders and the cross-border nature of many businesses. 153 The Committee heard that significant efforts have gone into harmonising workplace health and safety laws on a national basis for similar reasons. 154

3.85 The current legislative and regulatory landscape is vast and differs across every State and Territory, for example agents licence and payroll tax requirements, and it is possible that some operators are not aware that they are breaking the law. 155 The Committee heard that consistency across the states and territories is important as many businesses are operating nationally. 156

3.86 CBC advised that, if there is evidence to strengthen employment regulations, it should be done at the federal level. At a minimum there should be consistency with neighbouring states. 157 CBC further advised that any State or Territory based regulation around labour hire

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150 CFMEU, Submission 33, p.7; Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.117; Ms May, Enabled Employment, Proof Transcript of Evidence, 12 October 2017, p.103.

151 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.64.

152 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.64.

153 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.73.

154 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.73.

155 Ms May, Enabled Employment, Proof Transcript of Evidence, 12 October 2017, p.103.


157 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, pp.172-173.
employment be introduced with caution, particularly in light of red-tape reduction commitments. Consistency with NSW is a priority given proximity and cross-border businesses.\textsuperscript{158}

3.87 Legal Aid ACT advised that, because of the complex regulatory framework, it ‘would be best if they were working in tandem across a national basis’.\textsuperscript{159}

**Committee comment**

3.88 The Committee acknowledges that a national approach to labour hire licensing is the preferred approach to minimise inconsistencies, particularly for businesses operating across multiple jurisdictions.

**Recommendation 3**

3.89 The Committee recommends that the ACT Government join the Victorian and South Australian Governments in advocating via the Council of Australian Governments (COAG) process for the national adoption of a labour hire licensing scheme.

**Recommendation 4**

3.90 Acknowledging that a national labour hire licensing scheme may take time to develop, or not occur at all, the Committee recommends that the ACT Government introduce an ACT-specific labour hire licensing scheme. This should take into consideration the arrangements in other states.

**Key components of a potential ACT labour hire licensing system**

3.91 The Committee received a range of evidence on potential models for an ACT labour hire licensing system and key elements of an ACT system including the requirement for entities to be licensed, penalties for employers who use an unlicensed entity,\textsuperscript{160} and criteria for licensing.\textsuperscript{161}

\textsuperscript{158} CBC, Submission 11.
\textsuperscript{159} Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.117.
\textsuperscript{160} Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.64.
\textsuperscript{161} Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, pp.64-65.
3.92 Unions ACT advised the Committee to consider the scheme design outlined in the Australian Council of Trade Unions (ACTU) submission to the Victorian Inquiry into Labour Hire.¹⁶²

3.93 United Voice recommended the ACT adopt a scheme similar to those implemented in Queensland and South Australia.

DEFINITION

3.94 Defining what constitutes a labour hire company for the purposes of the licence would be necessary.¹⁶³ The Committee heard one suggestion that the definition of labour hire adopted in the Queensland legislation is overly broad.¹⁶⁴

COVERAGE

3.95 Due to the small size of the ACT, the Committee heard that any labour hire scheme should cover all industries and forms of labour hire, not just selected fields.¹⁶⁵

3.96 RCSA suggested that unscrupulous operators will continue operating in a different form. In light of this, they proposed that any licensing should target the supply of labour hire and labour contracting services as well as the gig economy platforms.¹⁶⁶

CRITERIA FOR LICENSING

3.97 The Committee was advised that a fit and proper person test for all operators and directors or a corporation test was necessary to verify 'compliance with existing state and commonwealth workplace relations statutes'.¹⁶⁷

3.98 In addition, the scheme would require 'an active process to verify that the workplace relations, workplace safety and workers compensation obligations of employers are being met.'¹⁶⁸

3.99 Maurice Blackburn advised that a requirement was also necessary for end-user enterprises ‘to guarantee the payment of any entitlements owed by the labour hire provider to its workers which would also ensure that costs and risks were not inappropriately shifted.’¹⁶⁹

¹⁶² Unions ACT, Submission 34, p.34.
¹⁶³ Mr Young, Proof Transcript of Evidence, 8 September 2017, p.64.
¹⁶⁴ Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.163.
¹⁶⁵ Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.8; CFMEU, Submission33, p.7.
¹⁶⁶ Mr Cameron, RCSA Proof Transcript of Evidence, 19 October 2017, p.193.
¹⁶⁷ Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, pp.64-65; United Voice, Submission 35, p.18.
¹⁶⁸ Mr Young, Proof Transcript of Evidence, 8 September 2017, p.73.
¹⁶⁹ Maurice Blackburn Lawyers, Submission 8, p.1.
Bond

3.100 The Committee heard that a bond or financial security could be used to indicate the stability of an employer. A bond could be used to protect some of the payments the business would have to make before it goes into liquidation, however the case would need to be made that there is high risk or extreme consequences of the entity not meeting its obligations.

Compliance and Enforcement

3.101 Adequate enforcement was also highlighted as a key component of any proposed labour hire scheme. The Committee heard that:

the ACT needs to have the resources given to an enforcement agency or a regulator that has both the powers to enforce it, with real costs to the business for not complying, and resources for prosecutions, penalties, suspension of licences and so on.

3.102 United Voice proposed a need for compliance audits on employment standards, taxation and superannuation payments and the power to investigate breaches and impose penalties.

3.103 The Committee heard that CMTEDD officials were considering what a licensing regime for labour hire might look like if one proceeded in the ACT, including possible digital solutions such as automatic compliance checking, which would require access to a variety of databases.

Compulsory Training for Licence Holders

3.104 The Committee heard that compulsory education and training requirements as components of a labour hire licensing scheme would only be necessary if additional obligations were put in place beyond compliance with existing laws. The Committee was advised that the very process of consulting on and developing a labour hire licensing scheme would be educative.

Mutual Recognition

3.105 RCSA advised that if a licensing scheme was implemented it should include mutual recognition for industry-led schemes such as StaffSure.

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170 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.73.
171 Mr Tomlins, Proof Transcript of Evidence, 8 September 2017, pp.74-75.
172 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.75.
173 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.8.
175 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.66.
176 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.75.
177 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, pp.75-76.
178 Mr Cameron, RCSA Proof Transcript of Evidence, 19 October 2017, p.193.
3.106 The Committee notes mutual recognition could also be considered for firms already licensed in another jurisdiction with comparable labour hire licensing regimes.

**Recommendation 5**

3.107 The Committee recommends that, to obtain a license under the proposed ACT labour licensing scheme, the labour hire operator would need to provide identifying details of the business in which they operate. They would also need to demonstrate they meet the below criteria:

- The business/company and its key personal must pass an objective 'fit and proper person test.' Such a test would consider if the company or key personnel had any previous breaches of occupational health and safety laws, any past convictions involving fraud, dishonesty or violence, and any past involvement in insolvent businesses.
- The business must demonstrate via administrative records that it pays its employees in accordance with at least the minimum rates specific in the relevant industrial instrument.
- The business must be registered with the Australian Tax Office and be deducting taxation and remitting superannuation on behalf of employees.
- If the business provides accommodation, the business must demonstrate the accommodation meets standards required under the applicable laws and regulations.
- The business must be registered with WorkSafe ACT and paying any required premiums.
- The business must demonstrate its systems for complying with workplace health and safety legislation and ensuring the safety of workers provided to host organisations.
- The business must be able to demonstrate they have the necessary capital requirements to meet any liabilities that might be induced as a result of their operations.
- The business must demonstrate compliance with federal migration laws.

**Recommendation 6**

3.108 The Committee recommends that, in establishing the veracity of the above criteria, the ACT Government should consult with relevant stakeholders, including by not limited to the relevant employer groups and trade unions.

**Recommendation 7**

3.109 The Committee recommends that a labour hire operator meeting the licensing criteria would have to pay an initial license fee and an annual renewal fee for their license.
Recommendation 8

3.110 The Committee recommends that, accompanying the introduction of a labour hire licensing scheme, host companies should be subject to a legal obligation to use only a licensed labour hire providers.

Recommendation 9

3.111 The Committee recommends that the ACT Government maintain a public register of all licensed labour hire operators so as to assist host companies with identifying if a labour hire provider is licensed.

Recommendation 10

3.112 The Committee recommends that ACT Government establish a statutory authority with responsibility for all ACT industrial relations matters. This authority would be responsible for administering the labour hire licensing scheme and could take responsibility for other industrial relations inspection and compliance powers, such as long service leave and workers compensation.

Recommendation 11

3.113 The Committee recommends the ACT Government request WorkSafe ACT to prepare a report dealing with existing legal or practical obstacles to the effective enforcement of workplace health and safety duties as they relate to labour hire.

Agents Act 2003

3.114 The ACT currently licences employment agents under the Agents Act 2003 (ACT). The Act defines what services an employment agent provides. It is unclear whether the Act would apply to labour hire services although some doubt was outlined by the Victorian Inquiry.179

3.115 A police check is required to be submitted as part of the agent licencing application.180

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179 Victorian Inquiry into the Labour Hire Industry and Insecure Work, pp.222-223.
180 Agents Act 2003 (ACT), s29(2).
COMMITTEE COMMENT

3.116 The Committee notes one proposal that all agents licensed under the ACT Agents Act have a ‘working with Vulnerable People clearance.’

3.117 Access Canberra provides the following definition of a vulnerable person:

A person is defined as being vulnerable if they are a child under the age of 18 years or an adult who is experiencing disadvantage and accesses a regulated activity or service related to the disadvantage.

Recommendation 12

3.118 The Committee recommends that the ACT Government ensure all agents licensed under the Agents Act 2003 (ACT) have a ‘Working with Vulnerable People’ clearance where they are likely to be working with clients who fall within the definition of Vulnerable People under the Working with Vulnerable People (Background Checking) Act 2011.

GROUP TRAINING ORGANISATIONS

OVERVIEW

3.119 Group Training Organisations (GTOs) are businesses that directly employ apprentices and trainees as either full or part time employees, put in place Australian Apprenticeship Training Contracts (Training Contract) and place apprentices and trainees with host employers. GTOs are not labour hire businesses.

3.120 GTOs hold all employer responsibilities including wages, allowances, superannuation, workers compensation, work health and safety, insurance, sick/holiday pay and other employment benefits. They are also responsible for training requirements including the quality and continuity of training on and off the job as well as additional support to help ensure apprentices and trainees successfully complete their Training Contract.

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181 Enabled Employment, Submission 5, p.5.
184 HIA, Submission 15, p.5.
3.121 Additionally GTOs provide recruitment and selection, induction, and back-of-office services including payment of wages which assists small businesses looking to take on apprentices without needing to be human resource experts.\textsuperscript{186}

3.122 Group Training was established more than 35 years ago to address skill shortages and ‘ensure a steady stream of skilled tradespeople to a growing ACT economy and avoid future skill shortages.’\textsuperscript{187} It is designed to provide a balance between on and off the job training and facilitates the engagement of apprentices where one business might not have the longevity of work.\textsuperscript{188} GTOs also address the increasing specialisation in a number of fields to give apprentices a broader workplace experience.\textsuperscript{189}

3.123 The majority of employees in a GTO are between 16 to 22 years of age due to the nature of apprenticeships and traineeships.\textsuperscript{190}

3.124 The Committee was advised that around 2000 apprentices are undertaking training in the ACT in general construction trades, plumbing and electrical trades.\textsuperscript{191}

**GROUP TRAINING INDUSTRIES**

3.125 Group training is provided across a variety of industries including hospitality, aged care, retail business, childcare, building and construction.\textsuperscript{192} Group training is also available in finance, insurance and business services, furnishing, light manufacturing, textile clothing and footwear, utilities, electrotechnology and many more industries.\textsuperscript{193} The Australian Apprenticeships website provides a listing of providers and the types of industry training they offer in each State or Territory.\textsuperscript{194}

3.126 GTOs make up 9 per cent of all employers of apprentices or trainees in the ACT.\textsuperscript{195} GTO employers in the ACT are most prevalent in electrotechnology, horticulture, construction, information technology, business and community services industries.\textsuperscript{196}

\textsuperscript{186} AEN, *Proof Transcript of Evidence, 8 September 2017*, pp.40-41.  
\textsuperscript{187} AEN, Submission 3, p.1.  
\textsuperscript{188} HIA, Submission 15, p.5.  
\textsuperscript{189} CITC, *Proof Transcript of Evidence, 8 September 2017*, pp.13.  
\textsuperscript{190} AEN, Submission 3, p.3.  
\textsuperscript{191} CFMEU, Submission 33, p.6.  
\textsuperscript{192} AEN, *Proof Transcript of Evidence, 8 September 2017*, p.36.  
\textsuperscript{194} Australian Government, *Australian Apprenticeships*, ‘Group Training’.  
\textsuperscript{195} Submission 23, ACT Government, p.6.  
\textsuperscript{196} Submission 23, ACT Government, p.6.
**Benefits of Group Training**

3.127 The Committee was advised of the benefits GTOs provide:

Group Training provides a safety net and flexibility for both the apprentice and host employer over the apprenticeship period (in many cases up to 4 years). In difficult economic times GTOs have kept apprentices in work and training, made sure they can attend training and guaranteed their wages. Group Training ensures the steady supply of apprentices through economic peaks and troughs protecting the investment of taxpayer dollars.\(^{197}\)

3.128 Skills Canberra highlighted that:

GTOs are especially useful to smaller businesses which do not have the spectrum to fully train an apprentice in all aspects of the job. The GTO can rotate the Australian Apprentice through multiple host employers to cover each aspect of the training required.\(^{198}\)

3.129 The Committee heard that GTOs have dedicated field officers and provide mentoring, support, protection and secure work for their apprentices.\(^{199}\) This level of pastoral care and support from commencement to completion may not be in place for indentured apprentices.\(^{200}\)

3.130 The Committee was advised that hosts do not outsource their responsibilities under law.\(^{201}\)

3.131 The HIA, for example advised that group training makes a positive contribution to skills development and employment in the ACT housing industry. They noted that ‘there is nothing about group training that is inherently insecure’ with GTO apprentice receiving the same benefits as indentured apprentices.\(^{202}\) Many small businesses are unable to commit to a fixed three or four year training contract because of the short-term project-based nature of residential building industry\(^{203}\) and ‘without group training, fewer apprentices would be employed in the housing industry’.\(^{204}\)

3.132 Some GTOs are operated on a not-for-profit basis.\(^{205}\)

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\(^{197}\) AEN, Submission 3, p.2.


\(^{199}\) CITC, *Proof Transcript of Evidence, 8 September 2017*, p.12; Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.91; 1300apprentice, Submission 6, p.1.

\(^{200}\) Mr Weller, HIA, *Proof Transcript of Evidence, 12 October 2017*, p.135; HIA, Submission 15, p.10; 1300apprentice, Submission 6, p.1.

\(^{201}\) Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.91.


\(^{204}\) Mr Weller, HIA, *Proof Transcript of Evidence, 12 October 2017*, p.135.

\(^{205}\) 1300apprentice, Submission 6, p.2.
3.133 Many of the submissions to the Committee focused on the construction industry.\textsuperscript{206} The Committee was advised that GTOs are an essential source of workforce development for the building industry.\textsuperscript{207}

**GROUP TRAINING - REGULATORY FRAMEWORK**

3.134 The ACT Government submission to the Committee outlined some of the key regulatory controls around the operation of GTOs.

**TRAINING AND TERTIARY ACT 2003 (ACT)**

The *Training and Tertiary Education Act 2003* requires that both parties to a Training Contract (the employer and the apprentice/trainee) must comply with the *National Code of Good Practice for Australian Apprenticeships*.\textsuperscript{208}

3.135 Training contracts are set for a period of time linked to the term of the apprenticeship or traineeship.\textsuperscript{209} ACT based apprentices and trainees ‘cannot have their position terminated without the intervention of Skills Canberra.’\textsuperscript{210}

3.136 Apprentices and trainees employed by GTOs are required to be paid according to the appropriate award or enterprise agreement relevant to the position or site.\textsuperscript{211}

**NATIONAL CODE OF GOOD PRACTICE FOR AUSTRALIAN APPRENTICESHIPS**

3.137 The National Code of Good Practice for Australian Apprenticeships (the Code) aims to assist employers and apprentices understand their obligations and expectations when entering into a Training Contract.\textsuperscript{212} It includes obligations on the employer to meet their legal obligations, provide a safe working environment, support structured training, provide supervision and support and advise apprentices of their rights and responsibilities. Apprentices are expected to be aware of and make a commitment to fulfil work and training responsibilities.\textsuperscript{213}

\textsuperscript{206} HIA, Submission 15; MBA, Submission 10; CFMEU, Submission33.

\textsuperscript{207} HIA, Submission 15, p.4, 10.

\textsuperscript{208} Submission 23, ACT Government, p.3-4.

\textsuperscript{209} AEN, Submission 3, p.2.

\textsuperscript{210} AEN, Submission 3, p.2; [Skills Canberra is a business unit within the Chief Minister, Treasury and Economic Development Directorate].

\textsuperscript{211} AEN, Submission 3, p.3.


\textsuperscript{213} National Code of Good Practice for Australian Apprenticeships,
REGISTRATION

3.138 In addition to the requirements under the *Training and Tertiary Education Act 2003*, GTOs can voluntarily register for the GTO National Register\(^{214}\) through their relevant State and Territory training authority. In the ACT this is managed by Skills Canberra within CMTEDD. Further, if GTOs wish to operate in another State or Territory, they will need to seek approval by application and address the operating requirements of that State or Territory Training Authority.\(^{215}\)

3.139 Skills Canberra provides the following advice to businesses seeking to register as GTOs:

To become an ACT registered GTO, the organisation must:

1. conduct a self-assessment against the Standards
2. prepare and submit a Group Training Organisation Application Form, Compliance Assessment Report and other support materials;
3. participate in a compliance audit conducted by an appointed independent auditor.\(^{216}\)

3.140 Registration also enables GTOs to access additional Australian Government and State and Territory government programs and incentives.\(^{217}\) Registration requirements were formerly linked to funding under a now-ceased Commonwealth/State funding agreement called the Joint Group Training Program.\(^{218}\)

NATIONAL STANDARDS FOR GTOs

3.141 Registration requires GTO compliance with the *National Standards for Group Training Organisations* (the National Standards) which ‘provide a formal framework that promotes national consistency and quality for group training’\(^{219}\). The Standards were reviewed, revised and endorsed by the Australian and State and Territory governments in January 2017.\(^{220}\) The Committee heard that the changes have been effective in getting organisations to review and continually improve their processes and procedures.\(^{221}\) The standards include three key elements:

- recruitment, employment and induction;

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\(^{218}\) Mr Miller, *Proof Transcript of Evidence, 8 September 2017*, p.69.


\(^{221}\) AEN, *Proof Transcript of Evidence, 8 September 2017*, p.37.
monitoring and supporting apprentices and trainees to completion; and,

- maintaining a sustainable GTO which is well governed and administered.\textsuperscript{222}

3.142 State and Territory training authorities are responsible for monitoring local GTO compliance with the National Standards.\textsuperscript{223} Registered GTOs have monthly and as-requested reporting requirements and ‘must agree to participate in external monitoring and audit processes required by the Directorate, including compliance and strategic audits.’\textsuperscript{224}

3.143 The Committee was advised that there are currently six GTOs registered as operating in the ACT,\textsuperscript{225} with 23 different employers identifying as GTOs holding active training contracts in the ACT. The 17 GTOs not registered in the ACT are registered in at least one other State.\textsuperscript{226}

3.144 The National Standards do not apply to directly indentured apprentices.\textsuperscript{227}

COMPULSORY REGISTRATION

3.145 The Committee notes that the Skills Canberra registration guide for GTOs states that ‘from 2018 all employers that seek to identify as a GTO employer on an ACT Training Contract are required to be an ACT registered GTO.’\textsuperscript{228}

3.146 NSW registration will be recognised in the ACT:

- the ACT has entered into a Joint Memorandum of Understanding (MoU) with the NSW Government. The MoU establishes a joint registration process for GTOs operating in both jurisdictions. Effectively, the MoU will facilitate a simplified registration process for GTOs operating in both NSW and ACT, allowing the registration process to be administered by one jurisdiction, rather than by both.\textsuperscript{229}

3.147 Two applications (one for the ACT and one for NSW) must be submitted but only one compliance assessment report is required.\textsuperscript{230}

3.148 The length of registration depends on the characteristics of the GTO. Those not previously registered or those seeking re-registration with fewer than 10 Australian Apprentices in the

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\textsuperscript{222} HIA, Submission 15, p.11.
\textsuperscript{223} \url{https://www.australianapprenticeships.gov.au/sites/ausapps/files/publication-documents/national_standards_for_gtos_0.pdf}
\textsuperscript{224} Skills Canberra, \url{http://www.cmd.act.gov.au/skillscanberra/employers/group_training_organisations}
\textsuperscript{225} \url{https://www.australianapprenticeships.gov.au/gto-listing} [accessed 2/11/2017]
\textsuperscript{226} Submission 23, ACT Government, p.5.
\textsuperscript{227} HIA, Submission 15, p.11.
\textsuperscript{229} Skills Canberra, ACT GTO Registration Guide, p.7.
\textsuperscript{230} Skills Canberra, ACT GTO Registration Guide, p.7.
last 12 months are granted a 12 month registration. Those re-registering with 10 or more Australian Apprentices are granted a three year registration. Further,

Where the GTO is operating in NSW, the registration term granted in the ACT will be based on the number of apprentices/trainees in NSW. 231

3.149 GTOs receive a letter to remind them of upcoming registration expiry. 232

OVERSIGHT AND THE CONSEQUENCES OF NON-COMPLIANCE

3.150 Registered GTOs are subject to compliance and monitoring activity including monitoring visits or compliance audits which may be undertaken any time during their registration term. If concerns are raised by employers or apprentices/trainees at visits or through enquiries, that information may also be passed onto the audit team if it warrants further investigation. 233

3.151 An auditor may recommend that registration be suspended or cancelled, ‘[i]f as a result of a compliance monitoring audit a GTO cannot demonstrate that it fully complies with the Standards, and it fails to demonstrate compliance required by the auditor within the specified timeframe.’ 234

3.152 GTOs are given 30 days from a recommendation of cancellation to lodge an appeal with Skills Canberra before a decision is made and will be notified in writing of the final decision. 235

COMMITTEE COMMENT

3.153 The Committee notes that compulsory registration of GTOs operating in the ACT will serve to strengthen the consistency and quality of services provided by all GTOs.

3.154 The Committee would like to see Skills Canberra undertake an active awareness/education campaign to ensure all GTOs operating in the ACT are aware of the new compulsory registration requirements.

EFFECTIVENESS OF THE CURRENT REGULATORY REGIME/CONCERNS

3.155 A number of submissions to the Committee suggested that the existing rules and regulations around GTOs are effective and appropriate. 236

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232 Skills Canberra, ACT GTO Registration Guide, p.11.
234 Skills Canberra, ACT GTO Registration Guide, p.11.
235 Skills Canberra, ACT GTO Registration Guide, p.11.
236 AEN, Submission 3; MBA, Submission 10, p.5; HIA, Submission 15, p.4.
3.156 HIA, for example, advised that there is no systemic failure that requires additional regulation.\textsuperscript{237} They note that the revised National Standards are very effective in the regulatory environment as they have a financial impact on businesses that do not comply. Compliance with the National Standards is essential to receive government training subsidies.\textsuperscript{238}

\section*{Concerns}

\subsection*{Workplace Health and Safety}

3.157 Unions ACT advised that:

\begin{quote}
...in the ACT, apprentices and GTO apprentices are at significantly higher risk of workplace injury; the evidence shows that the rate of injury of [Group Training] apprentices is between two to three times the industry rate.\textsuperscript{239}
\end{quote}

3.158 The Committee was advised by the CFMEU about recently publicised figures on the high rate of injury amongst construction industry trainees and apprentices, which are higher than the industry generally.\textsuperscript{240}

3.159 In contrast, HIA advised that in its experience they do not see a rate of injuries that cause alarm, despite typically employing 40 to 50 apprentices at any time.\textsuperscript{241} They reinforced the benefits of GTO field officers in providing additional support and assistance to apprentices, and as a person whom apprentices can raise concerns with that is not their day-to-day supervisor.\textsuperscript{242} Similarly 1300apprentice advised that if serious issues arose and the employee’s health and safety is at risk they will remove the employee from that host immediately.\textsuperscript{243} Many GTOs also conduct a site inspection at the host premises and apprentices and trainees complete workplace health and safety induction before commencing work.\textsuperscript{244}

3.160 The CFMEU also raised concerns that the number of GTO field officers to attend job sites in the construction industry is insufficient to monitor workplace safety, supervision and training standards for the number of apprentices they are responsible for.\textsuperscript{245}

\begin{footnotesize}
\begin{enumerate}
\item Mr Weller, HIA, \textit{Proof Transcript of Evidence, 12 October 2017}, p.135.
\item Mr Humphrey, HIA, \textit{Proof Transcript of Evidence, 12 October 2017}, p.139.
\item Unions ACT, Submission 34, p.34.
\item CFMEU, Submission 33, p.11.
\item Mr Weller, HIA, \textit{Proof Transcript of Evidence, 12 October 2017}, p.135.
\item Mr Weller, HIA, \textit{Proof Transcript of Evidence, 12 October 2017}, p.135.
\item 1300apprentice, submission 6, p.2.
\item 1300apprentice, submission 6, p.4.
\item CFMEU, Submission 33, pp.10-11.
\end{enumerate}
\end{footnotesize}
3.161 The CFMEU also advised, through case studies, that there is a substantial practice transferring apprentices to other sites and hosts, in some cases hosts that are not approved by, or have any connection with, the GTO.\textsuperscript{246}

3.162 The Committee was told that media reports claiming issues around supervision for school based apprentices and associated concerns with group training are isolated incidents.\textsuperscript{247}

3.163 The Committee asked about an incident in 2016 where a young GTO apprentice/trainee was injured on a worksite and whether that pointed to a failure in the current regulatory regime. The Australian Employment Network (AEN) advised that safety was a difficult message to get through to a predominantly young male cohort who ‘are risk takers in a lot of ways’.\textsuperscript{248}

3.164 The AEN advised that workplace health and safety is one of the highest priorities for GTOs, conscious that apprentices and trainees are predominantly in the 16-22 year age bracket who are still maturing.\textsuperscript{249} They also noted that insurance premiums for workers compensation are the most expensive when dealing with apprentices and trainees with the premiums are carried by the GTO and not the host organisation so act as an incentive to keep injury rates low.\textsuperscript{250}

3.165 AEN advised that ‘the only way to build on prevention is through knowledge’, including reiteration with apprentices of what is acceptable, safe and what is not.\textsuperscript{251} Supervision was also highlighted as a key measure in prevention of workplace injuries.\textsuperscript{252}

\section*{FUNDING}

3.166 The Committee received a proposal that government funding for any ACT GTO should be conditional on the GTO and host employer meeting health and safety conditions as well as compliance with the \textit{Fair Work Act 2009}, with the ability for the funding authority to review and withdraw funding in extreme cases of non-compliance.\textsuperscript{253}

3.167 The Committee was advised that ACT Government funding is only available for building and construction industry training.\textsuperscript{254} The AEN also noted that if all GTOs are registered with Skills Canberra then registration can be cancelled or suspended in conditions are not met.

\begin{footnotes}
\item[246] CFMEU, Submission 33, p.11.
\item[248] AEN, \textit{Proof Transcript of Evidence, 8 September 2017}, p.41.
\item[249] AEN, Submission 3, p.4; AEN, \textit{Proof Transcript of Evidence, 8 September 2017}, pp.41-42.
\item[250] AEN, Submission 3, p.4.
\item[251] AEN, \textit{Proof Transcript of Evidence, 8 September 2017}, p.42, 44.
\item[252] AEN, \textit{Proof Transcript of Evidence, 8 September 2017}, pp.42-43.
\item[253] Unions ACT, Submission 34, p.34.
\item[254] AEN, \textit{Proof Transcript of Evidence, 8 September 2017}, p.43.; Further information on ACT funding for GTOs is available at: http://www.trainingfund.com.au/funding/gtos/\
\end{footnotes}
The Committee notes that GTOs must provide evidence of compliance with the following requirement when undertaking registration:

The GTO provides services that meet the needs of apprentices and trainees to facilitate the continuity of the Training Contract to completion and the quality and breadth of the training experience, including:
- support and mentoring throughout the Training Contract;
- providing resources or advice or procuring any special equipment for the workplace in order to meet access and equity and Work Health and Safety requirements.255

Recommendation 13

The Committee recommends that the ACT Government introduce mandatory health and safety requirements for any Group Training Organisations receiving ACT Government funding.

SUPERVISION

The Committee heard that supervision of apprentices is essential for skill development and safety. Most GTOs review hosts to ascertain that they are suitable and any workplace issues are addressed and some require prequalification checks to ensure compliance with Work Health and Safety Act 2011 (ACT) obligations. Many GTOs also undertake mentoring visits, and check training of supervisors is suitable.256

APPRENTICES USED AS LABOUR HIRE

The Committee heard from Unions ACT that group training is ‘an exploitative form of traineeship characterised by the use of apprentices as low-cost labour hire in the construction industry.’257

The CFMEU described group training as a form of labour hire but acknowledged that because of training requirements the joint responsibilities on the hosts and training organisations, including supervision and on the job training, goes beyond ordinary labour hire hosts.258

In contrast, HIA advised that whilst GTO arrangements are a form of on-hire employment, it cannot be categorised in the same way as labour hire businesses. It is the GTOs obligation to

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256 Mr Weller, HIA, Proof Transcript of Evidence, 12 October 2017, p.136; HIA, Submission 15, p.11; 1300apprentice, Submission 6, pp.1-2.
258 CFMEY, Submission 33, p.6.
find work for apprentices during market downturns. In many cases apprentices are with the one host for the full term if there is sufficient work.

3.174 HIA noted that it is also not economic for the GTO to regularly move apprentices between hosts, advising that it is almost as much work for the GTO as initially employing the apprentice.

APPRENTICES EMPLOYED BY LABOUR HIRE FIRMS

3.175 The Committee also received concerns around labour hire companies engaging apprentices and hiring them out to employers in a similar way to GTOs but without the same requirement to comply with national standards for Group Training Organisations or auditing requirements by Australian Skills Quality Authority (ASQA).

3.176 CITC provided the Committee with an example of an apprentice being employed by a labour hire company and hired out to a subcontractor but without the labour hire company meeting its training obligations. CITC proposed that ‘work needs to be done locally to ensure that these companies are not manipulating apprentices in the ACT’, noting its concerns surround the ‘lack of legal framework for those apprentices to work under’ but also noting the example is likely to be a rare case.

3.177 The AEN raised concerns about labour hire companies employing apprentices or trainees and believes that:

...in the ACT no business that provides labour hire services should have the ability to employ an apprentice or trainee to host to any third parties unless they are a registered Group Training organisation and fulfil the requirements stated by the National Group Training Standards and Skills Canberra.

3.178 The Committee was advised that group training did not require an additional licensing regime as it is already a regulated industry and very different to labour hire arrangements.

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259 Mr Humphrey, HIA, Proof Transcript of Evidence, 12 October 2017, p.138.
261 Mr Weller, HIA, Proof Transcript of Evidence, 12 October 2017, p.138.
262 CITC, Submission 14, p.2.
263 CITC, Proof Transcript of Evidence, 8 September 2017, pp.10-12.
264 CITC, Submission 14, p.2.
265 CITC, Proof Transcript of Evidence, 8 September 2017, pp.10-11.
266 AEN, Submission 3, pp.4-5; AEN, Proof Transcript of Evidence, 8 September 2017, p.37.
267 AEN, Proof Transcript of Evidence, 8 September 2017, p.36.
CHURN

3.179 In response to concerns about the ‘churn’ of GTO apprentices through host organisations, the Committee heard that ‘[i]f an apprentice or trainee is handed back by a host employer, the GTO will source a new host to place the apprentice or trainee back in.’  

JOB OUTCOMES

3.180 The Committee enquired about job outcomes for apprentices and trainees and heard that for each industry and each apprentice/trainee the pathway after completion can vary:

If an apprentice or a trainee has done the majority of their time with a single host organisation and shown their worth, they are generally offered an ongoing job with them. In the case of many apprentices, if they have spent four years learning their trade with one host, they would generally choose to move. It really comes down to a matter of choice. You are talking about someone who, in all likelihood, started as a 17-year-old or 18-year-old and is now 22 or 23. They may be looking for a change.  

3.181 HIA advised that it does not have a formal means of tracking job outcomes for its apprentices, although it does see a number returning as members of the organisation.  

3.182 Many industries are looking to skill their workforce to grow their business, although traineeships and apprenticeships can also be a pathway to further study or starting up as a small employer.  

3.183 There are not formal permanency arrangements upon completion of a traineeship/apprenticeship with a GTO, however the AEN proposed that small business training supported by the ACT Government would be a good incentive to encourage transition for ‘graduates’ to set up their own business and ‘put something back in the system’.

3.184 Apprenticeships and traineeships in the ACT appear to have good job outcomes. Early data from the ACT Australian Apprenticeship Completion Survey, initiated in 2016, and figures from the National Centre for Vocational Education and Research Student Outcomes Survey indicate a high percentage of ACT graduates who believe their employment status had improved after completing training.

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268 AEN, Submission 3, p.2.  
269 AEN, Proof Transcript of Evidence, 8 September 2017, p.39.  
270 Mr Weller, HIA, Proof Transcript of Evidence, 12 October 2017, p.138.  
272 AEN, Proof Transcript of Evidence, 8 September 2017, p.40.  
273 AEN, Proof Transcript of Evidence, 8 September 2017, p.40.  
COMMITTEE COMMENT

3.185 The Committee notes that all GTOs operating in the ACT are required to comply with the *Training and Tertiary Education Act 2003* and the National Code of Food Practice for Australian Apprenticeships. As all GTOs currently operating in the ACT are registered on the GTO National Register in one or more Australian jurisdictions, they also must comply with the National Standards.

3.186 The Committee notes that the 17 GTOs registered as operating in another jurisdiction (and not the ACT) are not required to report to Skills Canberra and are not currently subject to monitoring within the ACT. Therefore not all GTOs operating in the ACT have been subject to the same scrutiny.

3.187 Until 2018 a GTO was also able to establish itself in the ACT and not be on the GTO National Register in any Australian jurisdiction and therefore not be subject to the National Standards or reporting and monitoring requirements.

3.188 The Committee is pleased that from 2018 all employers that seek to identify as a GTO employer on an ACT Training Contract will be required to be an ACT registered GTO.\(^{275}\) The Committee notes this should alleviate many of the concerns around the operation of unregistered GTOs and prevent labour hire companies employing apprentices or trainees without themselves registering as a GTO and meeting the associated obligations.

NON-GTO APPRENTICES

3.189 The majority of apprentices and trainees in the ACT are not engaged through GTOs, with only around one in nine apprentices and trainees in Australia being employed by GTOs.\(^{276}\)

3.190 Additional concerns were raised with the Committee around the assistance available to non-GTO apprentices.

FIELD OFFICER FOR CONSTRUCTION INDUSTRY APPRENTICES

3.191 Whilst GTOs appear well equipped to support their apprentices and host organisations, the Committee was advised that there is a lack of support for the 80 per cent of construction industry apprentices and their employers who are engaged outside of GTOs, particularly small sub-contractor employers.\(^{277}\) Field officers within Skills Canberra are not suitable as they do not have a construction background.\(^{278}\)

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\(^{276}\) AEN, *Proof Transcript of Evidence, 8 September 2017*, p.36.

\(^{277}\) CITC, Submission 14, p.2; Mr Ball, *Proof Transcript of Evidence, 8 September 2017*, p.14.

\(^{278}\) Mr Ball, *Proof Transcript of Evidence, 8 September 2017*, p.14.
3.192 Assistance around training and work health and safety is lacking and the CITC advised that a fully funded field officer position within Skill Canberra or in CTIC would go some way towards addressing these areas of concern. CITC proposed to the Committee that such a position could provide 'field and on-site activities that would respond to and assist industry apprentices; apprentice family members/carers; young construction workers, work experience students and employers' on issues including workplace health and safety, apprentice contract matters, employment issues, training and general support. They propose the position would also be required to liaise with Skills Canberra Field Officers; Schools/Colleges; WorkSafe ACT and Access Canberra.279

CASUAL EMPLOYMENT

OVERVIEW

3.193 Casual employment is defined by the Fair Work Ombudsman by the following factors: 280

- has no guaranteed hours of work
- usually works irregular hours (but can work regular hours)
  - doesn't get paid sick or annual leave
  - can end employment without notice, unless notice is required by a registered agreement, award or employment contract.281

Casual employees are entitled to:

- a higher hourly pay rate than equivalent full-time or part-time employees. This is called a 'casual loading' and is paid because they don't get benefits such as sick or annual leave
- 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion282
- unpaid community service leave. 283

An employer can’t take negative action against an employee for taking unpaid carer’s leave.284

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279 CITC, Submission 14, p.2.
LONG TERM CASUALS

3.194 The Fair Work Ombudsman also defines, and outlines the entitlements of, long term casuals:

Some casual employees work regular hours or the same days each week for a long period and become 'long term casuals'.

Long term casuals stay as casual employees unless they formally change to full-time or part-time employment. They don't automatically become permanent employees, even if they are called 'permanent casual'. They get their casual entitlements regardless of how regularly they work or how long they work for.

After 12 months of regular employment, and if it’s likely the regular employment will continue, a casual employee can:

- request flexible working arrangements
- take parental leave. 285

They don't get paid leave or notice of termination, even if they work regularly for a long time. 286

CHANGING TO FULL-TIME OR PART-TIME EMPLOYMENT

3.195 The Fair Work Ombudsman outlines the following regarding transition from casual work:

A casual employee can change to full-time or part-time employment at any time if the employer and employee both agree to it.

Some enterprise agreements, other registered agreements and awards have a process for changing casual employees to full-time or part-time. 287

LONG SERVICE LEAVE

3.196 In some States and Territories long serving casuals are eligible for long service leave. 288 In the ACT an employee (including casual, part-time and people remunerated at piecework rate289) have an entitlement for paid long service leave where:

(1) An employee who has completed seven years of service with a single employer is entitled to long service leave for the period of the service.

(2) An employee is entitled to long service leave for each year of service completed by the employee after the end of the seventh year of service.

(3) An employee’s entitlement to long service leave for a period of service arises at the end of the period.290

3.197 In the ACT there is also a portable long service leave scheme that applies to casu... in some industries. This is discussed further in Chapter 7.

SUPERANNUATION

3.198 The Committee notes that the superannuation guarantee applies to full-time and part-time employees and some casual employees, and includes temporary residents. Under the guarantee employers have to pay superannuation contributions of 9.5 per cent of an employee’s ordinary time earnings if:

- when an employee is paid $450 or more before tax in a month and is:
  - over 18 years, or
  - under 18 years and works over 30 hours a week.

Superannuation has to be paid at least every 3 months, into the employee's nominated account.291

EXTENT

3.199 The Committee received a range of evidence suggesting that there has been an increase in casualisation of the workforce. However, data seems to indicate that casual work has remained steady over the past two decades. A recent statistical snapshot provides the following analysis:

The use of casual employees in Australia grew most strongly from the early 1980s to the mid-1990s. During this time the casual share of all employees increased from around 13 per cent to 24 per cent.

The rate of growth in employees with and without leave entitlements in the past two decades has been more balanced with the casual employee share of total employees increasing marginally from 24 per cent in 1996 to 25 per cent in 2016.292

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290 Long Service Leave Act 1976, Part 2, s3, Entitlement to long service leave.
This analysis is supported by the Ai Group, who advised the Committee that casualisation of the workforce is not increasing and has remained at around 20 per cent for around two decades. Casual labour hire employees are included in that figure.  

CBC similarly noted that casualisation of the workforce has slowed significantly, based on research from the University of Canberra.  

In the ACT, the casual share of total employees is around 20 per cent which has not varied significantly over the last two decades as indicated in the table below based on ABS data.

### Table: trends in casual share of total employees, various years

<table>
<thead>
<tr>
<th>Casual share of total employees (%)</th>
<th>1992</th>
<th>2000</th>
<th>2010</th>
<th>2017</th>
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The Committee heard that casual work is more prevalent in specific industries such as hospitality and retail. Those industries are more likely to be employing young people but all cohorts in those industries are affected.

A recent statistical review found:

The occupation groups that recorded the highest prevalence of casual employees were hospitality workers (79 per cent of all workers) and food preparation assistants (75 per cent). Other occupations with high concentrations of casual workers include labourers (58 per cent), sales support workers (56 per cent), sports and personal service workers and farm, forestry and garden workers (both 55 per cent). Managerial or professional occupations have the lowest casual shares.

Legal Aid ACT noted that there is also a significant relationship between casual employment, age and gender.

Casual employment is most common among young workers, with 20 per cent of all casual workers aged between 15-19 years and just under 60 per cent of all casual workers aged between 20-24 years.

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296 Geoff Gilfillan, Department of Parliamentary Services, *Statistical Snapshot, Characteristics and use of casual employees in Australia, 19 January 2018*, p.1. [ABS, Australian Labour Markets, cat. 6105.0, Table 2]
workers under 35 years of age. Women are much more likely to be in casual employment than men: with 25.5 per cent of all female employees are casual compared to 19.7 per cent of male employees. Most workers in Australia who work part-time (54 per cent) work in casual employment. Just over 30 per cent of casual employees work full-time hours.

CONCERNS

3.206 The Committee received a range of concerns around casual employment which are discussed briefly below. However, the majority of matters, such as rates of pay, casual loading and some leave entitlements, fall outside the ACT’s legislative and regulatory powers.

3.207 ACTCOSS noted that high rates of casualisation in hospitality and retail are of concern as they are often the only available entry level work and create vulnerabilities for people early in careers.

UNDEREMPLOYMENT AND UNEMPLOYMENT

3.208 The Committee heard that underemployment is a significant concern in casual work. Unions ACT advised that ‘casual employees have double the risk of periods of unemployment compared to permanent employees.’

LENGTH OF EMPLOYMENT

3.209 The Committee notes that casual employment does not always mean temporary. Data indicates that in August 2016, around 81 per cent of casuals expected to be with their current employer in 12 months’ time, compared with about 93 per cent of permanent employees.

3.210 Unions ACT advised that long-term casual employment ‘can deplete the confidence of those seeking permanent employment elsewhere.’

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299 Legal Aid ACT, Submission 4, pp.6-7.
300 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.15
301 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.171.
302 Unions ACT, Submission 34, p.10 [extract from ACTU submission to the Victorian Inquiry into Labour Hire]
303 Geoff Gilfillan, Department of Parliamentary Services, Statistical Snapshot, Characteristics and use of casual employees in Australia, 19 January 2018, pp.1, 12.
304 Unions ACT, Submission 34, p.11.
WORKING HOURS AND FLUCTUATING PAY

3.211 The Committee was advised that there are significant fluctuations in casual work hours. Hours of employment are subject to the needs of the business which may result in fewer or irregular shifts.\textsuperscript{305}

3.212 The Committee was advised that working time insecurity and income insecurity are the causes of fluctuating pay. Unions ACT highlighted that ‘casual employees do not have the guaranteed hours and times of work of permanent employees. Some 25 per cent of employees have variable pay from one pay period to the next.’\textsuperscript{306}

3.213 Legal Aid ACT provided the Committee with case studies of situations where employees’ hours of work were cut. They noted these are representative of the types of client legal matters that Legal Aid ACT assists with through its General Practice Employment Clinic.\textsuperscript{307} They advised:

Casual workers are much more likely to face irregular and insufficient hours of work and fluctuations in earnings, with around 53 per cent experiencing variable earnings from one pay period to another in August 2016, compared with only 15 per cent of permanent employees. Just under a third (31 per cent) of casual workers preferred more hours of work per week compared with 10 per cent of permanent employees.\textsuperscript{308}

3.214 The financial consequences and other impacts of casual work are explored further in Chapter 6 of this report.

TRAINING AND DEVELOPMENT

3.215 Unions ACT noted that casuals have a lack of, or lower opportunities for, a career path, training and skills development as employer are less likely to invest in them.\textsuperscript{309}

3.216 The Committee notes data that indicates fewer casual employees engage in work-related training compared to permanent employees.\textsuperscript{310}

GENERAL PROTECTIONS AND UNFAIR DISMISSAL

3.217 The Committee heard a range of views about how unfair dismissal conditions apply to casual workers.

\textsuperscript{305} Dr Boersig, Legal Aid ACT, \textit{Proof Transcript of Evidence, 12 October 2017}, p.120.

\textsuperscript{306} Unions ACT, Submission 34, p.10. [extract from ACTU submission to the Victorian Inquiry into Labour Hire]

\textsuperscript{307} Dr Boersig, Legal Aid ACT, \textit{Proof Transcript of Evidence, 12 October 2017}, p.120.

\textsuperscript{308} Geoff Gilfillan, Department of Parliamentary Services, Statistical Snapshot, Characteristics and use of casual employees in Australia, 19 January 2018, p.1.

\textsuperscript{309} Unions ACT, Submission 34, pp.10-11.

\textsuperscript{310} Geoff Gilfillan, Department of Parliamentary Services, Statistical Snapshot, Characteristics and use of casual employees in Australia, 19 January 2018, p.1.
3.218 Unions ACT advised that ‘short-term and irregular casual employees are excluded from parental leave, the right to request flexible working arrangements and unfair dismissal protection’. 311

3.219 The MBA highlighted to the Committee that casual workers employed on a systematic and regular basis for the requisite period of time can avail themselves of protections under the *Fair Work Act 2009* and the relevant Award, for example they may be deemed to be a protected employee with regards to the unfair dismissal provisions of the *Fair Work Act 2009*. 312

3.220 Legal Aid ACT provided the following advice to the Committee:

> Under the *Fair Work Act 2009* (‘FWA’) casual employment will ordinarily not count towards an employee’s period of employment for the purposes of assessing whether they are protected from unfair dismissal. 313 However, if a casual employee is employed on a regular and systematic basis and during the period of their employment and they had a reasonable expectation of continuing employment on a regular and systematic basis, that period of casual employment will count towards the assessment of their period of employment. 314 In effect, this means a casual employee can be protected from unfair dismissal provided they not only worked on, but had a reasonable belief they would continue to work on, a regular and systemic basis for the minimum period of employment (12 months for a small business, 6 months for all others 315). However, while casual employees must prove they are working on such a basis, full and part-time employees do not need to prove they are working with any regularity and their entire period of employment is taken to count towards the period of employment. This is a key distinction, meaning it is not the case that “there is no difference” to casual and full time employment in regards to unfair dismissal.

3.221 Legal Aid ACT further advised that casual employees need to demonstrate certain factors that indicate regular or systemic employment in order to be covered by unfair dismissal protections, however, proving ‘regular and systemic’ employment can be difficult. 316

**EXCLUSION FROM LEAVE RIGHTS**

3.222 The Committee received concerns about the exclusion of casual workers from leave rights under the National Employment Standards (NES):

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311 Unions ACT, Submission 34, p.10.
312 MBA, Submission 10, p.3.
313 Legal Aid ACT, Submission 4b FWA 2009 s384(2)(a).
314 Legal Aid ACT, Submission 4b FWA 2009 s384(2)(a)(i) and (ii).
315 Legal Aid ACT, Submission 4b FWA 2009 s383.
316 Legal Aid ACT, Submission 4b.
including annual leave, personal/carer’s leave and compassionate leave, and paid public holidays, as well as notice of termination and redundancy pay. The entitlement to be absent from work during public holidays is weaker for casual employees. The lack of access to paid leave might encourage workers to attend work when they are not sufficiently rested, or sufficiently well.\(^{317}\)

3.223 Some evidence noted that casual employees are compensated with a pay loading for the benefits they forego including leave, redundancy and reduced engagement periods based on the modern award\(^{318}\) and therefore are not receiving inferior rights and entitlements.\(^{319}\)

3.224 The National Tertiary Education Union (NTEU) advised that in the case of the higher education sector, the 25 per cent loading is insufficient to compensate for the value of the conditions casual workers do not receive.\(^{320}\)

3.225 Similarly, the Committee was advised about the Organisation for Economic Co-operation and Development (OECD) research that found ‘temporary workers receive less than permanent workers even when controlling for job differences.’\(^{321}\)

**SHIFT REDUCTION AS A PENALTY**

3.226 The Committee was advised of cases where casual workers experienced a significant reduction in their shifts, allegedly in response to the employee raising concerns or requesting flexibility.

3.227 United Voice advised that worker voice is reduced for casuals and they are less prepared to raise concerns for fear they will not be rostered for further work. They note that ‘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.’\(^{322}\)

3.228 One submission from a casual hospitality worker highlighted how he experienced four years where superannuation was not paid by his employer. He noted he was regularly paid late, sometimes cash-in-hand and often not paid the appropriate overtime by his previous employer. A lot of other employees were “off the books” and underpaid. The worker noted his relationship with his employer became strained because he raised concerns with Fair Work Ombudsman and the ATO about unpaid superannuation, poor working conditions and exploitation. He feared he would not receive an accurate reference because of those complaints.\(^{323}\)

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\(^{317}\) Unions ACT, Submission 34, p.10. [extract from ACTU submission to the Victorian Inquiry into Labour Hire].

\(^{318}\) Mrs Hendry, CBC, *Proof Transcript of Evidence, 19 October 2017*, p.171.

\(^{319}\) CBC, Submission 11; AI Submission 22, p.21.

\(^{320}\) NTEU, Submission 38, p.7.

\(^{321}\) Unions ACT, Submission 34, p.24.

\(^{322}\) United Voice, Submission 35, p.12.

\(^{323}\) Submission 31.
3.229 The Committee heard that in situations where shifts for a casual worker are significantly reduced and an employee can prove that it occurred in response to the worker raising an issue or complaint, it could be deemed constructive dismissal, for which there are safeguards in the *Fair Work Act 2009* to protect those employees.\(^{324}\)

3.230 The Committee notes that the Fair Work Ombudsman provides an application for casual employees to record their work hours which could be helpful if disputes arise and to prove regular and systematic work hours.\(^{325}\)

**CONVERSION TO PERMANENCY**

**RIGHT TO REQUEST**

3.231 The Committee was advised that the FWC handed down a decision in 2017 proposing to extend the number of awards under which casual employees could be converted to part or full-time employment. The proposed criteria include continuous employment for 12 months during which a pattern of hours is established which would not need to be significantly varied with a switch to part or full-time employment.\(^{326}\)

3.232 The Ai Group advised that very few casual employees take up the right to request full-time employment.\(^{327}\)

3.233 CBC advised the Committee that business confidence and stronger economic conditions are likely to result in more employers interested in converting casual employment to full-time employment because they know their comparative advantage is in their team. Particularly in light of skill shortages, many businesses are keen to retain the staff they have invested in.\(^{328}\)

3.234 United Voice advised that the existing casual conversion clauses are ineffectual in enabling casual employees to obtain permanent employment if they wish it.\(^{329}\)

**MANDATORY CONVERSION**

3.235 Whilst most casual workers have the right to apply (but not an automatic right to convert), some Awards, such as the Building and Construction On-site Award 2010, include a mandatory casual conversion clause that enables casuals who have worked regularly and systematically

\(^{324}\) Mrs Hood, CBC, *Proof Transcript of Evidence*, 19 October 2017, p.175.
\(^{325}\) Ms Stephen-Smith MLA, *Proof Transcript of Evidence*, 8 September 2017, p.76.
\(^{326}\) Legal Aid ACT, Submission 4b [2017] FWCFB 3541; *Proof Transcript of Evidence*, 19 October 2017, p.173.
\(^{327}\) Mr Smith, Ai Group, *Proof Transcript of Evidence*, 19 October 2017, p.162.
for a prescribed period (usually 6-12 months) to move to an ongoing contract. The MBA advised that employers must not unreasonably refuse and employees must not be engaged and re-engaged to avoid this obligation.

3.236 The Committee received proposals that mandatory conversion should be extended to all employees under the National Employment Standards and the ANMF recommended that the ACT Government advocate for changes to the Fair Work Act 2009 to improve access to conversion.

**FIXED TERM EMPLOYMENT**

**OVERVIEW**

3.237 The Fair Work Ombudsman outlines fixed term employment as follows:

Fixed term contract employees are employed for a specific period of time or task. For example a 6 month contract where employment ends after 6 months.

Fixed term employees are different to permanent employees who are employed on an ongoing basis until the employer or employee ends the employment relationship.

Fixed term contract employees are usually full-time or part-time employees.

Full-time or part-time fixed term employees are generally entitled to the same wages, penalties and leave as permanent employees. An award or registered agreement may provide extra terms and conditions for a fixed term employee.

**NATURE AND EXTENT**

3.238 Fixed term employment is most common in the education and training, and public administration and safety industries. The ABS ‘Characteristics of Employees in November 2013’ highlighted that four per cent of employees worked on a fixed-term contract, of whom

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332 ANMF, Submission 13, p.9.
333 ANMF, Submission 13, p.9.
335 Australian Bureau of Statistics 2018, Form of Employment November 2013, ‘Table 6, EMPLOYEES, Whether worked on a fixed-term contract in main job - By industry and occupation of main job - By sex’, Data Cube: Excel Spreadsheet cat. no. 6359.0, viewed 2 April 2018
52 per cent were in the occupation of Professionals, and 33 per cent worked in the Education and Training industry. 336

Fixed term contract employees by industry and gender (percentage) November 2012. 337


In the ACT Public Service, the use of temporary employment is increasing. At the end of the 2016-17 financial year, 17.4 per cent of the proportion of the total workforce was temporary, based on headcount.338 The ACT Public Service as an employer is discussed further in Chapter 8 of this report.

The Committee was also advised by the NTEU that temporary employment is increasingly common in the higher education sector. See Chapter 4 of this report for further discussion.

RCSA advised the Committee that fixed-term contract, temporary agency work and part time work are all 'components of inclusive and dynamic labour markets, which are necessary and useful to complement open-ended full-time employment.'

Enabled Employment noted that ‘temporary work and casual work is an important and effective strategy for people with a disability and other marginalised groups to enter the workforce, gain experience and progress to permanent employment.’

APSCo also advised that in the ACT, in the professional staffing sector, full time temporary workers tend to be the highest paid.

**Concerns**

As with other forms of non-ongoing work, fixed term employees face unpredictability around future work opportunities and a power imbalance which can discourage employees from speaking up about pay or workplace safety issues for fear of missing out on further contracts.

The Committee was advised about the difficulties being employed on short-term rolling contracts with a government department, finding out only in the final week whether the contract would be extended.

The rolling nature of some fixed-term employment is also a concern. The CPSU advised of one of their members in the Education Directorate who works in administration at an ACT Government school noted that a great number of contract staff have their contracts renewed every single year, and are never made permanent.

Another individual who provided evidence to the Committee on their experience with short term rolling contracts noted issues with primary contractors not paying or being late with payments under 90 day payment arrangements. The participant advised that their superannuation had not been paid for 10 years.

Further sector-specific concerns are discussed in the relevant chapters of this report.

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339 RCSA, Submission 20, p.
340 Enabled Employment, Submission 5, p.5.
341 APSCo, Submission 16, p.7.
342 Submission 25.
343 CPSU, Submission 7, p.8.
344 Submission 32.
INDEPENDENT CONTRACTING

OVERVIEW/NATURE

3.249 Fair Work Ombudsman provides the following overview of what constitutes an independent contractor:

Independent contractors run their own business. They usually negotiate their own fees and working arrangements and can work for more than one client at a time. Independent contractors are often called contractors or subcontractors.  

3.250 Independent contractors do not have a minimum wage, leave entitlement or notice of termination unless they negotiate for these entitlements to be included in their contract. They need to arrange for tax to be taken out of their pay, pay GST and make their own superannuation contributions, however there are exceptions:

...when a contractor is hired wholly or principally for labour...they’re considered employees for superannuation purposes, and the person that hired them is responsible for paying their superannuation.

3.251 The ABS defines independent contractors as:

people who operate their own business and who contract to perform services for others without having the legal status of an employee, i.e. persons who are engaged by a client, rather than an employer. Independent contractors are engaged under a contract for services (a commercial contract), whereas employees are engaged under a contract of service (an employment contract). Independent contractors' employment may take a variety of forms, for example, they may have a direct relationship with a client or work through an intermediary. Independent contractors may have employees, however they spend most of their time directly engaged with clients or on client tasks, rather than managing their staff.

3.252 The Ai Group advised that ‘the common law is far better equipped to assess the substance of independent contracting arrangements than any statutory definition could’ noting a common law not statutory approach should be maintained.

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350 Mr Smith, Ai Group, Proof Transcript of Evidence, 19 October 2017, p.161.
3.253 Independent contractors can be engaged directly by a client or through a recruitment agent.\(^{351}\)

**EXTENT**

3.254 ABS data indicates that approximately nine per cent of all employed persons in Australia were independent contractors, and almost three quarters (72 per cent) of all independent contractors were males.\(^{352}\)

3.255 In the ACT, independent contractors represent approximately 5.6 per cent of the total number of employed persons.\(^{353}\)

3.256 Independent contracting appears to be common in the construction, ICT and banking sectors.\(^{354}\)

3.257 The detached residential building sector relies heavily on the use of independent trade contractors for onsite construction work.\(^{355}\)

3.258 The following ABS chart indicates the distribution of independent contractors by occupation of main job by sex.

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\(^{351}\) Ms Mills, APSCo, *Proof Transcript of Evidence, 19 October 2017*, pp.185.

\(^{352}\) ABS, *Characteristics of Employment, Australia, August 2016*

\(^{353}\) CFMEU, Submission 33, p.12.


\(^{355}\) HIA, Submission 15, p.6.
3.259 CBC noted that there are benefits for contractors who prefer to run their own business, particularly flexibility and autonomy, as well as benefits to a business gaining specialist or additional employees to meet high work demand or to perform specific work packages.

3.260 Many contractors have no desire to become permanent employees and often negotiate superior conditions directly. The Ai group for example, advised that ‘the vast majority of independent contractors are happy with that method of organising their affairs and have no interest in being employees.’

3.261 Contractors are often informed and supported by industry association standards and accreditation schemes. APSCo Australia, for example, developed a Vulnerable Worker Checklist to help:

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356 Available at: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6333.0Main%20Features4August%202016?opendocument&tabname=Summary&prodno=6333.0&issue=August%202016&num=&view=](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/6333.0Main%20Features4August%202016?opendocument&tabname=Summary&prodno=6333.0&issue=August%202016&num=&view=)

357 CBC, Submission 11.


...ensure the formation of genuine and non-coercive independent contracting relationships. The checklist would not only provide a useful tool for businesses to ensure compliance with legal obligations when engaging workers, it could also be relied upon as evidence of the willingness of parties to enter into an independent contracting arrangement.  

3.262 APSCo advised that professional staffing contracting provides some protection for workers in their autonomy to decide where and when they will work. Additionally, professionals supplied and managed by APSCo Australia members are very highly paid, and are not considered vulnerable workers.  

3.263 The Committee heard that independent contractors in the detached housing industry have the benefit of running their own business, giving them the flexibility to choose what projects or work they accept. In the construction industry many trade contractors start as carpenters and move on to become builders in their own right. Many want to ‘be their own masters’ and contracting also provides greater work options in an industry that has highly fluctuating work availability. There are also taxation advantages.  

CONCERNS

3.264 Despite the benefits above, independent contractors face a trade-off that they do not receive leave and superannuation entitlements, or other securities provided by the fair work system and other employment laws.  

3.265 The Committee was advised that independent contractors receive a loading for leave and it is up to the contractor how they budget for time off.  

3.266 Independent contractors can expose themselves to vulnerabilities where they have not got an understanding of the infrastructure and requirements of business, such as the correct insurances. The Committee was advised that there is no clear source of advice for a start-up contractor in this regard.  

3.267 RCSA advised the Committee that it does not accept the engagement of unskilled and semiskilled workers as independent contractors. RCSA is of the opinion that such workers are

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361 APSCo, Submission 16, p.13.  
362 Ms Elliott, APSCo, Proof Transcript of Evidence, 19 October 2017, p.178.  
363 Mr Humphrey, HIA, Proof Transcript of Evidence, 12 October 2017, p.138.  
364 Mr Weller, HIA, Proof Transcript of Evidence, 12 October 2017, p.141.  
365 Mr Humphrey, HIA, Proof Transcript of Evidence, 12 October 2017, pp.139-140.  
366 Mr Humphrey, HIA, Proof Transcript of Evidence, 12 October 2017, p.140.  
367 Ms Mills, APSCo, Proof Transcript of Evidence, 19 October 2017, p.184.  
368 Ms Mills, APSCo, Proof Transcript of Evidence, 19 October 2017, pp.185.
typically incapable of fulfilling the criteria required to sustain a genuine business to business relationship when working as an individual.\textsuperscript{369}

**Committee Comment**

3.268 The Committee notes that independent contracting appears to be more of a concern where it is improperly used, such as sham contracting arrangements which is discussed in the following section.

**Sham Contracting**

**Overview**

3.269 The Fair Work Ombudsman provides the following overview of sham contracting:

Sham contracting is where a person working as an employee is told they are an independent contractor when they’re not. They will also be treated like an independent contractor in some ways, for example they may be required to have an ABN and submit invoices.\textsuperscript{370}

3.270 The Fair Work Ombudsman advises that:

Sham contracting is illegal. It’s illegal to:

- claim an employee is an independent contractor
- say something false to convince an employee to become an independent contractor
- dismiss or threaten to dismiss an employee if they don’t become an independent contractor
- dismiss an employee and hire them as an independent contractor to do the same work.

Sham contracting can be done intentionally or carelessly by an employer. These types of arrangements are sometimes set up by employers who are seeking to avoid responsibility for paying legal entitlements to employees.\textsuperscript{371}

3.271 The ACT Government submission noted that ‘this practice unfairly places the onus on employees to manage their own employment costs for example; workers’ compensation insurance, long services leave, payroll tax etc.’\textsuperscript{372} They further advised:

\textsuperscript{369} RCSA, Submission 20, p.7.
\textsuperscript{370} https://www.fairwork.gov.au/find-help-for/independent-contractors
\textsuperscript{372} ACT Government, Submission 23, p.2-3.
With respect to Territory legislation, sham contracting may manifest as the avoidance of Territory legislation relating to employee entitlements such as under payment or non-payment of private sector workers’ compensation insurance premiums or long service leave entitlements under the Long Service Leave Act 1976. There are penalties under the Workers Compensation Act 1951 for employers who fail to hold a compulsory insurance policy or who under insure.\textsuperscript{373}

**EXTENT**

3.272 United Voice advised that:

Over one million workers in Australia are employed as independent contractors, but approximately 40 per cent of these admit that, in reality, they are dependent on their employers, with no real authority or control over their own work.\textsuperscript{374} 

3.273 The CFMEU advised the Committee about its 2011 findings on the high prevalence of sham contracting in the Australian construction industry. Independent contractors represented over 35 per cent of construction industry employees and whilst many were legitimate independent contracting arrangements, many were sham contracting or disguised employment arrangements.\textsuperscript{375} The CFMEU advised that 2016 ABS data indicates an increase:

So-called independent contractors are still heavily concentrated in the construction industry (just over 30 per cent). Many of them report working arrangements that more closely resemble employment relationships and the number of those doing so has, in a number of crucial respects, increased since the 2011 report. For example, the number of independent contractors who did not have authority over their own working procedures has risen from 43 per cent to 64.4 per cent. The number of independent contractors not able to sub-contract their work has also risen from 32 per cent to over 42 per cent of all independent contractors.

A staggering 86 per cent of all independent contractors reported a continuous working relationship with their current employer/business for more than one year. Forty per cent have been so engaged for ten years or more and twenty per cent for twenty years or more.\textsuperscript{376}

3.274 The Committee received evidence that sham contracting has occurred or is occurring in the ACT.

\textsuperscript{373} ACT Government, Submission 23, p.3.  
\textsuperscript{374} United Voice, Submission 35, p.19  
\textsuperscript{375} CFMEU, Submission 33, p.12.  
\textsuperscript{376} CFMEU, Submission 33, p.12.
3.275 The CFMEU provided the Committee with a range of ACT-based case studies, demonstrating sham contracting arrangements where independent contractors ‘have all the indicia of an employment relationship’. They also note the prevalence of sham contracting in the residential construction sector, stating that ‘it is an entrenched device to avoid workplace, taxation and other laws.’

3.276 Legal Aid ACT advised that sham contracting in the construction industry has been estimated to cost the Australian Government almost 2.3 billion every year in lost taxation revenue.

3.277 United Voice regards work gained through the gig economy platforms such as AirTasker and Uber to effectively be sham contracting, as the lines between employee and employer are ‘dissimulated intentionally so as to allow tech platforms to elude their employer status and its associated legal responsibilities’.

3.278 In contrast, the MBA does not believe that there is a growing problem with sham contracting and they consider that current regulations are sufficient to address any cases that arise without changes at State or Territory level. They stated:

Estimates of tens of thousands of workers in the building industry being potentially on a sham contract may indicate possible misclassification problems, but they do not represent a proper indication of sham arrangements – sham contracting being by definition a deliberate misuse of the law.

3.279 Similarly the HIA advised that, despite there being more trade contractors than employees in residential construction, there is no indication that sham contracting is prevalent. They advised the Committee about the 2011 Australian Building and Construction (ABCC) Commissioner (now Fair Work Commissioner) inquiry into Sham Contracting into the building industry and a 2014/15 Fair Work Ombudsman National Building and Construction Industry Campaign which audited a number of businesses in the industry. Both reviews found sham contracting was not evidently widespread in the residential construction industry despite claims to the contrary.

3.280 CBC advised the Committee that it is not aware of any sham contracting arrangements taking place. This view is based on CBC’s consultation with industry including through their workplace

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377 CFMEU, Submission 33, p.13.
379 Legal Aid ACT, Submission 4.
381 MBA, Submission 10, p.6.
382 MBA, Submission 10, p.6.
383 Mr Weller and Mr Humphrey, HIA, *Proof Transcript of Evidence, 12 October 2017*, pp.135, 137; HIA, Submission 15, p.6.
relations advice line and consultation with some groups of employees – particularly through the ACT Government funded apprentice advice line which CBC manages and delivers.\textsuperscript{385}

\section*{Concerns about Sham Contracting}

\textbf{3.281} Legal Aid ACT advised the Committee that:

Legal Aid ACT submits current protections from sham contracting remain largely ineffective. The dominant position of the employer, and the workers lack of access to collective bargaining power, restricts their ability to negotiate better arrangements. Uncertainty regarding the application of the common law test for ‘employee’ (which utilises a multifactorial approach, taking into account levels of control, hours worked, delegation models, tax and entitlements, mode and level of pay and equipment provision) persists. As Roles and Stewart\textsuperscript{386} have noted, many judges continue to apply the test to extremely similar fact scenarios yet reach competing outcomes. This is in addition to the fact that many workers, being highly dependent on the income, are reluctant to seek redress. Even where regulators do investigate potential sham arrangements, ‘the majority of cases do not result in court action’. Further legislative and regulative measures, including a reformation of the current common law test for employee, are required.\textsuperscript{387}

\textbf{3.282} Legal Aid ACT called for changes to the \textit{Fair Work Act 2009} including amendments to the definition of an employee for the purposes of capturing sham contractors.\textsuperscript{388}

\textbf{3.283} The Committee was advised that employees may be reluctant to report sham contracting because of threats around future work or may be complicit in the arrangement.\textsuperscript{389}

\textbf{3.284} The ACT Government submission noted that the ATO announced it would focus on sham contracting in its 2012-2013 compliance program, however since that time only one Canberra business has been prosecuted for sham contracting under the \textit{Fair Work Act 2009} and the prosecution was ultimately unsuccessful.\textsuperscript{390}

\textsuperscript{385} Mrs Hendry, CBC, \textit{Proof Transcript of Evidence}, 19 October 2017, p.169.


\textsuperscript{387} Legal Aid ACT, Submission 4.

\textsuperscript{388} Legal Aid ACT, Submission 4.

\textsuperscript{389} ACT Government, Submission 23, p.3.

\textsuperscript{390} ACT Government, Submission 23, p.3.
Adequacy of current regulatory regime

3.285 The MBA advised that sham contracting is already defined and dealt with under existing industrial relations laws and ‘any employer engaged in sham contracts should be dealt with fully under those laws’. 391

3.286 The Committee was advised that the Fair Work Act 2009 provides strong penalties against sham contracting arrangements and that these laws are operating effectively. 392 Sham contracting attracts potential penalties of up to $51,000 per breach for corporate entities and up to $10,200 per breach for individuals involved. 393

3.287 Noting that the legal and regulatory environment around contracting relationships is very complex, the Committee was advised that greater education is required for industry and other participants. 394 The Committee heard there needs to be awareness of the indicia that should be in place to ensure a contracting relationship is just that, and not an employment relationship. 395

‘ODCO’ Arrangements

3.288 Unions ACT provided the following overview of Odco Arrangements:

Closely related to labour hire, Odco arrangements are a form of contracting-out, where an employer hosts workers on a purported independent contract basis, via a third-party agency. Odco arrangements arise from a 1991 case (Building Workers Industrial Union of Australia v Odco Pty Ltd (1991) 29 FCR 104) that allowed employers to hire labour using service agreements as opposed to labour contracts.

Odco arrangements are, following a 2015 High Court decision, now considered unlawful sham contracting... 396

3.289 The Committee was further advised that despite the High Court decision sham contracting and Odco arrangements continue to be widespread:

Businesses can access restructuring services designed specifically to allow employers to avoid their workplace law obligations. The Odco contracting system was a licensed business model of national labour hire agency Labour Force Australia, and the system is used in all States and Territories, including the ACT. 397

391 Mr Hopkins, MBA, Proof Transcript of Evidence, 12 October 2017, p.92.
392 Mr Weller, HIA, Proof Transcript of Evidence, 12 October 2017, p.135.
393 HIA, Submission 15, p.8.
394 MBA, Submission 10, p.6; Mr Humphrey, HIA, Proof Transcript of Evidence, 12 October 2017, pp.137-138.
396 Unions ACT, Submission 34, P.20-21.
397 Unions ACT, Submission 34, P.20-21.
MISUSE OF PARTNERSHIP AGREEMENTS

3.290 On a similar note to sham contracting, the Maritime Union of Australia (MUA) advised the Committee that partnership agreements are increasingly being misused in the maritime industry, notably by some towage companies, to avoid employer responsibilities that come with traditional employee/employer relationships.

3.291 The Committee heard that the use of partnership agreements, as being applied by some towage companies, is inappropriate and heightens the insecurity of workers ‘by removing them from the Fair Work Act 2009 (Cth) and regulating the work under State based partnership legislation.’ MUA advised that the change resulted in workers that do not fall under National Employment Standards or a modern award. The workers do not enjoy sick leave, annual leave or superannuation and they assume much of the business liability. They are also not covered by workers’ compensation legislation, needing to source their own personal accident and income protection insurance.

3.292 The MUA described how partnership arrangements are being used where historically workers were employed under enterprise agreements:

> Instead of workers being employed by these companies, they are instead offered to form a partnership with other workers, and then engaged by the company via a contract for service.

3.293 The MUA further advised that towage companies implemented partnership arrangements by putting out a tender for workers to form the partnership. That tender could be taken up by existing or new workers, however for those workers that used to be employed under an enterprise agreement there are limited choices as ‘the alternative is that they do not get a job...’

3.294 A partnership is defined under the Partnerships Act 1963 (ACT) as ‘the relation between people carrying on a business in common with a view of profit, and includes an incorporated limited partnership.’

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398 The Committee notes that the MUA has merged with the CFMEU as of March 2018.
399 Submission 1, MUA, p. 1; Proof Transcript of Evidence, 8 September 2017, pp. 86-89
400 Submission 1, MUA, p. 1.
401 Proof Transcript of Evidence, 8 September 2017, p. 86.
402 Submission 1, MUA, p. 2.
403 Submission 1, MUA, p. 1.
404 Proof Transcript of Evidence, 8 September 2017, p. 87.
405 Partnerships Act 1963, s6;
Partnerships facilitate an ‘association of persons who have agreed to pursue a joint business venture for their mutual benefit. They provide an avenue for two or more persons to operate a business and share the profits, responsibilities and risks of the business.’  

The MUA expressed concerns that the above partnership features do not apply to towage industry workers. The towage partnership agreements MUA has seen thus far pay partners a set remuneration and do not enable partners to profit from monetary success of the partnership. Further ‘the principal retains control over the hours and location of the work performed, in addition to owning the asset used to carry out the work of the partnership, all of which are consistent with a relationship of employment.’

MUA maintain that towage workers are in less secure employment as a result of this changing practice and submits that ‘these arrangements are being used to avoid the protections and entitlements contained in the Fair Work Act 2009.’

The Committee was advised that, despite no known examples, the use of partnership agreements could be misused by other industries in circumstances similar to the towage industry.

The MUA recommended the Committee propose changes to the Partnerships Act 1963 (ACT) to prohibit the use of partnerships ‘where it can be demonstrated that an employee/employer relationship remains, despite there being a contract of service or a proposed contract of service between a partnership and a principal.’

Whilst we are unaware of any specific examples of the Partnerships Act 1963 (ACT) being utilised as a means to exploit entitlements and protections under the [Fair Work Act 2009], we believe legislative change is required in the ACT, so that it does not follow suit of the respective State Acts which have been exploited in this way.

The MUA would also like to see the ACT support legislative change under the Fair Work Act 2009 to prohibit partnership agreements in circumstances where they amount to sham contracting.

Committee Comment

The Committee notes the potential use of partnership agreements where it amounts to a form of sham contracting. However, the Committee also notes that it did not receive any specific

406 Submission 1, MUA, p. 1.
407 Submission 1, MUA, p. 3.
408 Submission 1, MUA, p. 3.
409 Submission 1, MUA, p. 2.
410 Proof Transcript of Evidence, 8 September 2017, p. 89.
411 Submission 1, MUA, pp. 3-4.
412 Submission 1, MUA, p. 3.
ACT examples of the misuse of partnership agreements in the manner described by the MUA for the towage industry.

3.302 The Committee believes it is a matter that regulators, inspectors and the unions should monitor to see if there is emerging evidence of these practices in any industry in the ACT.
4 EMPLOYMENT SECTORS OF INTEREST

HIGHER EDUCATION SECTOR

4.1 Higher education contributes $879 million to the ACT economy per year, and is one of the ACT’s major exports.\(^{413}\)

4.2 The Committee was advised that the higher education sector has increasingly moved to more insecure work arrangements with a prevalence of casual and short term contract employment across a range of roles. This is part of a national trend that can be seen over the last 15 years.\(^{414}\) The NTEU advised the Committee that this shift has resulted in:

- four out of five teaching only staff being employed on casual contracts;
- four out of five research only staff being employed on fixed-term contracts;
- less than one per cent of new university jobs since 2005 being ongoing or tenured teaching and research positions;
- at least half of university teaching being done by casually employed academics;
- only two out of 10 newly appointed staff being employed on a permanent basis, or three out of 10 using an [Full Time Equivalent] basis;
- 64 per cent of the total number of staff in universities being employed insecurely; and constant restructures and redundancies leaving more in ongoing fear about the security of their jobs.\(^{415}\)

4.3 The NTEU provided the Committee with a snapshot of the extent of casual and fixed-term employment at the Australian National University and the University of Canberra, based on Workplace Gender Equality Agency data.\(^{416}\) However, the Committee was advised that flawed reporting mechanisms prevented proper quantification of the level of casualisation in Australia’s higher education sector.\(^{417}\)

4.4 Unions ACT advised that over half all tutoring work is done by casual staff, many academics are on short fixed-term contracts and administrative roles are increasingly being filled by labour hire employees.\(^{418}\) Whilst predominantly casualisation is in tutoring work, the Committee was advised that there is a ‘creep’ toward casual employment for work that was traditionally done by full-time ongoing staff such as supervision of honours theses and unit coordination.\(^{419}\)

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\(^{413}\) Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.122.

\(^{414}\) Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.125; Submission 27.

\(^{415}\) Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.122.

\(^{416}\) NTEU, Submission 38, p.4, -6, 8-10.

\(^{417}\) NTEU, Submission 38, p.3.

\(^{418}\) Unions ACT, Submission 34, p.14.

\(^{419}\) Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.126.
CASUALS

4.5 The Committee heard that hours of work for casual academics are variable. NTEU advised ‘casual academics...do not know how much teaching they will have from one semester to the next and can be let go with one hour’s notice.’\(^{420}\) One individual who was engaged casually as a university tutor advised the Committee that he received between five and 20 hours of work a week depending on the number of classes in any one semester.\(^{421}\)

4.6 The Committee was advised that in order to increase hours of work, some casual academics work across two or more universities, which can make scheduling difficult. In some cases classes are cancelled a few weeks into a semester because of small class sizes, leaving teaching staff with less work, or no work if they had previously turned down other offers.\(^{422}\) Casual academics are often unemployed over the mid-year break as well as the summer non-teaching period as summer teaching opportunities are limited. As a result, many academics need to look for other casual or temporary work in these periods, often unrelated to their academic work, or they receive Centrelink payments.\(^{423}\)

4.7 Casual academics have an average annual salary of $30,000 annually – below the Australian full-time minimum wage.\(^{424}\) The Committee was also advised that ‘the 25 per cent casual loading is insufficient to compensate for the value of conditions not applied to casual workers.’\(^{425}\)

4.8 There is a lack of awareness amongst casual staff of their rights, and limited ability to enforce them, such as the case of underpayments at ANU’s Fenner School.\(^{426}\) Casual staff are potentially unwilling to pursue pay or leave entitlements or bullying matters for fear of jeopardising future casual contracts.\(^{427}\) Similarly the Committee heard from a former casual tutor that, as a casual employee, taking leave for illness is unpaid and also posed a real risk of losing future work opportunities.\(^{428}\)

4.9 The Committee was advised that the flow on effects of higher education workers not challenging exploitation are significant. The Committee heard that ‘unpaid work becomes the norm and the cheaper casual workforce becomes increasingly attractive to employers.’\(^{429}\)

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\(^{420}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.122.

\(^{421}\) Mr Easterbrook, *Proof Transcript of Evidence*, 12 October 2017, pp.130-133.

\(^{422}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.124.

\(^{423}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.123.

\(^{424}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.122.

\(^{425}\) NTEU, Submission 38, p.7.

\(^{426}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.122.

\(^{427}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, pp.123, 127; NTEU, Submission 38, p.8.

\(^{428}\) Mr Easterbrook, *Proof Transcript of Evidence*, 12 October 2017, p.133.

\(^{429}\) Dr Clohesy, NTEU, *Proof Transcript of Evidence*, 12 October 2017, p.123.
Research by casual academics is encouraged by universities but is unpaid.430 Similarly marking papers, attending meetings, preparation of course material, time to familiarise themselves with university policy and procedures, and maintaining currency in their subject area are commonly unpaid.431

4.10 The Committee was advised that only 12 per cent of casually employed academic staff are casual by choice. The majority of staff aspire to ongoing work.432

4.11 The broader effects of increasingly insecure employment practices at universities include individuals choosing alternative career paths, looking for more stability in ongoing jobs.433 Many who chose to stay and can make the casual academic career workable have independent financial means such as wealthy parents or partners.434

4.12 One submission to the Committee advised that casualisation of teaching roles for tutors and lecturers also affects the standard of education delivered, noting that experience and training are important.435

FIXED TERM CONTRACTS

4.13 The Committee was advised that academic staff employed on fixed-term full-time contracts experience many of the same impacts as their casually employed colleagues.

4.14 Fixed-term salaries are equivalent to ongoing full time staff at the same level, however career security and ability to plan for the future are not present.436 Superannuation rates are also not the same for those on fixed-term contracts shorter than 12 months – an issue the Committee was advised being considered in the current enterprise bargaining round.437

4.15 The Committee was advised that fixed-term contracts enable universities to refill a position at a base pay rate. Whilst there is some scope for fixed term contracting to be used for specific research tasks or fill in for absent staff, there does not appear to be a reason for the majority of fixed-term contracts in this sector.438

4.16 The Committee heard that universities do need a level of flexibility, however the balance has shifted too far in favour of the universities. The NTEU noted that the example of an casual

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430 NTEU, Submission 38, p.7; Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, pp.127-128.
431 NTEU, Submission 38, p.7; Submission 27.
432 NTEU, Submission 38, p.7.
433 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.124.
434 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.124.
435 Submission 27.
436 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.125.
437 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.125; NTEU, Submission 38, p.10.
438 Submission 27.
academic teaching the same course for 10 years on a series of fixed-term contracts clearly demonstrates an area of need:  

When we get down to it, teaching and research are the core business of universities. If teaching is one of the key roles of the university and that is being done by casual employees, then there is clearly a problem, I think.

CONVERSION

4.17 Conversion to more secure employment including fixed term contracts and ongoing work, should be possible for those teaching regularly. The Committee heard that the right to apply for conversion to permanent employment is meaningless as requests are denied. Reluctance to convert staff to permanent employment also relates to university research rankings and associated economic decisions as casual staff do not count towards research outputs.

4.18 The NTEU advised the Committee that it would like to see the right for conversion from casual or fixed term employment to ongoing employment linked to a set criteria such as length of employment in the role, regular and systematic work.

4.19 NTEU also proposed that long service leave should apply to all employees including casuals.

CONSTRUCTION SECTOR

4.20 The Committee was advised that insecure work is a common feature of the construction industry, particularly as the sector has mostly project-based work, and is heavily influenced by fluctuations in investment levels and economic activity.

4.21 The CFMEU advised that the use of labour hire in the construction industry has grown significantly, many tradespeople are engaged as ‘daily hire’ employees and sham contracting is widespread. They noted the devolution of work and responsibility:

Packages of work are let to specialist subcontractors. Subcontractors then themselves sub-let work to others further down the contractual chain. The large construction companies directly employ very few people to do ‘hands-on’ construction work.

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439 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, pp.125-126.
440 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.126.
441 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.126.
442 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.126.
443 Dr Clohesy, NTEU, Proof Transcript of Evidence, 12 October 2017, p.127.
444 NTEU, Submission 38, p.12.
445 CFMEU, Submission 33, p.3.
446 CFMEU, Submission 33, p.3.
447 CFMEU, Submission 33, p.3.
MBA advised that it not necessarily any less secure to work as a casual for flexibility or part time to structure work hours around other commitments.\textsuperscript{448} They advised the sector requires an agile workforce and the construction industry would be less productive and more expensive if contract and labour hire employment was not available to address transient and fluctuating needs.\textsuperscript{449}

The MBA also advised that insecure work is not a major issue in the ACT construction sector due to the strong economy which is translating into a strong building sector with secure employment and higher wages. Employers are offering higher than award requirements to retain good staff in the context of skills shortages and strong demand for labour is expected to continue.\textsuperscript{450}

They note that labour hire firms have an important role to play in providing some security and regularity of work for individuals that would otherwise be more vulnerable to the fluctuations of work in the construction industry.\textsuperscript{451}

MBA maintained that current federal and ACT laws offer adequate protection to workers employed by labour hire firms and any other worker in the construction industry.\textsuperscript{452} They also noted there is plenty of recourse under the current laws.\textsuperscript{453}

**CONCERNS**

**LABOUR HIRE**

The CFMEU advised the Committee that the use of labour hire in the construction industry ‘has long since surpassed any notion of being confined to only providing supplementary labour’.\textsuperscript{454}

The Committee was advised that the most common form of labour hire used in the construction industry is the model where an agency employs the worker and the worker is hired out to perform services for a third party host.\textsuperscript{455}

The CFMEU noted that in some cases, despite characteristics of a labour hire arrangement existing, it may not be immediately apparent or even identified by those involved as being labour hire. They gave the example of formworkers in the ACT, where companies have been

\textsuperscript{448} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, pp.95-96.

\textsuperscript{449} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.96.

\textsuperscript{450} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.92; MBA, Submission 10, p.2.

\textsuperscript{451} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.92.

\textsuperscript{452} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.93.

\textsuperscript{453} Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.92.

\textsuperscript{454} CFMEU, Submission 33, p.8.

\textsuperscript{455} CFMEU, Submission 33, p.4.
established specifically ‘to supply addition labour to the two major formwork companies.’

The Committee was advised that the employees of these companies work on construction sites wearing the uniforms of the major formwork companies and appear to be part of the permanent workforce but are employed on very different conditions. The workers’ employment situation is no different to casual or labour hire as they are on-call and only paid when allocated particular jobs.

4.29 The CFMEU also noted situations where workers have been housed by their companies in chronically overcrowded conditions and are moved or not given work if they complain. The Committee heard that many were on temporary visas and would not voice concerns about pay or working conditions because of fears of being dismissed or removed.

4.30 The Committee heard the scaffolding sector also exhibits employment arrangements that appear no different to labour hire.

RESIDENTIAL BUILDING SECTOR - CONTRACTORS

4.31 The Committee was advised that around 80 per cent of work in the detached residential construction sector is undertaken by independent contractors.

4.32 The CFMEU expressed concern about the legal legitimacy of many of these arrangements, noting a high rate of sham contracting being used. This is discussed further in the section on Sham Contracting in Chapter 3.

4.33 HIA similarly advised that the detached residential building sector relies heavily on the use of independent trade contractors rather than directly employed workers. They noted the benefits to subcontractors, head contactors/builders, consumers and the economy more generally of contracting include:

- Higher levels of productivity.
- Guaranteed higher quality of work.
- Payment by results which leads to stable costs at greater rewards for productivity.
- Capacity to organise work to suit themselves.

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456 CFMEU, Submission 33, p.5.
457 CFMEU, Submission 33, p.5.
458 CFMEU, Submission 33, p.5.
459 Mr Hall, CFMEU, Proof Transcript of Evidence, 19 October 2017, p.150.
460 CFMEU, Submission 33, p.5; Mr Hall, CFMEU, Proof Transcript of Evidence, 19 October 2017, p.150.
463 HIA, Submission 15, p.6.
464 HIA, Submission 15, p.6.
4.34 The Committee was advised that the residential construction sector is fairly volatile with commencements fluctuating significantly from year to year. Permanent labour is therefore a significant business risk and the use of contractors ‘makes good commercial sense’ in response to the industry environment.\textsuperscript{465} Similarly, the majority of residential projects are short term, being completed within six to twelve months, and face an uncertain pipeline of future work.\textsuperscript{466}

4.35 HIA advised that most businesses in the sector are micro-businesses with two-thirds of all businesses having no employees.\textsuperscript{467} A small business builder will not generate sufficient work over the course of a year to permanently employ the required specialist skills. The Committee was advised that:

\begin{quote}
a typical project home can involve 40 or more skills ranging from structural skills in carpentry, bricklaying and concreting through to niche skills like waterproofing, termite barrier installation, and finishing skills like landscaping, cabinetry and security systems.\textsuperscript{468}
\end{quote}

4.36 HIA noted that temporary work visa holder are a small percentage of total workers in the residential construction industry. As at 31 December 2016, Australian Border Protection reported 5,620 primary visa holders for the construction industry, of which 70 were reported to be in the ACT.\textsuperscript{469}

**Workplace Safety**

4.37 The Committee was advised by the CFMEU that one major concern with labour hire agencies in the construction sector is very few of them attend the worksite where their employees are being sent to assess the suitability or workplace safety matters that may be present.\textsuperscript{470} The CFMEU provided the Committee with case studies of labour hire workers who experienced disregard for workplace safety by either the labour hire agency or the host.\textsuperscript{471} They note this is inconsistent with the labour hire agencies’ legal obligations and highlighted that the hosts also hold responsibility for workplace safety. The CFMEU noted similar concerns around GTOs ability to adequately assess and monitor workplace safety on host sites.\textsuperscript{472}

4.38 The Committee heard that ‘work safety is something that needs to be committed to irrespective of the employment arrangement.’\textsuperscript{473} The MBA supports ensuring a good culture of safety on a site and noted that within MBA Group Training apprentices are encouraged to

\begin{footnotes}
\item[465] HIA, Submission 15, p.7.
\item[466] HIA, Submission 15, p.7.
\item[467] HIA, Submission 15, p.7.
\item[468] HIA, Submission 15, p.7.
\item[469] HIA, Submission 15, p.11.
\item[470] CFMEU, Submission 33, p.9.
\item[471] CFMEU, Submission 33, pp.10-11.
\item[472] CFMEU, Submission 33, p.9.
\item[473] Mr Hopkins, MBA, Proof Transcript of Evidence, 12 October 2017, p.93.
\end{footnotes}
report every incident they see or experience, instilling in them the skills and culture to be leaders in the industry. They noted that higher safety incident statistics for apprentices is possibly a reflection of higher levels of reporting by apprentices, compare to the industry as a whole. Greater reporting across all areas of the industry can be encouraged through information sessions, training courses, direct engagement with members’ principals and safety managers.

**CASUALS**

4.39 The Committee received concerns about casualisation in the construction industry.

4.40 The CFMEU gave the example of traffic control workers in the ACT construction industry, advising that 90-95 per cent of the total workforce of the sector is made up of casual employees. The Committee was advised that these workers are generally on-call, waiting day-to-day to find out if they will receive work. Additionally, because their engagements are short-term, most cannot access unfair dismissal provisions and few have access to casual conversion rights.

4.41 The CFMEU noted that casuals in this sector face the same fears as other casual workers of losing work if they raise concerns about workplace rights or working conditions.

4.42 HIA advised that businesses have to fill their staffing needs and may not be able to offer full time work. The relevant Award has a range of provisions including for daily hire workers and casuals, and whilst some workers may prefer to work more regularly, there may not be work available for them. HIA noted a number of Awards including the construction award also provide the option for casuals to convert to more permanent forms of employment if they are working regularly and systematically.

4.43 MBA noted that unfair dismissal provisions apply to casual employment after a period of time and excessive reduction of shifts could be construed as constructive dismissal.

4.44 MBA advised the Committee that skill shortages in some areas of the ACT construction industry mean there is high demand for those trades and they can choose employment arrangements to suit them. Despite conversion clauses, many employees are choosing to

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475 Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.94.
476 Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, pp.94-95.
477 CFMEU, Submission 33, p.15.
478 CFMEU, Submission 33, p.15.
479 CFMEU, Submission 33, p.15.
480 Mr Humphrey, HIA, *Proof Transcript of Evidence, 12 October 2017*, p.141
481 Mr Humphrey, HIA, *Proof Transcript of Evidence, 12 October 2017*, p.141.
482 Mr Hopkins, MBA, *Proof Transcript of Evidence, 12 October 2017*, p.98.
remain as casuals for flexibility and for the loading it attracts. They advised that many employers would rather more of their workforce were permanent so that costs such as leave are borne across the year rather than tied into the 25 per cent loading.\footnote{Mr Hopkins, MBA, \textit{Proof Transcript of Evidence}, 12 October 2017, pp.97-98.}

\textbf{COMMITTEE COMMENT}

\textbf{4.45} The Committee notes the above concerns and the views of industry bodies. Many of the concerns related to the construction industry are discussed further in this report in those sections relating to particular employment types such as labour hire and casual work.
5 VULNERABLE WORKERS

5.1 In this chapter, the Committee considers a number of factors/characteristics that make workers more vulnerable and more likely to experience work insecurities. Additionally, vulnerable workers are found more often in particular industries or sectors.

5.2 The Committee received evidence that workers who were most likely to be employed in insecure work include women, carers, people with a disability, Aboriginal and Torres Strait Islander workers, young people, students, unskilled or low-skilled workers and those from culturally and linguistically diverse backgrounds (CALD) including migrants, refugees and humanitarian entrants. The key vulnerable groups are discussed in more detail below.

5.3 The Committee heard that people most at risk of insecure employment are also likely to identify with one or more of these risk categories ‘so experience multiple forms of disadvantage as a result’. ACTCOSS outlined this intersectionality further, noting that intersectional experiences compound the risks of insecure work. They noted ‘women with disabilities are more likely to be insecure workers, as well as culturally and linguistically diverse women, older people, and young people.’

5.4 Insecure work can exacerbate worker vulnerability as it is itself a form of disadvantage and the Committee was advised that ‘people experience various barriers to gaining secure work that provides a living wage and basic entitlements’.

5.5 Many of these groups face discrimination, lower social inclusion, and have a low awareness of their workplace rights. They are also more likely to require flexible working arrangements.

CULTURALLY AND LINGUISTICALLY DIVERSE WORKERS

5.6 CALD workers ‘are more vulnerable to insecure employment conditions due to a range of intersectional and systemic barriers and challenges’. They may find it more difficult to find stable and adequate employment where overseas qualifications are not recognised, they possibly have a lower level of English and racism in employment practices is still common.

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485 FECCA, Submission 17; Legal Aid ACT. Submission 4; ACTCOSS, Proof Transcript of Evidence, 8 September 2017, pp.15, 19; WCHM, Proof Transcript of Evidence, 8 September 2017, p.45; ACT Government, Submission 23, p.7.
486 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, pp.15, 17.
487 ACTCOSS, Submission 21, p.9.
488 St Vincent de Paul Society, Submission 18.
489 ACTCOSS, Proof Transcript of Evidence, Friday 8 September 2017, p.15.
490 FECCA, Submission 17, p.3.
491 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.144.
5.7 The cost of obtaining recognition for skills and qualifications earned overseas is also a barrier. FECCA advised that ‘there is not a strong desire amongst professional bodies to do work in this area and expand their recognition to overseas qualifications’ but FECCA is working at the federal level to improve this.

5.8 FECCA highlighted that even second generation CALD Australians may be disadvantaged as their parents might not have the same networks to assist them. CALD Australians are overrepresented in lower paid industries.

5.9 Legal Aid ACT described these barriers as ‘social vulnerabilities’ and included lack of knowledge of Australia’s industrial relation laws and social isolation. Legal Aid ACT advised that:

...anecdotally, CALD clients that seek advice in relation to an industrial issues have little or no awareness of the Fair Work Act 2009 or accepted workplace practices and are often unaware that the poor working conditions that they have been subjected to, amount to breaches of workplace legislation.

5.10 In addition to the barriers above, CALD women also experience additional challenges to finding secure work including the need for accessible and flexible childcare, paid parental leave and flexible working arrangements.

5.11 Older migrants may also experience stagnation and limited up-skilling opportunities due to long periods in insecure work and cultural attitudes towards ageing and retraining.

5.12 The Committee heard that whilst students across the board are more vulnerable, it is exacerbated where cultural and linguistic barriers exist. FECCA also raised concerns that young CALD jobseekers are being channelled by employment services into insecure employment.

5.13 Legal Aid ACT advised that it has experienced an exponential increase in CALD communities accessing their services.

Since 23 December 2015 Legal Aid ACT’s Cultural Liaison Officers have provided services to 501 clients from culturally and linguistically diverse backgrounds. These

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492 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.144.
493 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.144.
494 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.144.
495 Legal Aid ACT, Submission 4, pp.5-6.
496 Legal Aid ACT, Submission 4, p.8
497 FECCA, Submission 17, p.3.
498 FECCA, Submission 17, p.4.
499 Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118.
500 FECCA, Submission 17, p.4.
501 Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.121
clients have come from 72 different countries. In addition to this, Legal Aid ACT’s Cultural Liaison Officers have been involved in conducting 104 community outreach programs and 25 Community Legal Education sessions. 502

5.14 FECCA highlighted to the Committee that there is a shortage of data on CALD workers, particularly those in insecure work. FECCA would like to see the ACT Government support the collection of more comprehensive data where possible, noting that: 503

These factors are crucial to identifying and understanding intersectional social determinants which contribute to participation in insecure working arrangements. 504

5.15 FECCA also noted the need for funding of ‘research into specific barriers and challenges which contribute to keeping CALD employees in insecure employment and research that looks into effective or good practice pathways for individuals to find sustainable, safe and secure employment.’ 505

5.16 The Committee heard that cultural competency training for employers was important to improve the experiences of CALD employees within organisations. 506

MIGRANTS AND VISA HOLDERS

5.17 The Committee heard that exploitation of migrant workers is a significant issue effecting those on temporary visas, working holiday makers, and student visas. 507 Temporary working visas are commonly used in insecure, low paid, unskilled or semi-skilled jobs and trades. 508

5.18 Evidence suggests that the nature of the Australian immigration system and types of visas granted to migrants create a ‘structural dependence’ in many cases where residency status is directly tied to ongoing sponsorship by the employer. This dependence exacerbates the power imbalance in the employment relationship. 509

5.19 Implied or explicit threats from employers that complaints by workers will result in the employer withdrawing visa sponsorship reflect that power imbalance and increase employees’ vulnerability to non-compliance with workplace laws. 510 Fear of retaliation deters many

502 Dr Boersig, Legal Aid ACT, Answer to Questions Taken on Notice, Proof Transcript of Evidence, 12 October 2017, p.121
503 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.143.
504 FECCA, Submission 17, p.2.
505 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.143.
506 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.143.
507 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.4; United Voice, Submission 35, pp.7-8; Legal Aid ACT, Submission 4, p.5; SDA, Submission 2, Att A p.12.
508 Legal Aid ACT, Submission 4, p.5.
509 Legal Aid ACT, Submission 4, p.5; United Voice, Submission 35, pp.7-8; SDA, Submission 2, Att A, pp.12-14.
510 Unions ACT, Submission 34, p.9; Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118; Senate, Education and Employment reference committee p.144.
migrant workers from raising concerns around unacceptable working conditions, including underpayment and increases workers’ reluctance to requests changes to pay or conditions.\footnote{Legal Aid ACT, Submission 4, p.5; Dr Campbell, FECCA, \textit{Proof Transcript of Evidence, 19 October 2017}, p.145.}

5.20 These practices are apparently widespread. The Committee was advised that in 2015 ‘almost 1/3 of 4000 temporary work sponsors (most of visa 457) were found to have breached their workplace obligations by the Department of Immigration and Border Protection’.\footnote{Legal Aid ACT, Submission 4, p.5. [referencing: Victorian Government, ‘Inquiry into the Labour Hire Industry and Insecure Work — Final Report’ 2016, 301.]}

5.21 A further power imbalance can arise where sponsoring employers promise future sponsorship for permanent residence status, further discouraging workers from raising complaints.\footnote{Legal Aid ACT, Submission 4, p.5; SDA, Submission 2, Att A, pp.22.}

5.22 Legal Aid ACT noted the increased obligations on employer sponsors as well as increased penalties and sanctions for breaches by employers under the \textit{Migrations Legislation Amendment (Worker Protection) Act 2008}. However, the Committee was advised that these do not go far enough:

> Anecdotally from our experience in providing free legal advice and assistance through our General Practice’s employment clinic, temporary migrant workers are still subject to exploitive working conditions including below Award rates of pay, no payment of penalty rates or overtime, excessive working hours, employer’s reducing pay for the cost of the original visa and travel costs and recruitment fees.\footnote{Legal Aid ACT, Submission 4, p.5.}

\textbf{Working Hours}

5.23 Some visa categories, including student visas, have a restriction on the number of hours a worker can undertake, which is most commonly 40 hours a fortnight.\footnote{Legal Aid ACT, Submission 4, p.6.}

5.24 The Committee heard that some visa holders, particularly where they are being underpaid, breach their visa conditions by working beyond the allowed number of hours in order to earn enough to live on. Many are also pressured by their employer into working additional hours and fear retaliatory action by the employer, or termination, if they do not.\footnote{Legal Aid ACT, Submission 4, p.6.}

\textbf{Mobility}

5.25 Vulnerability is further promoted by visa conditions which limit the ability for sponsored worker to find another employer.\footnote{Legal Aid ACT, Submission 4, p.5.} FECCA advised that visa holders are more vulnerable and
less likely to report employment concerns where their visa is tied to employment as the period allowed by the Australian Government between jobs has been steadily reduced:

...the shorter you make that the more vulnerable the worker is because they are not able to leave their abusive employer if they are not able to find a job within such a short period of time before being thrown out of the country or required to leave.\textsuperscript{518}

5.26 Currently workers have 60 days to find a new employer or they are deported.\textsuperscript{519}

**BRIDGING VISAS/SPONSORSHIP ARRANGEMENTS**

5.27 The Committee heard from a number of groups about the need to protect the immigration status of visa holders who have been exploited whilst being employed in insecure work and who make complaints against their employers, regardless of whether part of their unfavourable conditions required them to breach visa requirements.\textsuperscript{520}

5.28 Legal Aid ACT noted that ‘there is no standard process through which workers with claims of genuine merit can be granted a bridging visa to pursue their claim or the opportunity to seek another job in Australia if the claim is upheld’.\textsuperscript{521}

5.29 FECCA notes visa holders should be supported to stay in Australia until their case is resolved if it is before the Fair Work Commission;\textsuperscript{522}

If they were fired from a job or had to leave their job because they were being treated badly and therefore they also have to leave the country—the two are linked—it is deeply unfair to send a person home. If you do that you discourage people from reporting poor behaviour on the part of the employer.\textsuperscript{523}

5.30 A number of submissions to the Committee proposed that the ACT Government could become a ‘sponsor of last resort’ for migrant workers to allow for procedural fairness whilst the matter goes through the appropriate tribunal or court.\textsuperscript{524} This could involve the ACT Government becoming a genuine employer under federal immigration laws and fulfil the obligations of providing a paid position to the worker. Alternatively, the ACT Government could enter into an MOU or another type of agreement with the Department of Immigration and Border Force to allow sponsorship to take place that was not completely bona fide, however this would require the cooperation of the Australian Government.\textsuperscript{525}

\textsuperscript{518} Dr Campbell, FECCA, *Proof Transcript of Evidence*, 19 October 2017, p.145.

\textsuperscript{519} Mr White, Unions ACT, *Proof Transcript of Evidence*, 8 September 2017, p.4.

\textsuperscript{520} Dr Campbell, FECCA, *Proof Transcript of Evidence*, 19 October 2017, pp.143-144; Legal Aid ACT, Submission 4, p.5; Mr White, Unions ACT, *Proof Transcript of Evidence*, 8 September 2017, p.8; SDA, Submission 2, Att A, pp.12-14.

\textsuperscript{521} Legal Aid ACT, Submission 4, p.5.

\textsuperscript{522} Dr Campbell, FECCA, *Proof Transcript of Evidence*, 19 October 2017, p.145.

\textsuperscript{523} Dr Campbell, FECCA, *Proof Transcript of Evidence*, 19 October 2017, p.144.

\textsuperscript{524} Mr White, Unions ACT, *Proof Transcript of Evidence*, 8 September 2017, pp.4, 9; Unions ACT, Submission 34, pp.9-10.

\textsuperscript{525} Mr White, Unions ACT, *Proof Transcript of Evidence*, 8 September 2017, p.9.
Recommendation 14

5.31 The Committee recommends that the ACT Government act as a sponsor of last resort for visa holders employed in the ACT undergoing industrial disputes.

ABORIGINAL AND TORRES STRAIT ISLANDER WORKERS

5.32 The Committee was advised that Aboriginal and Torres Strait Islander workers are also more vulnerable and more likely to be in insecure work.

5.33 ACTCOSS noted that there is a lack of culturally aware workplaces and research points to Aboriginal and Torres Strait Islander workers feeling ‘more comfortable working within Indigenous owned, operated and managed organisations’. The Committee heard that research suggest that there is more of a sense of belonging in those organisations.

5.34 As with workers from CALD backgrounds, discrimination also affect Aboriginal and Torres Strait Islander workers.

5.35 The committee was advised that reconciliation action plans are a positive move to change the work environment.

5.36 ACTCOSS also advised about its commitment to investment in ‘growing the recruitment and retention of Aboriginal and Torres Strait Islander people in the community services sector’, focusing on:

building cultural competence, building cultural awareness and creating environments in which there is flexibility to maintain your cultural obligations and responsibilities as well as fulfilling the requirements in a job.

YOUNG PEOPLE AND STUDENTS

5.37 Young people are one of the vulnerable groups more likely to be impacted by insecure work.

Young people are commonly employed in industries that rely heavily on casual employees

526 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.20.
527 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.20.
528 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.20.
529 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, pp.19-20; ACTCOSS, Submission 21, p.9.
530 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.20.
531 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.23.
532 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.23.
533 Youth Coalition, Submission 12.
including hospitality, retail, cafes and restaurants, fast food and tourism, and often as a first entry to the workforce whilst studying. The Youth Coalition of the ACT (Youth Coalition) advised that 70 per cent of respondents to their ‘Rate Canberra’ survey were employed in these sectors. Students make up around 55 per cent of the takeaway/fast food sector workforce.

The Committee also heard that many young people continue in those industries after study because of shortages of work in their chosen fields. There are also limited opportunities to get work experience which influences future employment options.

The Committee was advised that job security was ‘not a common feature of young people’s employment experiences’ with declining opportunities for full-time work. Unemployment and underemployment are significant issues for young Canberrans, with Youth Coalition advising that 21 per cent of their survey participants were looking for work. In addition 53 per cent of 16-17 year olds and 61 per cent of 18-21 year olds were looking to increase the number of hours they work.

Legal Aid ACT noted that:

Young people appear to bear the brunt of increased work insecurity in our community due to lower education levels, (often due to their limited or underdeveloped skill set and lack of ability or knowledge of what services to seek assistance from) and their relative inexperience in the workforce which can contribute to their vulnerability.

The Committee heard that around 20 per cent of the ACT workforce comprises young workers. Unions ACT advised that there are around 20,000 to 30,000 young workers and student workers (under 25) who are also engaged in full or part-time study, including year 11 and 12 students, domestic tertiary students and international students. This accounts for around 20 per cent of the private sector labour market.

Further, the Committee was advised that a high percentage of workers aged under 18 have experienced unsafe work, bullying and harassment as well as wage theft in the form of

534 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.51; Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.2.
535 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.51.
536 Unions ACT, Submission 34, p.18 [based on 2011 Census data and 2015 Australian Industry Group survey.
537 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.51.
538 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.60.
539 Youth Coalition, Submission 12.
540 Youth Coalition, Submission 12; Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.51.
541 Legal Aid ACT, Submission 4, p.6.
542 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.2; Unions ACT, Submission 34, p.18.
underpayment, non-payment of superannuation, non-payment of penalty rates or cash-in-hand payments.543

5.43 Legal Aid ACT advised that in 2016-17 they ‘provided 13 advices to 9 clients aged 18 and under where employment was the primary matter.’544

5.44 2016 ABS statistics for characteristics of employment indicate that 75 per cent of those aged 15-19 and 41 per cent of those aged 20-24 do not receive paid entitlements, most likely because they are employed on a casual basis. Further, 97 per cent of the 15-24 year age group are employed. Unions ACT estimates therefore that 68 per cent of all employees engaged without entitlements are aged 15-24 years.545

5.45 The Committee received a submission highlighting the difficulties balancing work with study. The participant, as a pre-service teacher noted that the practical component of her study required four months of unpaid full-time work during which time she could not maintain her casual job. Despite being independent, she moved home to live with her parents due to the inability to afford food and rent over this placement period.546

5.46 From a financial perspective, the Committee heard concerns around junior pay rates, particularly for young people living independently. The ACT is increasingly seeing people as young as 16 and 17 years old presenting to homelessness services.547 Youth are more affected by insecure work because of more limited knowledge on how to budget and limited time to save up some reserves to cover unexpected expenses.548

CHARITY STREET COLLECTORS

5.47 Unions ACT highlighted recent Fair Work Ombudsman investigations and enforcement action on businesses engaging charity street collectors. Charity fundraising is chiefly conducted by for-profit sales and marketing companies.549

5.48 The Fair Work Ombudsman investigations and prosecutions found sham contracting, underpayment and ‘deliberate’ or ‘reckless’ exploitation of charity collection workers was ‘widespread throughout the commercial fundraising supply chain.’550 The majority of the

543 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.4; Unions ACT, Submission 34, p.17, 36; Unions ACT, Submission 34, p.17 and Attachment ‘Safety in ACT Workplaces for Young Workers – Executive Summary’, 2017.
544 Dr Boersig, Answer to Question Taken on Notice, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.119.
545 Unions ACT, Submission 34, p.18.
546 Submission 24.
547 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.52.
548 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.53.
549 Unions ACT, Submission 34, pp.19-20.
550 Unions ACT, Submission 34, pp.19-20.
workers are temporary visa workers, usually working holiday makers, or high-school and work experience students.

5.49 The Committee was advised that:

Charity collections in public places were, until recently, regulated in the ACT through the Charity Collections Act which established a licensing scheme. The licensing scheme did not afford any protections for workers collecting donations on behalf of a charity, and did not require as a condition of the license that the company comply with relevant Federal or ACT laws.

5.50 The Committee was also advised that in early 2017, the licensing conditions regulating public charity collections was abolished.

5.51 The Committee notes the Explanatory Statement for the 2017 amendments to the Charitable Collections Act 2003 (ACT), state that the amendments aimed at removing duplication with the Australian Government regulation. Charities registered with the Australian Charities and Not-for-profits Commission are exempt from the requirement to hold a charitable collections license in the ACT. These charities must meet regulatory requirements under the Australian Charities and Not-for-Profit Commission Act 2013 (Cth), which provides a national regulatory framework for the not-for-profit sector, including the requirement to report to the ACNC.

**COMMITTEE COMMENT**

5.52 The Committee notes there is a need to create a chain of accountability through the charity collection supply chain. The ACT Government can play a role in protecting charity collection workers through regulation of the industry.

**Recommendation 15**

5.53 The Committee recommends that the ACT Government introduce licensing or certificates to protect charity collection workers.

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551 Charitable Collections Act 2003
552 Unions ACT, Submission 34, p.20.
553 Unions ACT, Submission 34, p.20.
**WOMEN**

5.54 The Committee was advised by a number of witnesses how insecure work disproportionately affects women in the workforce, particularly after periods of caring and family responsibility.\(^{555}\)

5.55 Women have higher unemployment in the ACT (seasonally adjusted) at 5.7 per cent compared to males at 5.5 per cent. Similarly underemployment is higher amongst women, with the ABS June 2017 labour force figures at 10.9 as a proportion of the labour force compared to men at 6.9 per cent.\(^{556}\)

5.56 Women are more likely to work in casual, part time employment,\(^{557}\) labour hire and fixed term contracting and comprise a larger percentage of the insecure workforce than men.\(^{558}\) Additionally, women ‘may often agree to poor working conditions in order to obtain flexibility arrangements’\(^{559}\) which also has detrimental flow on effects for career progression, financial security and may place additional stress on family and care arrangements.\(^{560}\)

5.57 2011 Census data shows 41 per cent of women in the ACT earn less than the minimum weekly wage compared to 20 per cent of men. One in ten households earn less than $545 per week and 20 per cent earn less than $702.\(^{561}\)

5.58 Women are more likely to be working in lower paid industries such as childcare and aged care, retail, accommodation and food service.\(^{562}\) The Committee heard that women take these jobs to fit in with other obligations, as a stepping stone in their career whilst studying or as a vocation, particularly in the community sector.\(^{563}\) For many ‘it is a matter of survival’, a factor which increases their vulnerability to exploitation by employers.\(^{564}\)

5.59 The Women’s Centre for Health Matters (WCHM) advised that the high number of hours of unpaid work performed by women also affected their availability to undertake paid work and ability to negotiate more flexible working hours.\(^{565}\) Canberra has the highest level of unpaid work per capita (including volunteer, domestic, care of adults and childcare).\(^{566}\)

\(^{555}\) WCHM, Proof Transcript of Evidence, Friday 8 September 2017, pp.45-46; Dr Clohesy, NTEU, *Proof Transcript of Evidence, 12 October 2017*, p.128; NTEU, Submission 38, p.7-8, 11; Unions ACT, Submission 34, p.12.

\(^{556}\) WCHM, Proof Transcript of Evidence, Friday 8 September 2017, pp.45-46.

\(^{557}\) WCHM, Submission 9, p.3.

\(^{558}\) Unions ACT, Submission 34, p.12.


\(^{561}\) WCHM, Submission 9, p.7.

\(^{562}\) WCHM, Proof Transcript of Evidence, Friday 8 September 2017, p.46; Unions ACT, Submission 34, p.12.

\(^{563}\) WCHM, Proof Transcript of Evidence, Friday 8 September 2017, p.46.

\(^{564}\) WCHM, Proof Transcript of Evidence, Friday 8 September 2017, p.46.

\(^{565}\) WCHM, Submission 9, p.5.

\(^{566}\) WCHM, Submission 9, p.7.
PEOPLE WITH A DISABILITY

5.60 The Committee was advised that people with disabilities have additional barriers to negotiating with employers, particularly if they don’t feel able to disclose their disability status due to concerns about discrimination.567

5.61 Workers with a disability also require flexibility and support to manage their health conditions which requires an understanding employer.568

5.62 Minimum standards in the Fair Work Act 2009 ‘prevent a person with a disability being able to ask for flexible working arrangements until they have been continuously employed for 12 months and qualify the entire time for the Disability Support Pension.’569 The Committee was advised that:

This excludes a great number of people with a disability who might be able to find work of any nature, given the right flexible working conditions, and the removal of the requirement to be on the Disability Support Pension.570

5.63 The Committee was advised that people with a disability also face misconceptions that their labour is less valuable, a view that is furthered by the Business Services Wage Assessment Tool (BSWAT) system under the Australian Government Disability Employment Services Framework which pays employers to ‘take on’ a person with a disability and pays the worker with a disability a percentage of a Full Time Equivalent (FTE) wage based on a calculation of their FTE value.571

5.64 Enabled Employment advised that casual and contract work, whether directly employed or via labour hire arrangements provide the opportunity for workers with a disability to gain experience in an industry whilst earning an income. Work experience also facilitates references and building a stronger resume which are likely to assist towards better long term employment outcomes.572 They noted:

Part time work suits many people with a disability who are managing a condition, carers who are balancing their caring responsibilities with working, and senior Australians who may want to work part-time as a lead in to retirement.573

567 WCHM, Submission 9, p.4.
568 WCHM, Submission 9, p.9.
571 Enabled Employment, Submission 5, pp.12, 16.
572 Submission 5, Enabled Employment, p.7.
573 Submission 5, Enabled Employment, p.7.
5.65 Work experience will help increase the worker’s confidence in managing their condition whilst working as well as confidence in their skills and abilities. In addition:

They will also change attitudes in the workplace...opening up opportunities not only for themselves but for other people with a disability by challenging the stereotypes that exist around disability and working.\(^{574}\)

**CARERS**

5.66 The Committee was advised that people with caring responsibilities are also vulnerable to insecure work and face numerous barriers to employment including lack of flexible employment opportunities that can accommodate their caring role, unsupportive workplaces, lack of relevant work experience or skills to meet job requirements, lack of affordable replacement care, low education qualifications and difficulty accessing training because of caring responsibilities.\(^{575}\) These barriers increase the likelihood of long term financial disadvantage and have social implications.\(^{576}\)

5.67 In the ACT there are nearly 45,000 unpaid carers, including 3,000 young adult carers aged 15-25 years.\(^{577}\)

5.68 Unpaid carers have lower workforce participation than their age cohorts who do not have similar caring roles:

In 2015, the national workforce participation for unpaid carers aged 15 to 64 years was 56.3 per cent for primary carers, and for all carers it was 77.2 per cent. This was lower than for non-carers (80.3 per cent). Young adult carers aged 15 to 24 years were almost twice as likely to be unemployed than other 15 to 24 year olds without a caring role.\(^{578}\)

5.69 As a result of their caring role, when carers are in the workforce they are more likely to choose part-time employment, or not seek promotion that requires additional hours or responsibilities that may conflict with their caring. Carers seeking to re-enter the workforce may lack skills and confidence to seek employment.\(^{579}\) Young carers are also more at risk of disengaging from education and young adult carers are less likely to identify as a carer.\(^{580}\)

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\(^{574}\) Submission 5, Enabled Employment, p.7.

\(^{575}\) Carers ACT, Submission 19, pp.4, 6.

\(^{576}\) Carers ACT, Submission 19, p.7.

\(^{577}\) Carers ACT, Submission 19, p.3.


\(^{579}\) Carers ACT, Submission 19, p.3.

\(^{580}\) Carers ACT, Submission 19, p.7, 8.
5.70 The Committee was advised that many carers lack knowledge or awareness of workplace practices such as work from home, job share and flexible hours that could support their caring role.\textsuperscript{581}

\textsuperscript{581} Carers ACT, Submission 19, pp.6-7.
6 CONSEQUENCES OF INSECURE WORK IN THE ACT

OVERVIEW

6.1 There are significant consequences arising from insecure work for the individual worker, their families, the community as a whole and employers. The Committee explores these consequences below and notes that they can apply across a range of employment types.

6.2 ACTCOSS highlighted for the Committee how the impacts of insecure work:

- are often interrelated and include low or inadequate incomes, unemployment and underemployment, irregular and uncertain income, financial stress, housing stress and housing insecurity, lack of job pathways, limited access to training and development, and negative impacts on physical and mental health and wellbeing.\(^{582}\)

6.3 Other impacts include:

- unsafe working conditions, stresses on personal life and relationships, social exclusion, lack of flexibility in work-life balance, discrimination and the lack of a sense of autonomy.\(^{583}\)

6.4 The St Vincent de Paul Society noted that the negative effects of insecure work have the potential to create or entrench significant long-term barriers to finding stable employment.\(^{584}\)

6.5 The Youth Coalition of the ACT advised the Committee that ‘employment affects many areas of life. Housing, physical and mental health, education, social connectedness, all those things that are really important to young people are linked to employment and employment issues.’\(^{585}\)

6.6 The Public Sector Standards Commissioner highlighted that:

The effects on individuals of insecure work are well documented...and can significantly disadvantage workers, in particular women, with the effect of having less superannuation, no job security and the effect that that has on long-term planning, such as securing a home loan, no long service leave in most industries and a lack of career progression.\(^{586}\)

\(^{582}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.16.

\(^{583}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.16.

\(^{584}\) St Vincent de Paul Society, Submission 18.

\(^{585}\) Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.51.

\(^{586}\) Ms Overton-Clarke, PSSSC, Proof Transcript of Evidence, 8 September 2017, p.77.
6.7 The St Vincent de Paul Society advised the Committee that:

For many people in insecure, low paying jobs, the dance between welfare and work is an ongoing part of their lives. There are a number of interactions between the welfare system and insecure employment that are likely to exacerbate the negative effects of both unemployment and job insecurity, financial instability and lack of financial resilience, poor mental and physical health outcomes, relationship stress, housing insecurity and social exclusion.\(^{587}\)

6.8 The Committee also received submissions and heard evidence from individuals experiencing insecure working arrangements. Ms Mitchell, for example outlined her experiences to the Committee, having worked in both casual and part-time retail employment. She advised that she has struggled with underemployment, unpredictable income levels (arising from variable working hours), lack of flexible working arrangements for employees, and fears around using entitlements such as sick leave.\(^{588}\)

**FINANCIAL**

6.9 The Committee received evidence outlining how employees in insecure work are more likely to face financial difficulties with low, irregular and uncertain income which can result in stress and financial vulnerability.

6.10 FECCA noted that insecure work has a significant effect on workers’ financial security:

- due to low wages, fluctuating working hours and limited paid leave entitlements.
- Keeping up with the costs of day-to-day living and affording basic necessities such as housing, groceries and transport can be difficult to manage with an unreliable income.\(^{589}\)

6.11 One individual worker highlighted difficulties paying bills and buying food where primary contractors did not pay him for his work. He noted the time and effort also required to chase the missing payments.\(^{590}\) He also highlighted is inability to plan ahead when on short term contracts, including financial commitments.\(^{591}\)

6.12 ACTCOSS advised:

People on low income experience difficulties in covering essential costs, including making forced choices between food or heating, for example. Low income also makes

\(^{587}\) St Vincent de Paul Society, Submission 18.
\(^{589}\) Submission 17, FECCA, p.4.
\(^{590}\) Submission 32.
\(^{591}\) Submission 25.
it challenging for individuals and households to accumulate savings that may be
needed to cover unexpected costs as well as possibly forgoing social activities for the
worker or members of their family, particularly children.592

6.13 The Youth Coalition of the ACT and ACTCOSS also noted the difficulties for workers in insecure
work meeting higher cost of living expenses in the ACT.593

6.14 Unions ACT noted some labour hire working arrangements resulted in negative impacts
including ‘financial insecurity, difficulty in planning and saving for the future, widespread and
substantial underpayments, non-payment of superannuation.’594

6.15 Unions ACT also highlighted the impact of casualisation on wages, siting OECD research
indicating that even controlling for job differences, temporary workers receive less than
permanent workers.595 Additionally there is a gender element to the wage gap, with women
representing a higher portion of those in low wage insecure work.596

6.16 Unions ACT advised the Committee that of the 300 workers surveyed for their submission to
this inquiry, 33 per cent had not been paid correctly.597

6.17 ACTCOSS also highlighted that irregular incomes do not align with the tax and welfare
systems.598

CASE STUDY

6.18 One witness, Ms Mitchell, told the Committee about her experiences working as a casual and
now as a part-time employee. She advised that financial concerns were the most significant
impact on her, with employment averaging around 12 hours a week in her previous casual job
(but varying from as little as three hours to as many as 32 hours per week in the pre-Christmas
period).599 The variability in pay made budgeting difficult, especially when unexpected
expenses arose. Ms Mitchell advised, for example, that she does not use heating in her house
in order to avoid high electricity bills in winter.600

6.19 Ms Mitchell noted that extra hours were available at her casual job for workers who could fill
in for staff calling in sick but that also created other challenges. Rostering did not reflect the

592 ACTCOSS, Submission 21, p.17.
593 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.55; ACTCOSS, Submission 21, p.17.
594 Unions ACT, Submission 34, p.12.
595 ACTU Submission to the Victorian Inquiry into Labour Hire and Insecure Work (2015), source: the OECD, OECD
Employment Outlook (July 2002) pp166 and 141; see also an international study with similar findings in Comi, S. &
National Conference of Labour Economics University of Sassari, p1.
596 Unions ACT, Submission 34, p.24.
597 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.1.
598 ACTCOSS, Submission 21, p.19.
600 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.25.
needs or wishes of employees so she could not elect whether to work weekends or not. Public holidays were the only voluntary shift workers could actively elect to work to increase her pay.  

6.20 The CPSU advised that:

Insecure employees have less job security which has implications for them in a whole range of matters – for example it is harder for this group of employees to secure loans or mortgages and purchase property or significant items. Casual employees also have the additional issue of fluctuating hours which means it can be hard to know what their pay will be from week to week.  

WAGE THEFT/UNDERPAYMENT

6.21 Evidence tendered to the Committee noted that vulnerable workers are also more open to underpayment or wage theft.

6.22 Maurice Blackburn highlighted its experience representing workers in insecure work, with many ‘being exposed to substantial wage theft and unlawful working conditions through cost and risk-shifting models.’

6.23 The St Vincent de Paul Society noted that:

labour hire, sham contracting arrangements and "phoenix companies" are being used to avoid workplace laws and other statutory obligations, including underpayment of wages and entitlements, as well as, avoidance of payroll and income tax. There is anecdotal evidence and reports from Fair Work Australia that, whilst these issues may not be as significant in the ACT, these practices do occur particularly in the cleaning, security and fast food industries.

6.24 Evidence tendered to the Committee highlighted the prevalence of wage theft in the retail, fast food and warehousing sectors.

6.25 About a third of respondents to a recent Unions ACT survey on young peoples’ industrial experience had experienced wage theft. Similarly United Voice highlighted case studies of wage theft in the ACT, affecting particularly international students and young local workers.

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602 CPSU, Submission 7, p.8.
603 Maurice Blackburn, Submission 8, p.1
604 St Vincent de Paul Society, Submission 18.
605 SDA, Submission 2, p.8, 15.
606 Mr White, Unions ACT, *Proof Transcript of Evidence, 8 September 2017*, p.4.
607 United Voice, Submission 35, p. Attachment 1, Case Study 3 and 5.
6.26 As seen in other jurisdictional investigations, Fair Work Ombudsman audits of ACT franchise arrangements found high levels of non-compliance with workplace obligations, particularly underpayment of wages and superannuation.\textsuperscript{608} United Voice advised:

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. \textsuperscript{609}

6.27 They similarly note:

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. \textsuperscript{610}

6.28 The Shop, Distributive and Allied Employees’ Association NSW and ACT (SDA) supports the creation of an offence against wage theft where deliberate underpayment of wages has occurred. \textsuperscript{611}

\textbf{COMMITTEE COMMENT}

6.29 The Committee acknowledges that the \emph{Fair Work Act 2009} provides protections against underpayment of wages, however the ACT Government could further deter such behaviour by creating a new criminal offence of wage theft.

\textbf{Recommendation 16}

6.30 The Committee recommends that ACT Government consider creating a new criminal offence of wage theft in the cases of deliberate underpayment of wages.

\textbf{SUPERANNUATION}

6.31 The effects of irregular pay and underpayment also has flow on effects on superannuation entitlements. The Committee was advised that reduced contributions have a negative effect on retirement incomes for insecure workers. \textsuperscript{612}

\begin{flushright}
\textsuperscript{608} Unions ACT, Submission 34, pp.15-16; United Voice, Submission 35, p.7.
\textsuperscript{609} United Voice, Submission 35, p.7.
\textsuperscript{610} United Voice, Submission 35, p.16.
\textsuperscript{611} SDA, Submission 2, p.8, 15.
\textsuperscript{612} CPSU, Submission 7, p.8.
\end{flushright}
6.32 One individual proposed an increased in employer superannuation contributions for casuals in order to improve financial security later in life.\(^{613}\)

6.33 Unions ACT also noted how the gendered nature of insecure work has particularly negative impacts on women longer term:

The impact of low wages from insecure work has flow-on impacts for women in retirement. Low wages during working life often result in insufficient superannuation savings for retirement. Women who had low incomes during work are at increased risks of housing stress and homelessness due to continued low income from a low superannuation income.\(^{614}\)

**JUNIOR RATES**

6.34 The Committee was advised that youth and training wages are less than an adult wage and most student workers would be paid at these rates.\(^{615}\)

6.35 Junior rates, which are common in the awards and enterprise agreements of industries that young people are likely to be employed in, were a concern for those under 21 years old, particularly as they are likely to be transitioning to financial independence.\(^{616}\) Financial insecurity is of great concern for the 18-21 and 22-25 year age groups, as evidenced in the Youth Coalition’s Rate Canberra 2016 survey.\(^{617}\)

**HOUSING**

6.36 The Committee heard that housing stress is a significant impact of insecure working arrangements.\(^{618}\) Without permanent work it is generally not possible for workers to get a mortgage.\(^{619}\) Rolling contracts may be fixed-term but there is no guarantee of a follow up contract.\(^{620}\) These stressors are even more of an issue for single income families or where all income earners are in non-permanent employment.

6.37 The Committee was advised that in some cases, particularly for the professional ICT and contracting sector, members of APSCo can access support structures such as a banking relationship that allows workers to get a housing loan even in the absence of permanent

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\(^{613}\) Ms Yurtbilir, Submission 26; Ms Yurtbilir, *Proof Transcript of Evidence, 8 September 2017*, p.32.

\(^{614}\) Unions ACT, Submission 34, p.24.

\(^{615}\) Unions ACT, Submission 34, p.18.

\(^{616}\) Youth Coalition, Submission 12.

\(^{617}\) Youth Coalition, Submission 12.


\(^{620}\) WCHM, *Proof Transcript of Evidence, 8 September 2017*, p.49.
employment.\textsuperscript{621} These arrangements are not available to the majority of workers in insecure work.

6.38 People in insecure work can also face difficulties in the private rental market, particularly in the ACT ‘landlords are able to pick and choose from a number of applications for their property’\textsuperscript{622} and are less likely to select someone or a family with non-permanent employment. Unions ACT advised that 35 per cent of the workers surveyed for their submission to this inquiry reported that they could not pay their rent or mortgage due to low wages or unpredictable income.\textsuperscript{623}

6.39 WCHM advised that ‘housing stress in the ACT is highest among workers in the retail and accommodation and food services industries, at 43 per cent and 33 per cent respectively.’\textsuperscript{624} Modelling suggests that 55 per cent of workers facing housing stress are women. 45 per cent are aged 25-34 years and 10 per cent are predicted to be 18-24 years, although younger people are more likely to continue living with their parents so are reliant on others financially.\textsuperscript{625}

6.40 A shortage of permanent employment opportunities in the ACT is a significant barrier to housing.\textsuperscript{626} The high costs of housing increase the pressure to work long hours, exacerbating other negative consequences including health and wellbeing and leaving workers more vulnerable to exploitation.\textsuperscript{627}

6.41 The Committee was advised that the flow on effects of these housing limitations also contribute to homelessness:

There are people who are finding it impossible to find a safe, secure place to live now who, in past generations, would not have had that issue. And it is that combination of the rise of insecure employment and the level of heat there is in the housing market.\textsuperscript{628}

6.42 ACTCOSS noted that with lower levels of superannuation and assets, older women are more vulnerable to financial difficulties later in life. The ‘accumulated poverty’ makes older women particularly vulnerable to housing insecurity.\textsuperscript{629}

\begin{footnotes}
\item[622] WCHM, \textit{Proof Transcript of Evidence}, 8 September 2017, p.49.
\item[623] Unions ACT, Submission 34, pp.28-29.
\item[624] WCHM, \textit{Proof Transcript of Evidence}, 8 September 2017, p.46.
\item[625] WCHM, Submission 9, p.10.
\item[626] WCHM, Submission 9, p.10.
\item[627] WCHM, Submission 9, p.11.
\item[628] WCHM, \textit{Proof Transcript of Evidence}, 8 September 2017, p.49.
\item[629] ACTCOSS, Submission 21, p.20.
\end{footnotes}
WORKING HOURS/WORK LIFE BALANCE

6.43 The Committee received a range of evidence outlining the effects of insecure work on work-life balance, particularly the difficulties arising from changing rosters and employment that officially or unofficially requires workers to be on-call.

6.44 Unions ACT advised that almost half of the women who responded to their survey reported that hours of work, shifts or rostering had a significant negative impact on their ability to organise childcare. 630

6.45 Similarly unpredictable work hours and less access to take paid leave or paid breaks from work inhibits workers’ ability to participate in or commit to family activities, social activities, community life or study. 631 The Committee was advised by FECCA that insecure work has a significant effect on social inclusion due to isolation, racism, bullying, instability and low pay that do not create feelings of belonging nor do they foster trust and feelings of security. 632

CASE STUDY

6.46 In terms of flexibility Ms Mitchell highlighted that ‘your life is not your own’ when working casually or as a part-time worker. Despite an indication that rosters would be planned, she advised that casuals at her workplace would often receive late notice of shifts, sometimes as late as Sunday night for the coming week. She noted that there was also no regularity in shifts. Staff were required to provide four weeks’ notice for absences yet in contrast workers had to be prepared for a phone call from work even on a day off. 633

6.47 Ms Mitchell noted that although workers could refuse additional shifts they were less likely to be called in the future. 634 She stated ‘I was grateful for the income, but it was really anxiety provoking for me, wondering at the start of just about every non-working day whether I would get a call.’ 635

6.48 In her current part-time position she emphasised that ‘at a base rate of 23 hours per week, I am underemployed, but it is better than nothing.’ She advised that her income still varies with Sunday penalty rates but she is not paid for any overtime worked. 636 She also gets calls for extra shifts in her part-time position which she readily accepts for the additional income but which creates difficulties scheduling her day-to-day life, including making appointments. The

630 Unions ACT, Submission 34, p.27.
631 ACTCOSS, Submission 21, p.20; ANMF, Submission 13, p.9.
632 FECCA, Submission 17, p.4.
635 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.25.
Committee heard that calls to fill in a shift often required immediate attendance. ‘If they ring me, they want me right away’ 637 She noted the difficulties with rostering and being essentially on-call meant she could also not take on a second job to increase her working hours.638

HEALTH AND WELLBEING

6.49 A range of evidence to the Committee highlighted the relationship between employment and health and wellbeing.

6.50 The St Vincent de Paul Society noted that employment is a determinant of health and wellbeing:

    Certain types of employment particularly work that involves unsafe practices, with little autonomy, lacking flexibility and employee control are related to poor health outcomes.639

6.51 With no access to sick leave or carers leave when working casually or under contract, WCHM noted that there is an impact on workers’ health and wellbeing.640 Workers are forced to choose between an income and visiting a doctor.641 Ms Mitchell, for example noted that she could not afford to get sick in her casual work and generally worked even if she did not feel well.642

6.52 Women in particular are often carers for family members and put themselves and their own health and wellbeing last.643 With no holiday leave and additional fears of not getting another shift or contract workers are unable to take a rest break from work. 644

6.53 WCHM also noted the physical health effects of being on their feet all day and long shifts for those in retail and hospitality. 645 They also highlighted how childcare workers are exposed to young children with contagious illnesses but sick leave allowances do not accommodate for workers’ extra need for time off.646

637 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.29.
638 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.28.
639 St Vincent de Paul Society, Submission 18.
640 WCHM, Proof Transcript of Evidence, 8 September 2017, p.46.
641 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.25.
642 WCHM, Proof Transcript of Evidence, 8 September 2017, p.46.
643 WCHM, Proof Transcript of Evidence, 8 September 2017, p.46.
644 WCHM, Proof Transcript of Evidence, 8 September 2017, p.46.
645 WCHM, Proof Transcript of Evidence, 8 September 2017, p.47.
646 WCHM, Submission 9, p.8.
6.54 ACTCOSS highlighted to the Committee the possible health and safety risks of people holding more than one job, noting the difficulties working across multiple and possibly varying policies and procedures. They also raised concerns around peoples’ capacity to work well. 647

MENTAL HEALTH

6.55 Significant mental health concerns for workers in insecure work were also raised with the Committee, particularly for employees with unstable and/or unpredictable work hours and income.

6.56 ACTCOSS advised that insecure work can create anxiety and stress, in addition to contributing to broader health problems, noting the impacts particularly of irregular or non-social work hours. 648 They highlighted research showing a clear correlation between a sense of job security and mental health. 649 They also noted that workforce participation is an important part of ’social citizenship’. 650

6.57 Financial insecurity and related stress can have a detrimental effect on mental and physical health and wellbeing of workers facing employment uncertainty. 651

6.58 The Committee heard burn out was an issue in many industries, particularly in the care sector, with workers unable to take leave they need to take care of themselves. 652

6.59 Youth Coalition advised that employment is one of the top concerns for young people and significantly impacts on their emotional wellbeing. 653 They noted that for many youth there is a bleak outlook, concerned that they may not find full time work, own a home or pay back Higher Education Contribution Scheme/Higher Education Loan Program (HECS/HELP) debts, particularly for youth with limited or no family support. 654

6.60 The Committee heard that unexpected expenses created stress, but even more so the uncertainty of rostering and on-call arrangements increase stress levels. 655 Ms Mitchell advised the Committee: ‘I cope financially; it is not great, but I cope. It is the uncertainty that I find difficult.’ 656 She noted that regularity of work for casuals such as a base number of hours would be preferable for predictability. Ms Mitchell also supported changes that would enable

647 ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.21.
648 ACTCOSS, Submission 21, pp.20-21.
649 ACTCOSS, Submission 21, p.21
650 ACTCOSS, Submission 21, pp.20-21.
651 ANMF, Submission 13, pp.7, 9; FECCA, Submission 17, p.4.
652 WCHM, Proof Transcript of Evidence, 8 September 2017, p.47.
653 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, pp.51-52.
654 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, pp.60.
655 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.29.
656 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.29.
casual workers to transition automatically to part-time or full time role after twelve months of ‘regular and systematic’ continuous employment, based on the number of hours worked.  

WORKPLACE SAFETY

6.61 Evidence tendered to the Committee discussed a number of workplace health and safety matters including injury, illness, harassment and bullying.

6.62 FECCA noted that insecure work has a significant effect on occupational health and safety workers and workplaces for vulnerable workers ‘due to limited knowledge and limited access to information because of workload intensification, bullying on the part of employers, and threats to employment security.’

INJURIES

6.63 The Committee was advised that there is a relationship between insecure work and workplace injuries. Unions ACT provided the following advice on the extent of workplace injuries as it relates to insecure work:

ABS injury data, and Safe Work Australia statistics show that injuries are more frequent in sectors and jobs that are highly casualised and precarious. In “blue collar” industries, labourers, drivers and machine operators have high injury rates; and these are occupations over-represented with labour hire and casualisation. For “white collar” work, occupations in clerical, administration and sales, and in community and allied health, have high injury rates; these are occupations with higher rates of women employees, and with higher casualisation and use of labour hire.

ABS data shows that up to 36 per cent of workers, mainly those on low incomes and with insecure jobs, do not report workplace injuries, and do not lodge workers compensation claims.

6.64 Unions ACT advised that Committee that, in surveying over 300 workers as part of its submission, results indicated widespread unlawful behaviour and noncompliance by employers including in work health and safety and the requirements of the Fair Work Act 2009. The Committee heard that 52 per cent of respondents to the Unions ACT survey indicated they had worked in unsafe conditions.

657 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.27; Ms Mitchell, Submission 28.
658 FECCA, Submission 17, p.4.
659 Unions ACT, Submission 34, p.22.
660 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.1; Unions ACT, Submission 34, pp.22-23.
661 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.1.
6.65 ACT Government officials also provided the Committee with workers compensation injury data, noting that it is an imperfect dataset:

In respect of lost-time injuries, in the ACT private sector in 2016-17 there were a total of almost 2,000 injuries. Of those, 635 were injuries to apprentices, trainees, labour hire workers or people who were 24 years of age or younger at the time of injury. I would expect rates of injury among vulnerable workers, particularly young and inexperienced workers, to be somewhat higher than the average proportion of the population.662

6.66 The Committee heard from Unions ACT that insecure work ‘goes hand in hand with unsafe working conditions’ for a number of reasons. The implied threat to employment, future shifts or future placements for casual and labour hire workers if a worker raises any complaint has potentially very real health and safety consequences. Unions ACT also noted many young employees feel they are treated as disposable.663

6.67 Unions ACT also advised that ‘transient’ workers (principally workers with temporary 457 or backpacker working visas) are a key priority area for improving safety, as identified by the ACT Work Safety Council and Safe Work Australia. However, there is a significant gap in data on this group of workers.664

6.68 The Committee heard that many employers consider it more costly and time consuming to maintain safe working conditions and safe work practices than the cost of injury or being caught.665

JOBS PATHWAYS AND PROFESSIONAL DEVELOPMENT

6.69 A range of evidence to the Committee noted limited access to training and professional development for non-ongoing workers as well as a lack of job pathways.666

6.70 The Committee heard that employers are not likely to invest in training and development for staff who are not permanent which affects their future employment prospects and compounds any disadvantage and work insecurity.667

6.71 FECCA noted that many workers in insecure jobs are considered expandable and there is little recognition of the skills needed and acquired in such employment. This in turn affects career

662 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.68.
663 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.6.
664 Unions ACT, Submission 34, pp.22-23.
665 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.6.
666 ANMF, Submission 13, p.9; ACTCOSS, Submission 21, p.20; FECCA, Submission 17, p.4; CPSU, Submission 7, p.9.
667 WCHM, Proof Transcript of Evidence, 8 September 2017, p.48; ACTCOSS, Submission 21, p.20.
progression and opportunities leasing to career stagnation and skill reduction. \textsuperscript{668} Those same workers are also not generally paid enough to afford private training courses. \textsuperscript{669}

6.72 ACTCOSS noted that ‘investment in workers should underpin quality service delivery regardless of the sector and regardless of the hours worked.’ \textsuperscript{670}

6.73 ACTCOSS advised that in many cases insecure work does not provide a pathway into secure employment and can instead lead to a cycle of insecure employment and unemployment. \textsuperscript{671}

6.74 Lack of career progression or training for non-ongoing workers also results in higher turnover as those staff look for better pay, conditions and security elsewhere. CPSU highlighted that in some cases like clinical psychologists in ACT Health, short term contracts affect career progression and with the specialised nature of work those employees seek more stable employment elsewhere which in turn affects the quality of public services people receive. \textsuperscript{672}

**BUSINESS AND WORKPLACE IMPACTS**

6.75 Non-ongoing employment has flow on effects for ongoing employees in the workplace with a high turnover of staff impacting workload and in some cases leadership.

6.76 Non-ongoing staff can feel unprotected in their current employment, particularly where their entitlements are less than permanent employees doing the same work, and change jobs for better opportunity despite being an asset to their workplace. \textsuperscript{673}

6.77 The Committee was advised that ongoing staff are also often asked to take on additional work when a temporary employee leaves and experience burnout. Understaffing also affects ongoing staff accessing their annual leave entitlements. Similarly a high turnover of managers due to non-ongoing work at senior levels, affects the whole workplace with differing management styles, expectations and lack of consistency. \textsuperscript{674} CPSU noted additional concerns for ongoing staff when ‘jobs that do provide room for progression get cut in favour of contracts’. \textsuperscript{675}

\textsuperscript{668} FECCA, Submission 17, p.4.
\textsuperscript{669} WCHM, *Proof Transcript of Evidence, 8 September 2017*, p.48; ACTCOSS, Submission 21, p.20.
\textsuperscript{670} ACTCOSS, Submission 21, p.20.
\textsuperscript{671} ACTCOSS, Submission 21, p.20.
\textsuperscript{672} CPSU, Submission 7, p.9.
\textsuperscript{673} CPSU, Submission 7, p.8.
\textsuperscript{674} CPSU, Submission 7, p.8.
\textsuperscript{675} CPSU, Submission 7, p.9.
6.78 As an example, ANMF advised that stress and employment uncertainty, particularly for early career nurses and midwives, sees many becoming disenchanted and reconsider their career choice at a time when there are workforce shortages. 676

**FAMILY AND OTHER RELATIONSHIPS**

6.79 Insecure work also has impacts on family and other relationships.

6.80 The Committee heard about the impacts on childcare arrangements for workers with unstable and unpredictable work patterns. 677 Employers do not always take into account workers shift requirements to work around family responsibilities which can resulting in increased stress and anxiety for the employee.

6.81 WCHM noted ‘it has an impact on their families: making those hard choices between being there for your family and keeping your job.’ 678

6.82 One witness noted the pursuit of suitable, secure work resulted in many career changes and moving from State to State which had negative flow on effects on her personal relationships. 679

6.83 FECCA advised how insecure work has a significant impact on family and other relationships ‘due to demanding work hours, stress, physical injury and financial insecurity. This inhibit the capacity for employees to engage, contribute and build family and community relationships both within and outside their workspaces.’ 680

6.84 The Committee heard how insecure work also impacts longer term outcomes for families and children:

> If we can improve women’s employment security and their hourly pay rate, that will have a positive impact on homelessness, physical and mental health outcomes and safety, and outcomes for their children and families. 681

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676 ANMF, Submission 13, p.7.
678 WCHM, *Proof Transcript of Evidence, 8 September 2017*, p.46.
679 Ms Yurtbilir, *Proof Transcript of Evidence, 8 September 2017*, p.33.
680 FECCA, Submission 17, p.4.
681 WCHM, *Proof Transcript of Evidence, 8 September 2017*, p.46.
COMMUNITY EFFECTS

6.85 The Committee was advised that there are also flow on effects for the community including productivity of the workforce, inclusiveness, workforce participation and contribution to economy.

6.86 ACTCOSS highlighted to the Committee the need for further understanding of the unintended consequences and broader implications of insecure work because ‘as a whole community it creates risk and vulnerability that we have to pick up in other systems.’\(^{682}\) They noted that some costs are being borne by workers, and some are borne by government-funded systems like housing and healthcare.\(^{683}\) ACTCOSS provided the following example:

We did work with ACT Shelter, the Youth Coalition and the Women’s Centre for Health Matters a couple of years ago. We tried to look at what the impact is of the people-labour market position on their access to housing, the security of their housing and the affordability of their housing. That just highlights a whole lot of risks that actually then come back to government because there are more people looking for public housing because they cannot get housing in the private sector when they have insecure work.\(^{684}\)

6.87 ACTCOSS believes that more research needs to be undertaken on these unintended consequences to understand the prevalence, trends and where costs are being borne.\(^{685}\)

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\(^{682}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.19.

\(^{683}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.19.

\(^{684}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.19.

\(^{685}\) ACTCOSS, Proof Transcript of Evidence, 8 September 2017, p.19.
7 CONDUCT AND REGULATION OF EMPLOYMENT IN THE ACT

7.1 Employment and business conduct in the ACT is regulated at both Federal and Territory levels. Relevant laws include:

- *Fair Work Act 2009* (Cth)
- *Competition and Consumer Act 2010* (Cth)
- *Corporations Act 2001* (Cth)
- *Independent Contractors Act 2006* (Cth)
- *Incomes Tax Assessments Act(s)* (Cth)
- *Migration Act 1958* (Cth)
- *Superannuation Guarantee (Administration) Act 1992* (Cth)
- *Superannuation Guarantee (Charge) Act 1992* (Cth)
- *Tax Administration Act 1953* (Cth)
- *Discrimination Act 1991* (ACT)
- *Long Service Leave Act 1976* (ACT)
- *Long Service Leave (Portable Schemes) Act 2009* (ACT)
- *Payroll Tax Act 2011* (ACT)
- *Training and Employment Act 2003* (ACT)
- *Work Health and Safety Act 2011* (ACT)
- *Workers Compensation Act 1951* (ACT)
- *Children and Young People Act 2008* (ACT)

**FAIR WORK ACT 2009 – COMMONWEALTH**

7.2 The *Fair Work Act 2009* (Cth) remains the primary source of employment rights, conditions and entitlements for employees in the ACT. 686

7.3 The Fair Work system, established by the *Fair Work Act 2009* makes a ‘safety net’ of entitlements for relevant employees through 10 minimum National Employment Standards

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(NES), national awards for specific industries and occupations, the national minimum wage and protection from unfair dismissal.\footnote{Australian Government, Fair work Ombudsman, The Fair Work system, available at: \url{https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system}.} The NES cover:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal carers leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair Work Information Statement

### 7.4 The ACT Government advised the Committee that:

A registered agreement or employment contract can provide for other entitlements but they cannot be less than what is in the NES or relevant award.

The Territory interacts with the Commonwealth on industrial relations regulation via the Inter-Governmental Agreement on the National Workplace Relations System (the IGA).

The IGA provides for consultation to take place between the Commonwealth and jurisdictions, including the ACT, in relation to proposed amendments to the \textit{Fair Work Act}.\footnote{ACT Government, Submission 23, pp.11-12.}

### 7.5 During 2017 a number of changes to the Fair Work System were implemented:

- A Registered Organisations Commissions was established as an independent regulator of unions and employer associations;\footnote{Australian Government, Fair work Ombudsman, \textit{Australia’s industrial relations timeline}, available at: \url{https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/australias-industrial-relations-timeline}.} and

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\footnote{ACT Government, Submission 23, pp.11-12.}
\footnote{See the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 and Fair Work Amendment (Corrupting Benefits) Act 2017}
The Australian Building and Construction Commission was established, transitioning from Fair Work Building and Construction.692

**ACT Government Responsibilities**

7.6 The ACT Government has legislative and regulatory responsibility for public holidays, long service leave, workplace health and safety and workers’ compensation. There are also requirements under the *Children and Young People Act 2008* around the engagement of young people and the ACT is responsible for licensing and certification of some professions, in addition to workplace surveillance and privacy matters.

7.7 One submission noted that there are limits for the ACT Government to effectively legislate beyond these areas.693

**Long Service Leave**

7.8 Long service leave schemes are governed by three separate agencies in the ACT.

7.9 WorkSafe ACT administers the *Long Service Leave Act 1976* which ‘covers employees in the ACT private sector who are not covered by an industrial award or agreement, or in some cases, where an award or agreement does not contain provisions for long service leave’.694 It provides workers with minimum ‘conditions of service’ provisions involving long service leave.

7.10 The Fair Work Ombudsman advises private sector employees if their employer is covered by any industrial award or agreement that may preclude them from the benefits under the *Long Service Leave Act 1976* and advise which legislation applies for their long service leave entitlements.695

7.11 The ACT Long Service Leave Authority administers portable long service leave schemes for selected industries under the *Long Service Leave (Portable Schemes) Act 2009*.

**Portable Long Service Leave**

7.12 In the ACT, portable long service leave schemes have been established for the construction, cleaning, community sectors (including aged care) and security industries, which enable workers to move between employers in the respective industry and retain credit for time

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693 MBA, Submission 10, p.2


worked. Service as a self-employed worker is also accrued. These sectors are known to have high levels of casualisation, short term contracts and subcontracting.\textsuperscript{696}

7.13 The schemes are administered by the ACT Long Service Leave Authority and are funded by payments from employers into the Authority to cover the cost of employee leave entitlements.\textsuperscript{697} Claims are made through the Authority.\textsuperscript{698}

7.14 ACTCOSS advised that the scheme for the community sector industry was a positive step to improving working conditions in the sector but does not address the underlying issues that lead to insecure work in that sector.\textsuperscript{699}

7.15 CPSU advised that the current scheme should be extended to government contractors to ensure they can access their entitlements when they move between employers and contracts.\textsuperscript{700}

7.16 Unions ACT noted that the ACT’s portable long service leave scheme ensures access to long service leave for tens of thousands of workers. They support expansion of the scheme to every private worker in the ACT.\textsuperscript{701}

7.17 The St Vincent de Paul Society advised that insecure work is most common in the hospitality, cleaning, security, retail and fast food industries.\textsuperscript{702} The Committee notes that the portable long service leave scheme does not cover all these industries.

\textbf{COMMITTEE COMMENT}

7.18 The Committee believes there is scope for the current portable long service leave scheme to be expanded to include additional industries and sectors.

7.19 The retail, hospitality and fast food industries should be the first to be considered in extending portable long service leave arrangements.

\textbf{Recommendation 17}

7.20 The Committee recommends that the ACT Government extend portable long service leave arrangements to additional sectors and industry groups.

\textsuperscript{696} Ms Stephen-Smith MLA, \textit{Proof Transcript of Evidence, 8 September 2017}, p.62.
\textsuperscript{697} ACT Government, Submission 23, p.12.
\textsuperscript{698} https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3008~/long-service-leave
\textsuperscript{699} ACTCOSS, Submission 21, p.27.
\textsuperscript{700} CPSU, Submission 7, p.9.
\textsuperscript{701} Unions ACT, Submission 34, p.35.
\textsuperscript{702} St Vincent de Paul Society, Submission 18.
PUBLIC HOLIDAYS

7.21 ACT public holidays are prescribed under the Holidays Act 1958. Public holidays have relevance to all employees in the ACT.

If a person who is entitled under a modern award to a holiday on a weekday following a substituted public holiday and the weekday is not a public holiday under this Act, the substituted public holiday is not a public holiday for the person under this Act.

WORKPLACE HEALTH AND SAFETY

7.22 The Work Health and Safety Act 2011 (ACT) and supporting regulations govern workplace health and safety matters in the ACT. The regulations apply to the public and private sector workforce and mostly reflect the National Model Work Health and Safety Laws.

WORKERS COMPENSATION

7.23 The ACT has two workers’ compensation scheme arrangements, one for its public sector workforce and a separate arrangement for the private sector workforce.

7.24 The ACT public sector is insured under the Commonwealth’s Comcare Scheme, and covers around 22,000 ACT public sector employees. This is established by the Safety, Rehabilitation and Compensation Act 1988 (Cth).

7.25 The ACT Government has decided to progress an application to the Safety, Rehabilitation and Compensation Commission (SRCC) to become a self-insurer within the Comcare scheme. To support self-insurance, the ACT Government will establish a best-practice claims management model that promotes health and mental wellbeing for injured ACTPS employees. The claims management model will be informed by consultation with ACTPS employees and their representatives.

7.26 The Workers Compensation Act 1951 (ACT) establishes the regulatory framework for the Territory’s private sector workers’ compensation scheme. The scheme provides work injury insurance coverage for around 16,500 employers and medical treatment, rehabilitation

704 Holidays Act 1958, Section 3(5)
assistance and weekly or lump sum compensation for the Territory’s private sector workers in the event of injury as a result of their work.\textsuperscript{709}

\textbf{WORKSAFE ACT}

7.27 WorkSafe ACT, a business unit within Access Canberra in CMTEDD, is the responsible regulator for both workplace health and safety and workers’ compensation matters.\textsuperscript{710} Its role is to enforce the ACT’s health and safety and workers’ compensation laws through a mixture of education and compliance activities.\textsuperscript{711}

7.28 The WorkSafe website also describes its licensing functions:

WorkSafe ACT also has limited licensing functions providing licences and permits for individuals under the \textit{Work Health and Safety Act 2011}, the \textit{Dangerous Substances Act 2004}, the \textit{Scaffolding and Lifts Act 1912}, and the \textit{Machinery Act 1949}. The \textit{Dangerous Substances (Explosives) Regulation 2004} provides for the issuing of licenses and/or permits relating to all aspects involving explosives.

Additionally [WorkSafe ACT] license self-insurers, approved insurers and rehabilitation providers under the \textit{Workers Compensation Act 1951}.\textsuperscript{712}

7.29 WorkSafe ACT inspectors have certain powers and functions in relation to workplace health and safety matters at ACT workplaces including:

- entry to workplaces;
- inspecting, examining and making inquiries at workplaces;
- issuing improvement notices for non-compliance with the Act; and
- investigating contraventions of the Act.\textsuperscript{713}

7.30 Worksafe ACT launched an audit into the supervision of young workers which was due to be reported by the end of 2017.\textsuperscript{714} The audit was to ‘focus on work health and safety requirements for employers of young workers as well as ensuring there is an appropriate level of supervision and support, training and proper induction to worksites and workplaces’.\textsuperscript{715}

\textsuperscript{709} ACT Government, Submission 23, p.12.
\textsuperscript{710} ACT Government, Submission 23, p.12.
\textsuperscript{711} ‘overview’, available at: https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2198
\textsuperscript{712} ‘overview’, available at: https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2198
\textsuperscript{713} ACT Government, Submission 23, p.13.
\textsuperscript{714} Ms Stephen-Smith MLA, \textit{Proof Transcript of Evidence, 8 September 2017}, p.63;
ACT WORK SAFETY COUNCIL

The ACT Work Safety Council is established under the Work Health and Safety Act 2011 its role is to advise the Minister for Industrial Relations on Work Safety, Workers' Compensation, workplace privacy matters and Dangerous Substances legislation, approval of Codes of Practice and Protocols, Education and Training and promotion of Work Safety.716

7.31 The Minister for Workplace Safety and Industrial Relations advised that she has asked the ACT Work Safety Council ‘to provide advice on issues associated with insecure work and labour hire industry compliance around safety and injury management’ and to review the appropriateness of labour hire licensing in the ACT.717

7.32 The Council has also established an Apprentice and Young Worker Safety Advisory Committee.718

PAYROLL TAX

7.33 The Committee was advised that the ACT Revenue Office monitors compliance with payroll tax requirements:

Payroll tax is payable by an employer with employees in the ACT if the employer’s total taxable wages exceed the threshold. The threshold that applies in the ACT in 2016-17 is monthly Australia-wide wages of $166,666.66 per month ($2,000,000 per annum).719

7.34 The ACT Government noted in its submission that:

In the context of payroll tax compliance investigations, from time to time arrangements that could be categorised as labour hire arrangements and sham contracting have been identified. While these issues are of concern, given the size and composition of the ACT economy, the provisions under ACT tax legislation have generally proven adequate to date.720

7.35 The Committee enquired about how changes to payroll tax around 2013 affected the recruitment and contract staffing sector. APSCo advised that they ‘worked closely with the ACT Revenue Office to ensure contractors financial situation were not put at risk by retrospective regulation. The success of this process ensured that no-one was at a disadvantage when the changes were implemented.’721

717 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.63.
718 Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.63.
720 ACT Government, Submission 23, p.15.
721 Ms Mills, APSCo, Answer to Question Taken on Notice, Proof Transcript of Evidence, 19 October 2017, pp.183-184.
CHILDREN AND YOUNG PEOPLE ACT 2008

7.36 Unions ACT highlighted that the Children and Young People Act 2008 (ACT) regulates the employment of children and young people in the ACT. The Act include requirements that childrens’ studies are not impacted by work and requirements around guardians’ consent for children under 15 years of age to be eligible for work.\(^{722}\) The Children and Young People Regulation 2009 outlines the requirements around ‘light work’.

7.37 Under the Act the Director-General may state conditions of employment for named children or young people in an employment conditions notice. The Minister may also set children and young people employment standards\(^{723}\) and there are conditions around high risk employment.\(^{724}\)

7.38 The Committee was advised that there are opportunities for the ACT Government to set standards for a certification and auditing regime for employers of children and young people in order to improve work health and safety standards. The certification, which would require that employers demonstrate they have appropriate work health and safety systems in place to address work safety for young people, could be modelled on the Active Certification program and administered by WorkSafe ACT.\(^{725}\)

Recommendation 18

7.39 The Committee recommends that the ACT Government implement a certification system for employers who employ five or more young people to improve work health and safety standards.

COMPLIANCE ACTIVITY

7.40 Compliance activity for relevant industrial relations laws is also undertaken by a range of federal and ACT authorities Including:

- Federal Industrial Relations Commission
- Fair Work Commission
- Fair Work Ombudsman
- Australian Human Rights Commission

\(^{722}\) Unions ACT, Submission 34, p.36.

\(^{723}\) Children and Young People Act 2008, s790 and s792.

\(^{724}\) Children and Young People Act 2008, s798 to s804.

\(^{725}\) Unions ACT, Submission 34, p.36.
▪ ACT Human Rights Commission
▪ Australian Taxation Office
▪ Australian Government Department of Immigration and Border Protection
▪ Worksafe ACT
▪ ACT Government Office of Regulatory Services
▪ ACT Civil and Administrative Tribunal
▪ Australian Competition and Consumer Commission
▪ Australian Securities and Investments Commission
▪ Australian Communications and Media Authority.\(^{726}\)

**ENFORCEMENT AND COMPLIANCE**

7.41 The Committee heard that a spectrum of enforcement and compliance options was important and recognised that non-compliance is variable. In workplace health and safety for example there are education and awareness raising responses through to penalty notices and on-the-spot fines and prosecutions. The regulator publishes statistics on how often those tools are used.\(^{727}\)

7.42 The Committee enquired about the percentage of employers who are doing the wrong thing compared to those who are unaware of their obligations and was advised that it would be a minority of instances where people are doing the wrong thing intentionally.\(^{728}\) The Committee heard that ‘the engage and educate approach would probably deal with 70 or 80 per cent of what I would call the lower risk, lower harm enforcement issues.’\(^ {729}\) It was also advised that enforcement is an important backup tool for significant breaches, injuries or potential for harm or death.\(^{730}\)

**EFFECTIVENESS OF CURRENT REGULATORY FRAMEWORK**

\(^{726}\) Submission 5, Enabled Employment, pp.7-8.
\(^{727}\) Mr Young, *Proof Transcript of Evidence, 8 September 2017*, p.72; Mr Jones, *Proof Transcript of Evidence, 8 September 2017*, p.73; Ms Stephen-Smith MLA, *Proof Transcript of Evidence, 8 September 2017*, p.75.
\(^{728}\) Mr Tomlins, *Proof Transcript of Evidence, 8 September 2017*, pp.71-72; Mr Jones, *Proof Transcript of Evidence, 8 September 2017*, p.72.
\(^{729}\) Mr Jones, *Proof Transcript of Evidence, 8 September 2017*, p.72.
\(^{730}\) Mr Jones, *Proof Transcript of Evidence, 8 September 2017*, p.73.
INCLUDING ENFORCEMENT

ADEQUACY OF CURRENT SYSTEM

7.43 Some evidence presented to the Committee pointed to the adequacy of current arrangements.

7.44 The Canberra Business Chamber (CBC) advocates for a consistent regulatory approach nationally, avoiding patchwork or inconsistent economic environments across state boundaries which increase the cost of doing business in the ACT. This in turn weakens the ACT economy 'by burdening businesses operating across state boundaries and acts as a disincentive for interstate investment in the ACT economy.' 731 They advised that the existing federal workplace laws governing the employment relationship already mitigate against unlawful practices or conduct. 732

7.45 MBA advised that the current regulatory framework is broad and effective. They noted that Unfair Dismissal provisions, Award conditions, Enterprise Bargaining Agreement opportunities, mandatory casual conversion for some Awards and the ability for breaches to be actioned under the Federal Courts and the Fair Work Commission are all key areas that demonstrate the comprehensive nature of the current framework. 733 They advised that improved education and enforcement are all that is needed to ensure employee rights. They note that the Fair Work Ombudsman offers a free mediation service for workplace dispute resolution. 734

7.46 HIA advised that current Commonwealth and ACT legislation adequately address concerns about independent contracting, labour hire, visa holders and other vulnerable workers in the context of the residential building industry. 735 They raised concerns about additional red tape being imposed on small businesses in the ACT, duplication of existing regulation or imposition of additional labour costs that do not lead to improvements in productivity or competitiveness. 736 The Committee was advised that any deficiencies in the current regulations will be the result of compliance and enforcement issues. 737

7.47 Ai Group advised that:

the small minority of businesses which are not doing the right thing should be addressed through increased compliance and enforcement activities and better

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731 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.166.
732 CBC, Submission 11.
733 MBA, Submission 10, p.4.
734 MBA, Submission 10, p.4.
735 HIA, Submission 15, p.4.
736 HIA, Submission 15, p.4.
737 HIA, Submission 15, p.13.
education, not through taking away much-needed flexibility for employers and workers.738

7.48 CBC supports the vigorous application of the existing regulatory system to eliminate unlawful practice where there is evidence indicating avoidance of obligations, noting the current system is sufficient to regulate the ACT labour market.739 Whilst CBC does not believe there is evidence that the federal regulations need strengthening at this time, if changes are necessary they support those being made at a federal level, through the Council of Australian Governments (COAG), to ensure consistency across states and territories.740

7.49 CBC advised that the ACT needs more private sector employment to reduce its vulnerability to changes in the Australian Public Service employment policies. Additional regulatory burdens will result in businesses that are less able to meet the challenges that they face and grow, and as a result will not grow our economy and employment opportunities.741

7.50 APSCo submitted that there are ‘sufficient statutory and regulation protections in place in the ACT and federally to protect the rights of vulnerable workers.’ In addition there recent amendments were made to the Fair Work Act 2009 to protect vulnerable workers.742

7.51 Enabled employment advised that:

If compliance is undertaken effectively and efficiently with all governing legislation, in the ACT or elsewhere in Australia, it would assumedly be difficult to operate a ‘sham’ agency which seeks to ‘get around’ legal protections for employees.

However, given the disparate nature of compliance activity by both federal and territory governments, and the administration of different legislative requirements between the federal and territory governments, it may be difficult or impossible for compliance to be undertaken efficiently without the cooperation of all agencies undertaking state and federal compliance activities, with a complicating factor of privacy law and principles.743

CONCERNS

7.52 The Committee received evidence suggesting that the effectiveness of the current employment and industrial relations regulatory regime, particularly enforcement, is not adequate.
FAIR WORK OMBUDSMAN

7.53 The Committee received concerns about the resources available in the ACT from the Fair Work Ombudsman to enforce the *Fair Work Act 2009*. The Committee was advised that there is only one full-time Fair Work Ombudsman inspector in the ACT to cover 140,000 workers.

7.54 The ACT Minister for Workplace Safety and Industrial Relations advised that she has raised those concerns with the Australian Government Minister for Jobs and Innovation (Senator the Hon Michaelia Cash) and sought advice from the Fair Work Ombudsman ‘about what resources are available in the ACT to ensure that employers are not exploiting workers in insecure jobs.’ She also indicated continuing advocacy for appropriate resourcing in the ACT from the Fair Work Ombudsman.

7.55 Unions ACT asserted that there is rarely a consequence for employers who break the law, particularly with the Ombudsman’s focus on advice and guidance, and ‘those who are found to have engaged in deliberate or serious illegal activity can avoid the consequences by restructuring, asset shifting or simply in corporation liquidation.’

RECENT FAIR WORK OMBUDSMAN ACT ACTIVITY

7.56 Fair Work Ombudsman compliance activity in the ACT found high levels of non-compliance with Australian workplace laws, particularly:

- national hospitality industry, ‘wave 3 campaign’ - 71 per cent non-compliance rate in the ACT;
- national hair and beauty campaign - ACT had a non-compliance rate of greater than 50 per cent;
- northern ACT regional campaign - 43 per cent non-compliance rate;
- ACT restaurant industry audit program - 59 per cent non-compliance rate.

7.57 The Committee was advised that a 2016 audit by the Fair Work Ombudsman found 43 per cent of small businesses in retail, hairdressing and accommodation were not compliant with all their workplace responsibilities, despite the audits being conducted after a period of active awareness and education by fair work inspectors.
In a follow-up to earlier findings like those above, the Fair Work Ombudsman initiated a 2017 compliance monitoring campaign in the ACT, where 80 businesses that were previously found to be non-compliant with Australian workplace laws were audited.  

The follow-up audits found that 48 of the businesses (60 per cent) were now fully compliant with workplace laws, however 32 businesses (40 per cent) remained non-compliant. Breaches related to pay rates, record-keeping and pay slips. Fair Work Ombudsman reported that:

‘The campaign led to $31,087 being recovered on behalf of 120 workers with the Fair Work Ombudsman issuing 17 formal letters of caution, eight infringement notices (on-the-spot fines) and one compliance notice. The Fair Work Ombudsman also initiated litigation against two local businesses.’

Fair Work Ombudsman media states that:

While the majority of issues we deal with can be resolved through our early intervention measures, business operators who fail to take our advice seriously will find themselves on the receiving end of more serious enforcement action.

Monitoring compliance with award rates is the role of the Fair Work Ombudsman. The Committee was advised that better compliance will ensure that vulnerable workers are not exploited by unscrupulous employers.

Committee Comment

The Committee notes the ACT Minister for Workplace Safety and Industrial Relations is committed to continuing advocacy for appropriate Fair Work Ombudsman resourcing for the ACT.
Recommendation 19

7.63 The ACT Government should advocate for the Australian Government to implement its 2016 election commitments to increase the Fair Work Ombudsman’s investigatory powers and to increase penalties under the Fair Work Act 2009.

7.64 Unions ACT also proposed the following arrangement to increase the number of Fair Work Ombudsman inspectors located in the ACT:

The ACT Government should enter into an agreement, similar to the current arrangement between the ACT Government (ACT Policing) and the Australian Federal Police, to fund additional Fair Work inspectors to be located in the ACT. Under this arrangement, the ACT Government would fund Fair Work Ombudsman inspectors to operate specifically in the ACT. As a servicing arrangement, the ACT Government could direct the priority areas of the inspectors, using similar clauses to clause 8 of the AFP/ACT Policing Arrangement.756

Recommendation 20

7.65 The Committee recommends that the ACT Government request additional Fair Work Ombudsman inspectors be based in the ACT.

Recommendation 21

7.66 The Committee recommends that the ACT Government request that the Fair Work Ombudsman undertake a compliance audit of the ACT residential building sector to determine the level of compliance and to identify the likely existence of sham contracting.

LOCAL COMPLIANCE ACTIVITY

WORKSAFE ACT

7.67 WorkSafe ACT’s role is to enforce the Territory’s health and safety and workers’ compensation laws through a mixture of education and compliance activities.757

7.68 Unions ACT advised that there has been a decline in inspections and enforcement activities by WorkSafe ACT. They advised that once inspections associated with loose-fill asbestos matters and other licensing inspections were removed from figures, there is a decline in proactive and

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756 Unions ACT, Submission 34, p.38.
reactive inspections.\textsuperscript{758} Inspections that are carried out appear to focus on the construction industry although retail, community health and social services are more dangerous sectors for serious injuries.\textsuperscript{759}

7.69 The ACT also has low prosecution rates for serious breaches of workplace laws, including relating to occupational violence, construction safety, industrial manslaughter etc.\textsuperscript{760}

7.70 In relation to workplace health and safety compliance, Unions ACT noted that many businesses are prepared to absorb the costs of disruptions or fines. They advised that a focus on education and engagement by WorkSafe ACT also reduces deterrents to breaking workplace health and safety laws.\textsuperscript{761}

7.71 The Committee was advised that WorkSafe ACT is under resourced or unwilling to enforce the law with gig-economy companies\textsuperscript{762} and the ACT Government states that these are a legal grey zone.

Office of Industrial Relations

7.72 Unions ACT recommended that the ACT Government group all industrial relations entities into a single ‘office of industrial relations’.\textsuperscript{763} Presently, there are several separate entities, authorities and branches of the ACT Government that are industrial or work safety related that have been established over the years. There is insufficient coordination between these bodies, and no central policy guiding their work. Furthermore, there is no unified compliance and enforcement.\textsuperscript{764}

7.73 The Committee was advised that the combined Office of Industrial Relations should:

- Combine all existing entities with industrial relations and procurement responsibilities.
- Be the principle repository within the public service for industrial relations policy, enforcement and compliance, principally for the private sector.
- House responsibilities for the administration of and compliance with the ACT Government’s proposed Local Jobs Code.
- Ensure inspectors have access to a broader range of inspection powers.

\textsuperscript{758} Mr White, Unions ACT, \textit{Proof Transcript of Evidence, 8 September 2017}, p.3.
\textsuperscript{759} Mr White, Unions ACT, \textit{Proof Transcript of Evidence, 8 September 2017}, p.3.
\textsuperscript{760} Mr White, Unions ACT, \textit{Proof Transcript of Evidence, 8 September 2017}, p.3.
\textsuperscript{761} Unions ACT, Submission 34, p.16
\textsuperscript{762} Unions ACT, Submission 34, p.16.
\textsuperscript{763} Mr White, Unions ACT, \textit{Proof Transcript of Evidence, 8 September 2017}, p.5; Unions ACT, Submission 34, pp.40-42.
\textsuperscript{764} Unions ACT, Submission 34, p.41.
- Provide advice to ACT Government business units and directorates regarding procurement, compliance with the proposed Local Jobs Code, and provide support for contract management and audits.
- Monitor ongoing compliance with existing IRE Certification, Active Certification, and prequalification.
- Be a single point of contact for disputes or complaints about industrial and procurement matters.\textsuperscript{765}

COMMITTEE COMMENT

7.74 The Committee notes that the ACT’s industrial relations functions are dispersed across more than one government entity.

7.75 The Committee believes the consolidation of those functions into a single ACT Office of Industrial Relations would provide a ‘one-stop-shop’ for all ACT Industrial Relations matters. This presents opportunities for better collaborative and streamlined functions, particularly inspection and enforcement activity.

GETTING HOME SAFELY

7.76 The 2012 Getting Home Safely report into compliance with work health and safety requirement in the ACT’s construction industry, recommended, amongst other things, that:

The ACT Government should increase the number of work health and safety matters for which Infringement Notices can be issued on both employees and employers, including sub-contractors. This work should be completed by 30 June 2013. Infringement Notices should be published to ensure that the public is aware of malfeasance and has the opportunity to take their future business elsewhere to safer companies.\textsuperscript{766}

Recommendation 22

7.77 The Committee recommends the ACT Government implement, as matter of urgency, the Getting Home Safely recommendation regarding public register of Notices/infringements related to workplace health and safety/workers compensation for all sectors, not just construction.

\textsuperscript{765} Unions ACT, Submission 34, pp.41-42.


INTERNATIONAL CONVENTIONS

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

7.78 The Committee was advised that Australian is not currently a signatory to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. FECCA noted that ‘as a signatory to this Convention Australia would have to report and implement measures that seek to improve the human rights of migrant workers and their families.’ They recommended that Australia become a signatory to this convention.

INTERNATIONAL LABOUR ORGANISATIONS (ILO) CONVENTIONS

DECENT WORK AGENDA

7.79 United Voice advised the Committee that ‘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.’ They noted, however that the characteristics of decent work are not being upheld in Australia:

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) and C98 (Right to Organise and Collective Bargaining).

7.80 United Voice further advised that:

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:

- The State duty to protect human rights
- The Corporate responsibility to respect human rights, and
- Access to remedy for victims of business-related abuses.

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767 Submission 17, FECCA, pp.4-5.
7.81 The Committee was advised that ‘only the Executive of the Commonwealth has the capacity to enter into treaties’, therefore these are matters for the Australian Government and are out of the ACT’s jurisdiction.\textsuperscript{771}

**ILO Convention 94, Labour Clauses (Public Contracts) Convention, 1949**

7.82 The Committee received evidence that the International Labour Organisation’s Convention 94, the Labour Clauses (Public Contracts) Convention, 1949 is ‘one of the most overlooked global instruments’ related to the use of government procurement practices to establish decent working conditions.\textsuperscript{772} The convention has been ratified by sixty-two countries but not Australia.

7.83 The objectives of the instrument are:

- **First**, to remove labour costs being used as an element of competition among bidders for public contracts, by requiring that all bidders respect as a minimum certain locally established standards.

- **Second**, to ensure that public contracts do not exert a downward pressure on wages and working conditions, by placing a standard clause in the public contract to the effect that workers employed to execute the contract shall receive wages and shall enjoy working conditions that are not less favourable than those established for the same work in the area where the work is being done by collective agreement, arbitration award or national laws and regulations.\textsuperscript{773}

**Committee Comment**

7.84 The Committee notes that international conventions are not in the jurisdiction of the ACT Government and that this is a proposal more suitably addressed by the Australian Government.

7.85 The Committee notes that the key objective of ILO Convention 94, the Labour Clauses (Public Contracts) Convention, 1949 is to ensure that government contracts are not used in a way such as to undermine labour conditions.

7.86 The objectives of this instrument are able to be implemented in a variety of ways including legislative change and incorporating the key principles into ACT Government procurement practices.

\textsuperscript{771} HIA, Submission 15, p.13.
\textsuperscript{772} CFMEU, Submission 33, p.19.
Recommendation 23

7.87 The Committee recommends the ACT Government advocate via the Council of Australian Governments (COAG) process for the Australian Government to ratify the International Labour Organisation, Labour Clauses (Public Contracts) Convention, 1949 (No.94).

Recommendation 24

7.88 Acknowledging that it may take time for the Australian Government to ratify Convention 94, or that it may not occur at all, the Committee recommends that the ACT Government amend the Human Rights Act 2004 (ACT) to incorporate the standards articulated in this convention.

Recommendation 25

7.89 The Committee recommends the ACT Government amend the Human Rights Act 2004 to explicitly include rights relating to industrial relations. This should give particular consideration to the eight fundamental conventions outlined by the International Labour Organisation, which include:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
8 ADDRESSING INSECURE WORK

8.1 The Committee heard that the ACT Government is conscious of the need to strike a balance between protecting vulnerable workers and overburdening businesses, particularly the majority who are doing the right thing.\(^{774}\)

8.2 The Committee heard that, in addition to the evidence received as part of this inquiry, the ACT Government draws information from the ACT Work Safety Council, other jurisdictions as well from injury and work safety data.\(^{775}\)

8.3 The Minister for Workplace Safety and Industrial Relations noted that peak employer organisations often make representations for more regulation in order to ensure level playing fields for those businesses doing the right thing.\(^{776}\)

8.4 The Committee also heard that any policy implementation or changes would be targeted, providing the example of Active Certification which was introduced following the Bringing Them Home Safely report. In that case initially audits were conducted quarterly on all organisations. Now, following two successful audits, businesses can move to biannual audits. The Committee heard that active certification reduced the accident rate somewhere between 25 and 50 per cent.\(^{777}\)

EDUCATION AND AWARENESS RAISING

8.5 The Committee received a range of evidence in support of enhanced worker education and awareness around workplace rights, as well as educating employers and business owners.\(^{778}\)

EMPLOYERS

8.6 Legal Aid ACT advised that there is a need for community legal education for employees and particularly small businesses who may not be aware of their rights and responsibilities.\(^{779}\)

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\(^{774}\) Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.70.

\(^{775}\) Mr Young, Proof Transcript of Evidence, 8 September 2017, p.70.

\(^{776}\) Ms Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.71.

\(^{777}\) Mr Tomlins, Proof Transcript of Evidence, 8 September 2017, p.71.

\(^{778}\) Enabled Employment, Submission 5, p.5; Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.5; Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118; Legal Aid ACT, Submission 4, p.8; Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.167.

\(^{779}\) Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118; Legal Aid ACT, Submission 4b.

8.7 CBC also noted that small business finds it hard to keep up with the regulatory requirements, demonstrated in a growth of demand advice and assistance through the CBC services hotline.  

8.8 The Youth Coalition of the ACT recommended incentives for employers doing the right thing, proposing ‘employer of choice’ rewards.  

8.9 FECCA highlighted a need to educate CALD business community on how to be good employers and ‘understand the rules around running a business.’  

8.10 ANMF similarly proposed that the ACT Government could have a role in educating ACT employers and the wider public of issues associated with insecure work ‘and consider the implementation of positive initiatives (that may sit outside legislative reform) for employers that seek to stem the use of temporary or casual work.’  

8.11 Unions ACT proposed regulatory changes including a tighter accreditation and certification system for employers that employ more than five children or young people. This is discussed further in Chapter 7 in relation to the Children and Young People Act 2008.

VU LNERABLE WORKERS

8.12 The Committee heard that, as with other categories of vulnerable workers, young peoples’ lack of awareness and understanding of their workplace rights, accessing employment and familiarity with work practices contribute to their vulnerability.  

8.13 The Committee was advised that some employees are subjected to unscrupulous practices. Legal Aid ACT noted that ‘ensuring casual employees understand where they stand with their employer, and vice versa, can work to increase the security an employee feels they have in their employment.’ The Committee also notes concerns that there are limited places to get advice and, in the experience of Legal Aid ACT, many workers wait too long to get appropriate

780 Mrs Hendry, CBC, Proof Transcript of Evidence, 19 October 2017, p.172.  
781 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.55.  
782 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.148.  
783 ANMF, Submission 13, p.9.  
784 Unions ACT, Submission 34, p.36; Proof Transcript of Evidence, 8 September 2017, p.54.  
785 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.52-53; Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.7; Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118; Legal Aid ACT, Submission 4, p.8.  
786 Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118.  
787 Legal Aid ACT, Submission 4b.
advice. A significant increase in calls to the Legal Aid telephone helpline may indicate that people are beginning to think more about their rights and obligations in the workplace. 788

8.14 Unions ACT noted that young people report low awareness of their right under Fair Work Act 2009 and Workplace Health and Safety Act 2011.789 They advised:

As part of Unions ACT’s survey of more than 300 workers, the chronic lack of education and information for young workers was repeatedly raised. Young workers in particular regularly complained that they cannot access adequate information about their rights at work.

Both the [South Australian] inquiry into labour hire and the Senate inquiry noted the importance of educating vulnerable workers about their rights as one of their key recommendations.790

8.15 The Committee was advised that some workplace rights education is currently provided through schools, employers and front line youth workers.791 Youth Coalition also advised that a number of services in the ACT run employment programs:

Most of the homelessness services will have a life skills program built in. But also BCS [Belconnen Community Services] has a youth employment hub. The Multicultural Youth Services also run an employment program. Part of that includes education for young people. I suppose it is happening in an ad hoc way rather than in a systematic way. Those services would be filling in the gaps for where they feel young people are not getting educated in other parts of their lives. It would be good to see it happen systemically. 792

8.16 WorkSafe ACT provides health and safety tips for new and vulnerable workers and those engaging new or vulnerable workers. The Committee notes that this information is difficult to find on the WorkSafe ACT website.793

8.17 Youth Coalition also advised that employers need to understand that educating young employees means more than providing a handbook and ‘expecting them to understand everything in it’.794 They highlighted the lack of employer compliance with legislated requirements to provide all new workers with the Fair Work Statement. Youth Coalition also noted that any information provided has to be relevant and youth friendly.795

788 Dr Boersig, Legal Aid ACT, Proof Transcript of Evidence, 12 October 2017, p.118; Legal Aid ACT, Submission 4b.
789 Unions ACT, Submission 34, p.17.
790 Unions ACT, Submission 34, p.38.
791 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.54.
792 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.54.
794 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.53; ACTCOSS, Proof Transcript of Evidence, Friday 8 September 2017, p.20.
795 Youth Coalition, Proof Transcript of Evidence, 8 September 2017, p.55.
8.18 However, workplace rights and workplace health and safety requirements do not appear to be regular components of school teaching or university awareness programs, nor is it consistently provided by employers. The Committee heard:

...it is very difficult for a young worker or migrant worker to know that they are being ripped off or being put in an unsafe condition if they do not know what the minimum wage is or even that there is a minimum wage when it comes to migrant workers, or they do not know that they have got the right to say no, they are not required to work in unsafe working conditions.

8.19 The Committee heard that the ACT Government should be more actively educating young and other vulnerable worker groups about their rights at work including wage levels, and the right to work in safe conditions.

8.20 FECCA proposed the more funding was needed for organisations that distribute information on workers’ rights to CALD communities.

Committee Comment

8.21 The Committee believes that education is a powerful tool to assist all workers to understand and pursue their workplace rights. The ACT Government is well placed to implement awareness raising and education strategies to educate some of the most vulnerable workers in our community about their rights.

Recommendation 26

8.22 The Committee recommends that the ACT Government work with unions, teachers and curriculum professionals to include workplace rights and workplace safety in the ACT senior secondary curriculum.

Recommendation 27

8.23 The Committee recommends that, at point of arrival or engagement, the ACT Government require employers and/or universities to provide compulsory ACT Government approved information sessions to migrants on 457 visas and international students on their workplace rights and the industrial relations framework.

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796 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.5.
797 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.5.
798 Mr White, Unions ACT, Proof Transcript of Evidence, 8 September 2017, p.5.
799 Dr Campbell, FECCA, Proof Transcript of Evidence, 19 October 2017, p.143.
Recommendation 28

8.24 The Committee recommends that the ACT Government consider further funding measures to provide assistance to temporary visa workers, including the provision of employment rights information to international students via an entity with relevant experience providing employment rights information.

ACT PUBLIC SECTOR EMPLOYMENT

CURRENT ACTPS EMPLOYMENT REQUIREMENTS

8.25 The Committee was advised by the Public Sector Standards Commissioner that the ACT Public Service (ACTPS) has a general preference for permanent employment which is encapsulated in the Public Sector Management Act 1994 (PSM Act), policies and industrial relation documents including the enterprise agreements which apply a similar filter for casual employment: 800

Generally the engagement of temporary staff is limited to where there are no permanent officers available, where the work required is of a temporary nature, where it is specialised or it is just not practical to use a permanent officer. Definitely it is seen as a supplement to the normal, usual workforce of a permanent service. 801

8.26 These requirements would be taken into account in the creation of any new position in the ACT Public Service. 802

8.27 The Committee heard that for temporary vacancies there are options to redeploy permanent staff for temporary transfer or higher duties arrangements, which can also be a development opportunity. Only where that is exhausted would temporary employees be considered. 803 Often redeployment results in vacancies in more junior positions on a temporary basis and therefore entry-level opportunities for new entrants to the service. 804 However, there is always going to be a need for temporary positions, particularly in project specific or specialised staff. 805 The PSM Act specifies may be employed for a fixed term less than 12 months, or ‘if

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800 Ms Overton-Clarke, Proof Transcript of Evidence, 8 September 2017, p.77; Mr Noud, Proof Transcript of Evidence, 8 September 2017, p.84.
801 Ms Overton-Clarke, Proof Transcript of Evidence, 8 September 2017, p.77.
802 Mr Noud, Proof Transcript of Evidence, 8 September 2017, p.84.
803 Ms Overton-Clarke, Proof Transcript of Evidence, 8 September 2017, p.80.
804 Ms Overton-Clarke, Proof Transcript of Evidence, 8 September 2017, p.80.
805 Ms Overton-Clarke, Proof Transcript of Evidence, 8 September 2017, pp.80-81.
the head of service consults the principal union about the need for temporary employment, less than 5 years.  

8.28 Under the enterprise agreements, casual employees are able to ask for their position to be reviewed with respect to being made permanent, however it is often not taken up. Where there is a long term need the ACT Government would seek to convert to a permanent position.  

8.29 The Committee heard that there was not a propensity of short term contracts at lower levels and increasingly ‘training’ positions (such as graduates) are guaranteed a job as long as they pass their probation/training period.  

8.30 All Senior Executive Service officers are on contracts of up to five years.  

8.31 Some specific positions, such as seasonal firefighters also require and agile employment solution as they are not required for 12 months of the year. The ACT Government is considering how job security can be provided in the new enterprise agreements to retain those skilled individuals.  

**EXTENT OF NON-ONGOING EMPLOYMENT**  

8.32 The Committee was advised that non-ongoing employment through direct and indirect engagement are increasing in the ACTPS.  

8.33 The Committee was advised that 23.3 per cent of the ACTPS workforce is made up of fixed-term contracts and casual workers. That figure excludes the use of labour hire. Access Canberra purportedly engages 103 people through labour hire.  

8.34 Casual workers made up 6.8 per cent of the ACTPS workforce at June 2017, or 690.6 FTE which is an increase of 22.6 FTE or 1.3 per cent since the previous year. Temporary full-time workers make up 13.1 per cent, and 4.3 per cent of the workforce were engaged on temporary part-time basis which represents 3,403.6 FTE, or an increase of 171.4 FTE or 5.3 per cent on the previous year.  

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806 Public Sector Management Act 1994, Division 5.8 Temporary work.  
807 Mr Noud, *Proof Transcript of Evidence, 8 September 2017*, pp.84-85.  
808 Ms Overton-Clarke, *Proof Transcript of Evidence, 8 September 2017*, pp.77-78.  
810 Ms Overton-Clarke, *Proof Transcript of Evidence, 8 September 2017*, p.83.  
811 Mr Noud, *Proof Transcript of Evidence, 8 September 2017*, p.85.  
8.35 The Committee was advised that fixed term (temporary) contracting appears to be slowly increasing as evidenced in data from the State of the Service Report, shown in the table below.\textsuperscript{814}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|c|}
\hline
\hline
Permanent & 77.6\% & 77.4\% & 77.6\% & 76.7\% & 75.9\% \\
Temporary & 15.3\% & 15.6\% & 15.9\% & 16.8\% & 17.4\% \\
Full time & 70.5\% & 70.1\% & 69.9\% & 69.6\% & 68.9\% \\
Part time & 22.4\% & 22.5\% & 23.3\% & 23.8\% & 24.4\% \\
Casual & 7.1\% & 7.1\% & 6.5\% & 6.5\% & 6.6\% \\
\hline
\end{tabular}
\caption{Employment modes (Proportion of total workforce, end FY, based on Headcount)}
\end{table}

8.36 On notice, the Committee was provided with a breakdown of ACTPS permanent and non-permanent employment across directorates as at 30 June 2017.\textsuperscript{815}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
 & Permanent & Temporary & Casual & Total \\
\hline
Chief Minister, Treasury and Economic Development Directorate & 2035 & 404 & 18 & 2457 \\
Community Services Directorate & 756 & 123 & 13 & 892 \\
Education Directorate & 4644 & 1040 & 894 & 6578 \\
Environment, Planning and Sustainable Development Directorate & 436 & 152 & 7 & 595 \\
Health Directorate & 5469 & 1546 & 388 & 7403 \\
Justice and Community Safety Directorate & 1510 & 279 & 29 & 1818 \\
Transport Canberra and City Services Directorate & 1548 & 211 & 123 & 1882 \\
Other small organisations in the ACT Public Sector & 136 & 30 & 0 & 166 \\
\hline
Grand Total & 16534 & 3785 & 1472 & 21791 \\
\hline
\end{tabular}
\caption{Number of employees}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
 & Permanent & Temporary & Casual & Total \\
\hline
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Other small organisations in the ACT Public Sector & 136 & 30 & 0 & 166 \\
\hline
Grand Total & 16534 & 3785 & 1472 & 21791 \\
\hline
\end{tabular}
\caption{Percentage of employees\textsuperscript{816}}
\end{table}


\textsuperscript{815} Ms Overton-Clarke, Answer to QTON, 8 September 2017. Sourced from ACT Public Service State of the Service Report 2017 and records the information as at 30 June 2017.

\textsuperscript{816} Ms Overton-Clarke, Answer to QTON, ‘non-permanent employment stats’, 8 September 2017. Sourced from ACT Public Service State of the Service Report 2017 and records the information as at 30 June 2017.
<table>
<thead>
<tr>
<th>Directorate</th>
<th>Permanent</th>
<th>Temporary</th>
<th>Casual</th>
<th>Non-Permanent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Minister Treasury and Economic Development Directorate</td>
<td>82.8%</td>
<td>16.4%</td>
<td>0.7%</td>
<td>17.2%</td>
</tr>
<tr>
<td>Community Services Directorate</td>
<td>84.8%</td>
<td>13.8%</td>
<td>1.5%</td>
<td>15.2%</td>
</tr>
<tr>
<td>Education Directorate</td>
<td>70.6%</td>
<td>15.8%</td>
<td>13.6%</td>
<td>29.4%</td>
</tr>
<tr>
<td>Environment Planning and Sustainable Development Directorate</td>
<td>73.3%</td>
<td>25.5%</td>
<td>1.2%</td>
<td>26.7%</td>
</tr>
<tr>
<td>Health Directorate</td>
<td>73.9%</td>
<td>20.9%</td>
<td>5.2%</td>
<td>26.1%</td>
</tr>
<tr>
<td>Justice and Community Safety Directorate</td>
<td>83.1%</td>
<td>15.3%</td>
<td>1.6%</td>
<td>16.9%</td>
</tr>
<tr>
<td>Transport Canberra and City Services Directorate</td>
<td>82.3%</td>
<td>11.2%</td>
<td>6.5%</td>
<td>17.7%</td>
</tr>
<tr>
<td>Other small organisations in the ACT Public Sector</td>
<td>81.9%</td>
<td>18.1%</td>
<td>0.0%</td>
<td>18.1%</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>75.9%</td>
<td>17.4%</td>
<td>6.8%</td>
<td>24.1%</td>
</tr>
</tbody>
</table>

8.37 CPSU advised that the high numbers of non-ongoing staff in CMTEDD reflects Access Canberra frontline services including call centres and shopfronts which anecdotally have a high proportion of contracted staff.\(^{817}\)

8.38 The Committee asked about the high percentage of non-permanent employment in the ACT Health and Education Directorates and heard that the reasons for using of temporary, casual and labour hire varies across directorates.\(^{818}\) High levels of administrative staff in both directorates are said to be non-ongoing.\(^{819}\)

**Health Directorate**

8.39 The Committee heard that two thirds of the doctors are at a junior level and on temporary contracts linked to their training. At the end of that training many move to specialist rankings and acquire permanent employment.\(^{820}\) Similarly specialists are engaged on a contract basis.\(^{821}\)

8.40 The ANMF advised the Committee that around 15 per cent of the nursing and midwifery Full-Time Equivalent (FTE) workforce in the ACT Health Directorate is employed on some form of

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\(^{817}\) CPSU, Submission 7, p.4.

\(^{818}\) Mr Noud, *Proof Transcript of Evidence, 8 September 2017*, p.78.


\(^{820}\) Mr Noud, *Proof Transcript of Evidence, 8 September 2017*, p.79.

\(^{821}\) Ms Knox, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.110.
New graduate nursing and midwifery employees are principally employed on temporary contracts.

8.41 The Committee was advised that ACT Health has a Relief Pool ‘which consists of about 90 permanent and temporary, full time and part time staff’ who are used to fill short term unexpected day-to-day vacancies. Many have speciality skill areas such as ICU, Emergency or Paediatrics. If no suitable member of the Relief Pool is available, ACT Health has 250 staff registered in a casual pool who can be booked to fill roster shortfalls. These pools have been established to reduce reliance on Agency (labour hire) nurses and maximise the number of nurses provided with permanent or temporary employment whilst maintaining flexibility to manage short term absence.

EDUCATION DIRECTORATE

8.42 The Committee was advised that casual and temporary employment are an important part of the Education Directorate’s workforce to provide flexibility, skilled backfill and ‘to retain the expertise of recently retired permanent staff’. In addition to local school-specific selection, the Education Directorate has established a casual/temporary pool of teachers with the same qualification and professional registration requirements as permanent staff. Individual school communities are also encouraged to build relationships with a core group of relief staff. The Committee was advised that a system-wide pool of ‘floating’ relief staff was not possible because it would be problematic to line up skills to the required teaching position on any one day.

8.44 The following table provides a breakdown of casual, temporary and permanent FTE employees in School Leader and Teacher positions within the Education Directorate.

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822 ANMF, Submission 13, p.6.
824 Ms Overton-Clarke, Answer to QTON, ‘Health and Education Directorate non-ongoing jobs’, 8 September 2017.
826 Mr Noud, Proof Transcript of Evidence, 8 September 2017, pp.78-79.
Conversion to permanent employment would be considered where ‘patterns of continuous employment of an individual casual/temporary teacher at a particular site become evident’, however the Committee heard that those occurrences are rare.  

CONCERNS

Whilst the CPSU acknowledged that there is always going to be a level of casual and non-ongoing employment in the ACTPS, it highlighted that more far-reaching and comprehensive solutions are required.

The Committee was advised that whilst some employees, particularly at higher pay rates who may have greater market power prefer working in non-ongoing arrangements, the majority of workers would prefer ongoing employment.

USE OF LABOUR HIRE

The Committee was advised that extent of labour hire use in the ACTPS is difficult to determine as it is not transparent and more data is required.

Access Canberra is reported to engage 103 people through Contract Central, working in ICT, fines recovery, parking inspectors, administration and other inspections. The Committee asked the Public Sector Standards Commissioner about the use of labour hire arrangements in the ACTPS, particularly Access Canberra call centres and was told that it is an area that requires moving staff onto rostering arrangements. Temporary employees are used to fill gaps

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830 Ms Overton-Clarke, Answer to QTON, ‘Health and Education Directorate non-ongoing jobs’, 8 September 2017.
831 Mr Waters, CPSU, Proof Transcript of Evidence, 12 October 2017, p.113; CPSU, Submission 7, pp.2-1.
832 CPSU, Submission 7, p.7.
833 Ms Knox CPSU, Proof Transcript of Evidence, 12 October 2017, p.112.
834 CPSU, Submission 7, p.6.
where current permanent staff are not interested in changing to rostering arrangements.\(^{835}\) In addition to labour hire direct temporary employees are also engaged.\(^{836}\)

8.50 Some concerns were also raised around current staff at ACT shopfronts being asked to reapply for their positions as part of a hiring round of temporary contract employees, creating pressure and uncertainty.\(^{837}\)

8.51 The Committee heard that ‘non-poaching’ penalty clauses in labour hire contracts recognise the recruitment work a labour hire company has undertaken.\(^{838}\) However, they also make it difficult to directly employ that individual and retain the capacity within the ACTPS workforce if the worker is identified as a particular asset to the organisation.\(^{839}\)

8.52 Unions ACT advised that the ACT Government should be a model employer by avoiding the use of insecure forms of engagement such as labour hire and putting an emphasis on secure work arrangements with collective bargaining.\(^{840}\)

8.53 CPSU similarly advised that the use of labour hire in the ACT Public Service should be eradicated and a clear policy position established.\(^{841}\) They advised that the issues around staffing requirements at Access Canberra do not appear to have been discussed with the CPSU or Access Canberra staff to resolve the need to staff extended opening hours.\(^{842}\) The Committee heard that a range of mechanisms could and should have been worked through before a decision to move to labour hire, noting that a range of other ACTPS jobs operating outside of usual business hours are accommodated in Enterprise Bargaining Agreements or other arrangements.\(^{843}\)

8.54 The Committee heard that using labour hire costs the directorates more than direct employment and provides lower wages and conditions and job insecurity for affected workers. It also has negative consequences over time for the capability of the service.\(^{844}\)

8.55 Unions ACT also highlighted that there does not seem to be an ACT Government-wide policy on the use of labour hire.\(^{845}\)

\(^{835}\) Ms Overton-Clarke, *Proof Transcript of Evidence, 8 September 2017*, pp.81-82.

\(^{836}\) Ms Overton-Clarke, *Proof Transcript of Evidence, 8 September 2017*, p.82.

\(^{837}\) CPSU, Submission 7, p.7.

\(^{838}\) Mr Tomlins, *Proof Transcript of Evidence, 8 September 2017*, pp.82.

\(^{839}\) Mr Waters, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.114.

\(^{840}\) Mr White, Unions ACT, *Proof Transcript of Evidence, 8 September 2017*, p.5.

\(^{841}\) Mr Waters, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.107, 113.


\(^{843}\) Mr Waters, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.112; CPSU, Submission 7, p.6.

\(^{844}\) Mr Waters, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.108.

\(^{845}\) Unions ACT, Submission34, p.21.
8.56 The Committee was advised that the use of labour hire workers in front-line roles undermines the ability of the public service to implement public policy due to potentially inadequate training of those workers.\footnote{Unions ACT, Submission34, p.21.}

8.57 The impacts on labour hire workers utilised by the ACT Government are the same as for other non-ongoing employment, including regularly having to reapply or be reconsidered for positions which contributes to workers’ stress. Rolling short-term contracts limit workers’ ability to secure housing loans and fears exist around raising concerns at work in case it jeopardises future contract renewal.\footnote{Mr Waters, CPSU, \textit{Proof Transcript of Evidence}, 12 October 2017, p.109; CPSU, Submission 7, p.6.} See Chapter 6 for a more detailed discussion around the consequences of insecure work.

\textbf{Contractor Central}

8.58 The CPSU raised concerns that the Contractor Central arrangements are facilitating the use of labour hire rather than reducing it.\footnote{Mr Waters, CPSU, \textit{Proof Transcript of Evidence}, 12 October 2017, pp.108, 113-114.}

8.59 The Committee was advised that Contractor Central is an ACT Whole of Government arrangement where agencies can opt-in to engage and manage contract labour sourced through recruitment agencies.\footnote{ACT Government, Submission 23, p.20; Ms Stephen-Smith MLA, Answer to QTON, ‘labour hire conditions’, 8 September 2017.} The introduction of Contractor Central aims to substantially reduce the rates the ACT Government pays labour hire firms by harnessing the purchasing power of the New South Wales Government.\footnote{Mr Tomlins, \textit{Proof Transcript of Evidence}, 8 September 2017, pp.82.} It covers a range of categories including ICT, administrative, finance and technical but does not include temporary positions or casual contracts such as for teachers or nurses.\footnote{Ms Stephen-Smith MLA, Answer to QTON, ‘labour hire conditions’, 8 September 2017.}

8.60 Labour hire agencies seeking to provide services through Contract Central must prequalify, a process that includes completion of an Ethical Supplier Declaration, provide a current Workers Compensation certificate and an Industrial Relations and Employment (IRE) certificate (for industrial roles).\footnote{ACT Government, Submission 23, pp.20-21.}

8.61 Contractor Central uses a vendor management tool which separates out the worker’s pay rate, superannuation, Workcover costs, employee insurances, etc. to provide visibility that workers are receiving the correct award rate at minimum. Some workers are paid more than the award.\footnote{Ms Stephen-Smith MLA, Answer to QTON, ‘labour hire conditions’, 8 September 2017.}
ACTPS CASUAL EMPLOYMENT AND TEMPORARY CONTRACTS

CASUAL EMPLOYMENT

8.62 Evidence to the Committee suggests that casual employees of the ACTPS hold the same concerns around working conditions and benefits, and experience the same impacts as other casual employees. Casual employment was discussed more broadly in Chapter 3.\(^{854}\)

8.63 The ANMF advised that it only supports the use of casual employment for nurses and midwives if it is the genuine desire of the employee. They note, as other evidence suggested regarding casuals in any sector, that casual nursing and midwifery workers feel additional pressure to work when unwell due to the absence of paid leave and may struggle to find time to take rest or recreation breaks. Reluctance to take unpaid leave for caring, health or recreational purposes also stems from fear that they will not be asked to undertake further work at a particular workplace if they do not accept work as and when it is offered.\(^{855}\)

8.64 The Committee was advised that training and professional development opportunities are also difficult to access for casual and temporary nurses and midwives. Some are required to undertake employer-mandated training at the workplace beyond registration requirements, leaving casuals the choice of obtaining the mandated training in their own time at their own expense to ensure they are offered shifts or hope that the employer is willing to engage the casual worker for an extra shift to complete the training – a cost employers may not wish to incur.\(^{856}\)

TEMPORARY CONTRACTS

8.65 The Committee was advised that current use of temporary employment by the ACT Government goes beyond the circumstances where it is legitimately warranted.\(^{857}\)

8.66 WCHM noted increasing use of contracts in the ACTPS, insecurities that come with that type of employment particularly for workers who find themselves on rolling contracts.\(^{858}\)

8.67 The Committee was advised that temporary contacts are a significant concern for nurses and midwives working in the ACT healthcare system, particularly the ACT Public Service. Some employees have requested permanency following ongoing rolling contracts but never had

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\(^{854}\) CFMEU, Submission 7, p.7

\(^{855}\) ANMF, Submission 13, p.8.

\(^{856}\) ANMF, Submission 13, p.8.

\(^{857}\) CPSU, Submission 7, p.2.

\(^{858}\) WCHM, Proof Transcript of Evidence, 8 September 2017, pp.49-50.
permanency offered. ANMF advised that employment security, stability and certainty is crucial to the efficiency and effectiveness of the ACT Healthcare system.

8.68 CPSU advised of a case where two permanent jobs were replaced with three fixed-term employees which created concern for other ongoing employees around job security. These types of employment practices also affect the workforce as a whole because it does not develop a skill and experience base which affects workforce capability over time.

8.69 The Committee was advised that there is limited data on ACT Government workers who are employed on rolling or back-to-back contracts. The Committee received evidence that suggests in some cases contract staff have contracts renewed annually for 3, 4, 6 years but are never made permanent.

8.70 The ACT Government is also one of the biggest users of temporary 45 work visas (or Temporary Skills Shortage Visas) in the ACT.

**RELIEF TEACHING**

8.71 The Committee heard evidence from a couple of former relief teachers who worked casually and on contract for the ACTPS. One noted:

> the reasons people are in relief teaching are varied. Some people just want to do relief teaching because it gives them maximum flexibility. Some people are not offered a permanent job when they get out of their training. If they want to stay in teaching, they may do relief teaching to get a foot in the door.

8.72 Moving from one State to another, one witness advised that she had to start work as a relief teacher each time and ‘go through the hoops’ to become a permanent teacher. She worked as a relief teacher in the ACT for around six years, starting with day-to-day casual relief teaching as well as year-long contracts. In light of these experiences, she recommended that national teacher recruitment guidelines might lead to more secure work.

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859 ANMF, Submission 13, p.6.
860 ANMF, Submission 13, p.6.
861 Mr Waters, CPSU, Proof Transcript of Evidence, 12 October 2017, p.109.
862 Ms Knox, CPSU, Proof Transcript of Evidence, 12 October 2017, p.112.
863 CPSU, Submission 7, p.8.
864 Unions ACT, Submission 34, p.9.
865 Ms Mitchell, Proof Transcript of Evidence, 8 September 2017, p.27; Ms Yurtbilir, Proof Transcript of Evidence, 8 September 2017, p.31.
866 Ms Yurtbilir, Proof Transcript of Evidence, 8 September 2017, p.35.
867 Ms Yurtbilir, Proof Transcript of Evidence, 8 September 2017, p.32.
868 Ms Yurtbilir, Proof Transcript of Evidence, 8 September 2017, p.32.
8.73 Another witness advised of the frustrations working casually as a relief teacher due to unpredictable hours and, as a result, unpredictable income. She noted that there could be provision for long term casuals to be offered a contract where there is clearly ongoing work.\textsuperscript{870}

8.74 Similarly a witness advised the Committee that ‘if a teacher is on protracted, long-term relief, I think the government needs to look at ways to make that particular teacher more permanent.’\textsuperscript{871}

**Recommendation 29**

8.75 The Committee recommends that the ACT Government trial a full time relief teacher role.

**Employment of Equity Groups**

8.76 CPSU highlighted concerns about the higher rates of non-ongoing employment amongst Aboriginal and Torres Strait Islander employees, employees with a disability and CALD employees in the ACTPS.\textsuperscript{872}

8.77 The Committee heard that the ACT Government should establish employment targets for equity groups such as people with a disability in the ACT Public Service.\textsuperscript{873} ACTCOSS advised that targets are critical because they set and expectation but needs to be career progression process as well, not just entry-level positions, otherwise they risk being tokenistic. There needs to be a ‘deliberate investment to build capability so that people can progress’.\textsuperscript{874}

8.78 ACTCOSS noted business and community organisations should also be encouraged to adopt targets.\textsuperscript{875}

8.79 The Committee also heard about the need for the ACT Public Service to foster a culture of acceptance, where people feel comfortable raising issues to address some barriers they might experience as well as creating ‘environments in which people can succeed’.\textsuperscript{876}

Getting the job is always just the first step. Actually doing the job well and being able to fulfil the expectations of an employer is a whole other thing. So how workplaces work to create environments in which that is possible is very important.\textsuperscript{877}

\textsuperscript{870} Ms Mitchell, *Proof Transcript of Evidence, 8 September 2017*, p.27.
\textsuperscript{871} Ms Yurtbilir, *Proof Transcript of Evidence, 8 September 2017*, p.33.
\textsuperscript{872} CPSU, Submission 7, p.3, 5.
\textsuperscript{873} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.22.
\textsuperscript{874} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.22.
\textsuperscript{875} ACTCOSS, Submission 21, p.5.
\textsuperscript{876} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.23.
\textsuperscript{877} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.23.
OTHER CONCERNS

8.80 The Committee received a range of other concerns around security of work in the ACTPS.

8.81 The Committee heard evidence that applications for ACTPS positions are not being considered if an applicant doesn’t hold Australian citizenship, although legally they only require permanent residency.\textsuperscript{878}

8.82 The Committee also heard that applicants find it hard to get part-time hours that fit in with other obligations such as providing care to family members.\textsuperscript{879} WCHM recommended to the Committee that the ACT Government should ‘adopt employment practices that enable all workers to balance their paid and unpaid work obligations and ensure that all employees are aware of their flexible work options.’\textsuperscript{880}

8.83 The Committee was advised that some directorates are better than others at engaging with the CPSU on fixed term temporary employment of more than 12 months, a requirement encapsulated in the PSM Act.\textsuperscript{881}

8.84 CPSU advised that employees in insecure employment with the ACTPS bear all the risk including downturn in business, budget cuts or a change to business or service delivery models, despite notions of flexibility benefiting employees and employers.\textsuperscript{882} Flexibility and efficiency are often at the expense of employee conditions.\textsuperscript{883}

8.85 The Committee was told of the increased financial costs to employers from the use of non-ongoing employment. These can include ‘recruitment and training costs, premiums paid to labour hire companies and the increased expense of using contractors’ as well as ‘loss of corporate knowledge and business continuity, reduced security and accountability, reduction in the quality of services and lower staff morale.’\textsuperscript{884}

8.86 The Committee also received concerns about the long term use of acting and higher duties arrangements, particularly for female employees. Acting arrangements that are used on a long-term basis leave employees in a vulnerable position with uncertainty around ongoing pay arrangements.\textsuperscript{885}

\textsuperscript{878} WCHM, \textit{Proof Transcript of Evidence, 8 September 2017}, pp.49-50.
\textsuperscript{879} WCHM, \textit{Proof Transcript of Evidence, 8 September 2017}, pp.49-50.
\textsuperscript{880} WCHM, Submission 9, p.13.
\textsuperscript{881} Mr Waters, CPSU, \textit{Proof Transcript of Evidence, 12 October 2017}, pp.109-110
\textsuperscript{882} CPSU, Submission 7, p.10.
\textsuperscript{883} CPSU, Submission 7, p.2.
\textsuperscript{884} CPSU, Submission 7, p.2.
\textsuperscript{885} CPSU, Submission 7, p.6.
OPTIONS FOR IMPROVEMENT

8.87 Evidence to the Committee proposed a number of areas where the ACT Government as employer could improve its current employment practices.

WORKFORCE PLANNING

8.88 The Committee was advised that good workforce planning can go some way to reducing reliance on non-ongoing employment and to make best use of resource capabilities.\(^{886}\)

LIMIT THE USE OF FIXED TERM CONTRACTS

8.89 In light of concerns around the use of temporary and rolling contracts, the Committee was advised that the ACTPS should ensure it minimises the use of insecure and precarious employment.\(^{887}\)

8.90 The ANMF reiterated the ILO proposals for limiting the use of fixed term (temporary) contracts including:

   a) the prohibition of fixed-term contracts for permanent tasks;
   b) a limitation in the number of successive fixed-term contracts; and
   c) a limitation of the cumulative duration of fixed term contracts.\(^{888}\)

8.91 The ANMF proposed that where these conditions are breached/exceeded the employee should be able to convert to a permanent contract.\(^{889}\)

CONVERSION TO PERMANENCY

8.92 The Committee was also advised that opportunities to convert to permanent employment with the ACTPS should be expanded.

8.93 ANMF notes that casual conversion can be achieved through Enterprise Bargaining Agreements. The ACT Public Service Nursing and Midwifery Enterprise Agreement 2013-2017 for example allows the ACT Government to consider engaging a casual employee on a different basis (including permanent or temporary) where regular and systematic patterns of work exist and where persons have a reasonable expectation that such arrangements will continue.\(^{890}\) The ANMF advised that this position should be extended to include an unrestricted right for

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\(^{886}\) Mr Waters, CPSU, *Proof Transcript of Evidence, 12 October 2017*, p.113; CPSU, Submission 7, p.7.

\(^{887}\) ANMF, Submission 13, p.3.


\(^{889}\) ANMF, Submission 13, p.7.

\(^{890}\) ANMF, Submission 13, p.8.
casuals to made permanent where the regular and systematic pattern of work exists for over six months.\footnote{ANMF, Submission 13, pp.8, 9.}

8.94 Additionally, the ANMF proposes that after 12 months employees on rolling temporary contracts be afforded the right to automatically convert to permanent employment where the work continues to exist.\footnote{ANMF, Submission 13, p.9.}

8.95 As discussed above, the Committee heard a proposal from a former relief teacher that once a casual teacher has been working for an extended period, the employer should be able to determine what the likely ongoing need for that person/position is and offer a longer-term contract or permanency.\footnote{Ms Mitchell, \textit{Proof Transcript of Evidence, 8 September 2017}, p.27.}

\textbf{COMMITTEE COMMENT}

8.96 The Committee would like to see the ACT Government be an exemplary employer and leader in creating secure jobs, by limiting the use of short-term contracts and casual employment.

8.97 The Committee notes that the Standing Committee on Health, Ageing and Community Services reported in August 2017 on its Inquiry into the Employment of People with Disabilities. Many of the issues raised around inclusion and workplace culture were explored in more detail by that Committee.\footnote{Standing Committee on Health, Ageing and Community Services, Inquiry into the Employment of People with Disabilities, available at: https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-health,-ageing-and-community-services/inquiry-into-the-employment-of-people-with-disabilities.}

\textbf{Recommendation 30}

8.98 The Committee recommends that the ACT Government, in conjunction with affected employees and their representatives, should review available data on the use and extent of labour hire, casual and fixed term employment arrangements in the ACT Public Service in order to identify areas where these employment arrangements can be minimised, and implement alternatives.

\textbf{Recommendation 31}

8.99 The Committee recommends that the ACT Government should not use labour hire.
Recommendation 32

8.100 The Committee recommends that the ACT Government cease using fixed-term contracts.

Recommendation 33

8.101 The Committee recommends that the ACT Government introduce stronger policies to limit keeping ACTPS employees on multiple non-ongoing contracts and create clear pathways for permanent employment and career progression.

Central Oversight

8.102 The CPSU highlighted that decisions on the use of labour hire, casual, temporary or contractors are made by individual Directorates. They note that there is no central oversight or regulatory checking of recruitment and staffing practices across the ACTPS. The Committee heard that greater central oversight and compliance checking is necessary to ensure adherence to commitments in the enterprise agreements and PSM Act, as well as increased reporting and regulatory compliance.

8.103 The Committee was also advised that there is little consistency with regard to delegations – the level at which employment decision are made. CPSU noted that there is no central reporting and believes this would be valuable in reducing insecure employment in the ACTPS.

Committee Comment

8.104 The Committee believes central oversight of recruitment and staffing practices for compliance with existing commitments around insecure working arrangements would provide valuable data and assist the ACT Government in reducing its use of insecure employment.

ACT Government’s Role as a Funder/Purchaser

8.105 The Committee received a range of evidence encouraging the ACT Government to better harness its purchasing power to improve employment outcomes and compliance with industrial relations and workplace safety laws.

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895 Mr Waters, CPSU, Proof Transcript of Evidence, 12 October 2017, pp.107, 108.
897 Mr Waters, CPSU, Proof Transcript of Evidence, 12 October 2017, p.113.
The CFMEU advised that the ACT Government is able to use its position as a major purchaser of construction-related services to effect positive change.\textsuperscript{898}

ACTCOSS advised that procurement policy has the ability to create norms and ‘may lift industry practice across different sectors if there were more parts of the economy where you could have a guarantee of access to secure work.’\textsuperscript{899}

The ANMF noted the potential use of procurement processes to incentivise private sector employers ‘to stem the use of temporary or casual work.’\textsuperscript{900}

Similarly WCHM made several recommendations to the Committee around procurement reform, noting that the government sets a standard and private sector organisations in the ACT are competing with the public sector for staff.\textsuperscript{901}

Unions ACT noted that the ACT Government has all the necessary powers to require its contractors to comply with local and federal laws when it comes to workplace safety and industrial relations, including in the form of a legislated instrument.\textsuperscript{902} They advised that the Australian and Victorian Governments have used procurement powers to establish industrial standards in a prescriptive way.\textsuperscript{903}

United Voice similarly advised that the ACT Government ‘is in a position to use its purchasing power to improve employment standards across the private sector service industry.’ They noted the recent review and resulting changes to ACT Government school cleaning tendering and contracting arrangements provide a good model for tendering in relation to property services procurement by government.\textsuperscript{904} In particular they noted that the cleaning contracts included increased requirements to ensure a safe workplace, increase opportunities to educate workers in relation to their rights as well as protections against tax avoidance and labour schemes which could serve to obscure employment rights.\textsuperscript{905}

In contrast, MBA advised that the use of procurement rules to encourage best practice and guard against furthering insecure employment seem aimed particularly at the construction sector and are not warranted ‘in the absence of solid evidence that there are extant issues of insecure employment’ in the sector.\textsuperscript{906}

\textsuperscript{898} CFMEU, Submission 33, p.18.
\textsuperscript{899} ACTCOSS, \textit{Proof Transcript of Evidence, 8 September 2017}, pp.18-19.
\textsuperscript{900} ANMF, Submission 13, pp.3, 9.
\textsuperscript{901} WCHM, \textit{Proof Transcript of Evidence, 8 September 2017}, p.48.
\textsuperscript{902} Mr White, Unions ACT, \textit{Proof Transcript of Evidence, 8 September 2017}, p.4; Unions ACT, Submission34, p.42.
\textsuperscript{903} Unions ACT, Submission 34, p.9.
\textsuperscript{904} United Voice, Submission 35, p.4.
\textsuperscript{905} United Voice, Submission 35, p.18.
\textsuperscript{906} MBA, Submission 10, p.3.
CONCERNs

8.113 Unions ACT noted that the ACT Government is the second largest purchaser of services in the Territory after the Australian Government and should show preference for direct employment for service provision, including cleaning and security services.\textsuperscript{907}

8.114 They advised that the effect of contracting out major contracts such as maintenance services for public housing, and public facilities, or major events transfers the employment of workers from direct employees of the ACT Government to being employees of contractors. They note that in the case of a major ACT Government maintenance contracts, the head contractor uses a network of subcontractors using Odco, labour hire and agency hire arrangements.\textsuperscript{908}

8.115 RCSA advised that:

\begin{quote}
Tendering and procurement practices provide the ACT Government with a platform on which to put in place arrangements that encourage best practice in the supply of contracting and workforce services. The ACT Government’s recent slashing of margins for on-hire firms supplying contractors to the ACT Government is just one example of price-down procurement that encourages poor practices and cutting corners.\textsuperscript{909}
\end{quote}

8.116 United Voice and Unions ACT also called for the ACTPS to maximise direct employment.\textsuperscript{910}

Recommendation 34

8.117 The Committee recommends the ACT Government utilise direct employment as a default for service provision such as school and hospital cleaning.

CURRENT ACT PROCUREMENT REQUIREMENTS

8.118 The Committee was advised that the ACT Government is already attempting to utilise its purchasing power to set high standards for industrial relations compliance and set an example of best practice. The Minister for Workplace Safety and Industrial Relations, Ms Stephen-Smith MLA, advised ‘our aim is to ensure that we set a high bar that we hope would flow through industries.’\textsuperscript{911}

\textsuperscript{907} Unions ACT, Submission 34, p.42.
\textsuperscript{908} Unions ACT, Submission 34, pp.21-22.
\textsuperscript{909} RCSA, Submission 20, p.3; Mr Cameron, RCSA, \textit{Proof Transcript of Evidence, 19 October 2017}, p.189.
\textsuperscript{910} Unions ACT, Submission 34, p.42; United Voice, Submission 35, p.4.
\textsuperscript{911} Stephen-Smith MLA, \textit{Proof Transcript of Evidence, 8 September 2017}, p.67.
The Committee received evidence in support of a procurement code from the CFMEU, noting that ACT Government tenders should ‘only be awarded to bidders who have demonstrable commitment to secure, local employment and ethical workplace practices.’

Below is an outline of the current ACT Government procurement requirements that include enforceable undertakings to ensure compliance with industrial relations and/or work health and safety obligations in ACT Government procurement contracts.

**Canberra Region Local Industry Participation Policy**

The Committee was informed that the Canberra Region Local Industry Participation Policy (LIPP) is designed to ensure that competitive local businesses are given every opportunity to respond to ACT Government procurement opportunities:

LIPP aims to promote the security and sustainability of local businesses and the local economy generally, but also includes criteria which address employment of local labour including, in some cases, apprentices and trainees.

LIPP applies to all procurements covered by the Government Procurement Act 2001 and is has tiered implementation based on procurement value thresholds.

**Ethical Suppliers Declaration**

An Ethical Suppliers Declaration, which is a statutory declaration, must be completed for tenders for prescribed works and services and to contract for prescribed works and services with a total consideration or estimated consideration of $25,000 or more.

‘Prescribed works and services’ refers to those works and services that will require the exertion of labour by employees in the performance of a contract. Examples include maintenance, construction, cleaning, horticultural and gardening services. The principle would not normally apply to other types of services, such as legal or accountancy services, general consultancies or ICT services.

Requests for tenders for prescribed works or services must contain provisions to require tenderers to certify that they are complying with their employee and industrial relations obligations. This will help the relevant Territory entity ensure that it has complied with undertakings that the Territory has made through the Memorandum of Understanding with Unions ACT.

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912 CFMEU, Submission 33, p.18.
913 ACT Government, Submission 23, p.15.
917 ACT Government, Procurement Policy Circular PC21: Probity and Ethical Behaviour, p.2
CONTRACT PROVISIONS

8.124 ACT Government contracts for the provision of prescribed works and services must contain terms that allow for the verification of compliance by suppliers and subcontractors with their employee and industrial relations obligations. This can include clauses ensuring entities can:

- monitor and audit the performance by a supplier or subcontractor against those obligations,
- make non-compliance with those obligations a breach of the supplier’s contract, and
- allow for termination of the contract if compliance is not achieved.

8.125 Audit and procedure protocols are meant to be established in contract management process for entities to monitor their suppliers’ compliance in relation to employee and industrial relations obligations.

BUILDING AND CONSTRUCTION

INDUSTRIAL RELATIONS AND EMPLOYMENT STRATEGY (IRE)

8.126 The Committee was advised that the ACT Government’s Industrial Relations and Employment (IRE) Strategy is one of a package of initiative designed ‘to eliminate sham contracting and ensure industrial relations and employment compliance best practice is part of the culture of the construction industry, in relation to ACT Government contracts.’

8.127 The IRE requires all contractors (and subcontractors) engaged to perform building work on ACT Government sites to hold and maintain an IRE Certificate for the term of the relevant contract. Certification, which is based on a desktop audit, is valid for 18 months and entities must apply for recertification. Random project audits are conducted by independent approved auditors who are registered and listed on the Procurement website ‘to ensure all firms working on the site are compliant with IRE law.’ Spot checks may also be conducted, particularly where a concern or complaint has been raised.

8.128 Contractors must also complete an Ethical Suppliers Declaration, meet insurance requirements and comply with the applicable law and any contractual remedies/sanctions for non-compliance.

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918 ACT Government, Procurement Policy Circular PC21: Probity ad Ethical Behaviour, p.3
919 ACT Government, Procurement Policy Circular PC21: Probity ad Ethical Behaviour, p.3
920 ACT Government, Procurement Policy Circular PC21: Probity ad Ethical Behaviour, p.3
921 ACT Government, Submission 23, p.16.
922 ACT Government, Submission 23, p.16.
923 ACT Government, Submission 23, p.16; ACT Government, Procurement Policy Circular PC21: Probity ad Ethical Behaviour, p.3; more information is available at: https://www.procurement.act.gov.au/prequalification/industrial_relations_and_employment_obligations
924 ACT Government, Submission 23, p.16
8.129 The requirements for IRE certificates for ACT public construction contracts have similarities to the labour hire licensing requirements that Queensland and South Australia are introducing.\textsuperscript{925}

8.130 The IRE strategy is under review with a view to:

- broaden the strategy to cover additional sectors such as cleaning
- Address job security for employees of code-covered entities working of government projects
- Determining the strategy’s effectiveness in ensuring IRE compliance best practice\textsuperscript{926}
- Assessing the performance of approved auditors and possibly removing those with unsatisfactory performance from the audit register.\textsuperscript{927}

8.131 The ACT has around 2,000 IRE certified organisations.\textsuperscript{928}

**PREQUALIFICATION**

8.132 Suppliers must be prequalified to tender for ACT Government work in the following work categories:

- Civil Road and Bridge (National Prequalification Scheme)
- Building Non Residential (National Prequalification Scheme)
- Territory specific Construction Industry Services
- Weed Control Services
- Fire Trails Maintenance and Upgrade
- Footpath Remedial Works and Installation and
- Accredited Senior Auditors.\textsuperscript{929}

8.133 The ACT has around 200 prequalified suppliers, who are required to hold IRE certification before applying for prequalification. Prequalification, like IRE certification is renewed around every 18 months.\textsuperscript{930}

**WORK HEALTH AND SAFETY ACTIVE CERTIFICATION PROGRAM**

8.134 The ACT Work Health and Safety Active Certification Program (ACP) ‘endeavours to prevent fatal, permanent and serious debilitating injuries within the construction industry and improve
work health and safety practices on sites where ACT Government construction projects are being delivered.\textsuperscript{931}

8.135 Regular 13-week audits are conducted by six registered independent auditors, although there are some provisions to delay or waive audits based on specific criteria.

8.136 It also encompasses a points penalty scheme where accrual of sufficient points from non-compliance results in the loss of prequalification status and resulting ineligibility to tender for ACT Government capital works projects.\textsuperscript{932}

8.137 Audits have no bearing on the independent findings or decisions of WorkSafe ACT. \textsuperscript{933}

\textbf{Weighted Safety Criterion Assessment}

8.138 The Committee was advised that the ACT Government now sets a comparative assessment weighting of 30 per cent for safety record and capacity when evaluating construction tenders.\textsuperscript{934}

\textbf{Guideline for Managing Work Health and Safety in Construction Projects}

8.139 An ACT Public Service guideline for managing work health and safety in construction projects valued at $250,000 or more also applies to all government employees involved in managing the delivery of construction projects.\textsuperscript{935}

\textbf{Secure Local Jobs Package}

8.140 In addition to the current requirements outlined above, the Committee heard from the Minister for Workplace Safety and Industrial Relations about the proposed Secure Local Jobs for local workers package which will establish a code to ensure worker safety and fair pay and conditions on public projects and contracts.\textsuperscript{936} The package, which is under development, aims to streamline existing requirements, enhance compliance and enforcement measures and strengthen the ACT Government’s capacity to use its purchasing power to deliver better outcomes for Canberra workers.\textsuperscript{937} It will focus on industries that are prone to insecure work, including those employing workers in insecure, low paid, unskilled or semi-skilled jobs and trades.\textsuperscript{938}

\textsuperscript{931} ACT Government, Submission 23, p.17.
\textsuperscript{932} ACT Government, Submission 23, p.18.
\textsuperscript{933} ACT Government, Submission 23, p.18.
\textsuperscript{934} ACT Government, Submission 23, p.18.
\textsuperscript{935} ACT Government, Submission 23, p.19.
\textsuperscript{937} ACT Government, Submission 23, p.21.
\textsuperscript{938} ACT Government, Submission 23, p.21; Stephen-Smith MLA, \textit{Proof Transcript of Evidence, 8 September 2017}, p.62.
8.141 The package will include a local jobs code which will be established in 2018 and include enhanced compliance and enforcement measures. The package will expand the coverage of the existing IRE Strategy to all entities covered by the code. Those covered by the new arrangements would also be required to prepare a Labour Relations, Training and Workplace Equity Plan (LRTWE) which would become a weighted criterion for comparative assessment. A compliance and enforcement framework will also be included in the package and a tripartite advisory body is proposed to review the implementation and provide independent advice to the Minister responsible.

8.142 The Committee was advised that the package will deliver on the following objectives:

- award contracts for government goods and service provision only to companies that meet the highest ethical and labour standards;
- ensure that the creation of local jobs is a key consideration in procurement;
- introduce measures to promote job security and deliver ethical procurement outcomes;
- require providers of goods and services to the ACT Government, including government agencies and statutory authorities, to adhere to the standards of a Local Jobs Code;
- create an efficient, clear and transparent governance regime for resolution of disputes related to government procurement, and continually monitor the performance of contracts; and
- simplify the procurement process and reduce duplication by establishing standard contract terms for all procurement contracts, which include strong representative rights and protections for workers, to the maximum extent permitted.

8.143 The Committee heard that with the proposed code:

...the hope is to leverage as much influence as we can on ethical and safe behaviours beyond territory procurement but within the confines of legislative instruments that can be made as part of the Procurement Act. Whether we will be successful in that is the challenge, and it is the one we are working towards achieving.

PROPOSED AREAS OF PROCUREMENT REFORM

8.144 ACTCOSS advised that the ACT Government reduce the prevalence of insecure work within the community sector with procurement reforms. They note that the use of ‘value-for-money’ as the chief criteria for procurement means value for the purchaser, ‘not for the community that
is receiving the service’.\textsuperscript{943} As a result, employers that can reduce their employment costs can offer a cheaper tender, which may suit the purchaser and the employer but does not benefit the employees or those receiving community services where it results in insecure work and employee churn.\textsuperscript{944}

8.145 ACTCOSS also called for an expansion of social procurement for ACT Government contracts ‘to create employment opportunities for people experiencing disadvantage and barriers to gaining secure employment.’\textsuperscript{945}

8.146 WCHM and ACTCOSS also recommended that the ACT Government:

Encourage ACT employers to adopt secure, flexible employment practices that support workers to manage family and caring responsibilities, study, and other life commitments. This would include incorporating provisions into ACT Government procurement policy and practice.\textsuperscript{946}

8.147 Similarly Carers ACT called for the ACT Government to ‘include carer employment initiatives in their procurement processes to increase carer-friendly workplaces and improve carer workforce participation and workforce participation satisfaction.’\textsuperscript{947}

8.148 The Committee was advised that whilst the ACT Government has placed industrial relations obligations on tenderers in the past, the lack of ability to audit and apply sanctions is a significant gap.\textsuperscript{948}

8.149 The Committee heard that the ACT could adopt a similar model to the Federal 2006 National Building Economic Stimulus Plans (BER) to support an increase in apprentice numbers in the construction industry.\textsuperscript{949} That process had rigorous auditing and reporting processes to ensure organisations complied with the contract and met obligations for employment and training of Apprentices, Trainees, Indigenous and Cadets.\textsuperscript{950}

COMMITTEE COMMENT

8.150 The Committee recognises ACT Government is developing the Secure Local Jobs Package, including a local jobs code. The Code may go some way towards addressing those areas of reform proposed to the Committee.

\textsuperscript{943} ACTCOSS, \textit{Proof Transcript of Evidence, 8 September 2017}, p.17.
\textsuperscript{944} ACTCOSS, \textit{Proof Transcript of Evidence, 8 September 2017}, p.17.
\textsuperscript{945} ACTCOSS, Submission 21, p.5; WCHM, Submission 9, p.13.
\textsuperscript{946} WCHM, Submission 9, p.13; ACTCOSS, Submission 21, p.5.
\textsuperscript{947} Carers ACT, Submission 19, p.9.
\textsuperscript{948} United Voice, Submission 35, p.18.
\textsuperscript{949} CITC, Submission 14, p.1.
\textsuperscript{950} CITC, Submission 14, p.1.
8.151 The Committee believes a procurement code should set out standards and principles that must be met by successful tenders for a range of contracts with ACT Government directorates and agencies. Such a code should require tenders to demonstrate that:

- The organisation predominantly engages workers in secure employment, rather than as casuals or fixed term contracts.
- Any independent contractor relationships are genuine rather than sham arrangements.
- At a minimum, employees are receiving wages and conditions under any applicable industrial instruments.
- The tender demonstrates proactive arrangements to ensure compliance with workplace health and safety legislation.
- The cost structure of the tender are such that the workers will be accorded their legal employment entitlements over the life of the contract.
- The code should impose similar obligations to business or companies that the initial tenderer may sub-contract to in order to complete ACT Government work.

Recommendation 35

8.152 The Committee recommends that ACT Government establish a procurement code that lays out standards and principles that must be met by successful tenders for a range of contracts with ACT Government directorates and agencies.

ACT Government Funding - Community Sector

8.153 The ACT community sector employs over 19,000 people, of whom 78 per cent are women and 85 per cent are employed part time. Community sector earning are between 43 per cent and 55 per cent lower than other industries.  

8.154 The ACT Government funds the community sector at around $539 million per year and ACT Government funding is a significant source of income for around a quarter of the sector.

8.155 The Committee was advised that security of work in the community sector was highly influenced by the ‘inadequacy and uncertainty’ of government funding which creates barriers to long-term roles being created in the sector.

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951 Unions ACT, Submission 34, p.15.
952 Unions ACT, Submission 34, p.15.
954 ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.15
8.156 ACTCOSS advised the Committee that, in the community sector, inadequate funding and lack of funding certainty ‘incentivises employers to mitigate risks by passing those risks onto the workers.\textsuperscript{955} This is usually in the form of short term contracts. The Committee heard that employers in the community sector ‘do value continuity of staff, but struggle with how to make it work financially’.\textsuperscript{956}

8.157 The Committee also heard that lack of funding continuity and certainty compromises continuity of care for people access the services as there is significant churn of workers (such as in disability and aged care). Workers move in and out of jobs to try to forge a career path and increase their long-term employment prospects in the sector.\textsuperscript{957} Long service leave data suggests that workers remain in the sector but regularly change jobs.\textsuperscript{958}

8.158 Government procurement practices are pertinent for the community sector as it is primarily a government-funded service market.\textsuperscript{959}

A good example has been in the housing sector where for five years there was only single-year funding through the commonwealth-state housing agreement. Staff who wanted to be more confident about their long-term employment prospects would move out of those roles, even though they might be highly skilled housing support workers, because they just needed to make sure they had a secure job to keep paying their costs of living and hopefully to qualify for a mortgage at some point, which you cannot qualify for if your job only goes for a year. No bank is going to give you a mortgage, even if is a reasonably paid job in an industry which you would expect to continue to need to have work. That is one issue.\textsuperscript{960}

**Length of Contract**

8.159 ACTCOSS noted that some ACT Government procurements are moving to five year contracts as program funding arrangements are being renewed, however the majority of ACT Government funding is for less than two years.\textsuperscript{961}

8.160 ACTCOSS advised that longer term government contracts would assist with stability of workers, noting that the Productivity Commission had raised concerns in 2011 around ‘short-term contracts for long-term objectives’ in the community sector. The Productivity Commission

\textsuperscript{955} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.16.

\textsuperscript{956} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.18.

\textsuperscript{957} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.17.

\textsuperscript{958} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.21.

\textsuperscript{959} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.18.

\textsuperscript{960} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.17.

\textsuperscript{961} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, pp.17-18.
suggested five or 10 year contracts would be more appropriate,\textsuperscript{962} which would also have a positive impact on employment stability.

8.161 The Committee heard that security of work also has more to do with the type of organisation in the community sector rather than its size.\textsuperscript{963} ‘Organisations that do research and advocacy have more secure employment because they have less instability in their funding flows.’\textsuperscript{964} By contrast, those that were providing services and transitioning through the NDIS had increased insecurity because of the limited certainty around future service demand and instable operating environment, regardless of size.\textsuperscript{965} ACTCOSS noted:

The other thing we found in that research ... was that community services find it difficult to recruit people because our wages are low but that, once people are in, they like to stay and they stay because they value learning and development and career progression opportunities. \textsuperscript{966}

**TRAINING**

8.162 The community sector also requires the capacity to invest in people with formal learning opportunities and career progression within the industry in order to create more secure work in the industry and keep workers.\textsuperscript{967}

8.163 ACTCOSS noted that the current pricing settings for the NDIS are particularly concerning as they do not allow for investment in worker development. Instead, program funding is utilised for training.\textsuperscript{968}

8.164 Through the ACT Community Services Industry Strategy 2016-2026 implementation ACTCOSS has been working to increase access to other funding sources such as the skilled capital investment for training and development rather than taking funds away from front-line work.\textsuperscript{969} ACTCOSS emphasised the need for the ACT Government to recognise the value of investing in the community sector in this way:

We know that investment has a twofold impact. Not only does it grow the capacity of the industry, the quality of work and the continuity of people’s careers but also it builds human capital.\textsuperscript{970}

\textsuperscript{962} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.17.
\textsuperscript{963} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.20.
\textsuperscript{964} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.20.
\textsuperscript{965} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.21.
\textsuperscript{966} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.21.
\textsuperscript{967} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.21.
\textsuperscript{968} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, pp.21-22.
\textsuperscript{969} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.21.
\textsuperscript{970} ACTCOSS, *Proof Transcript of Evidence, 8 September 2017*, p.22.
8.165 There are proposals to use the industry levy to fund workforce training and development.⁹⁷¹

8.166 Some submissions to the Committee also called for a review of the adequacy of indexation of government funding of community services in addition to procurement reform to reduce the prevalence of insecure work in the community sector.⁹⁷²

COMMITTEE COMMENT

8.167 The Committee notes that there is benefit in the ACT Government reviewing the adequacy of indexation for its funding of community services and ensure it adequately funds wages and the costs associated with compliance with industrial relations obligations in its contracts.

8.168 The Committee believes the ACT Government should investigate how its funding and procurement practices can be harnessed to reduce the prevalence of insecure work in the community sector. This action should be taken in consultation with the community sector, and must be a central part of the implementation of the ACT Community Services Industry Strategy 2016-2026.

Recommendation 36

8.169 The Committee recommends that the ACT Government, in consultation with the community sector, act to reduce the prevalence of insecure work within the community services sector as a central part of implementing the ACT Community Services Industry Strategy 2016-2026.

GOVERNANCE AND POLICY ADVICE

TRIPARTITE MECHANISMS

8.170 The Committee was advised that worker representation within ACT public institutions could be improved by developing a tripartite governance policy and framework.⁹⁷³ Unions ACT noted tripartite mechanisms builds goodwill, trust and fosters cooperation. They stated:

Presently, the ACT Government has created a range of public institutions and bodies that advise or have governance responsibilities, that have no worker voice. This includes the various boards and advisory bodies including: Study Canberra, the Capital

⁹⁷¹ Unions ACT, Submission 34, p.15.
⁹⁷² ACTCOSS, Submission 21, p.5; WCHM, Submission 9, p; Unions ACT, Submission 34, p.15.
⁹⁷³ Unions ACT, Submission 34, p.40.
Metro Project Board, City Renewal Authority, Racing and Gaming Commission, Cultural Facilities Corporation Board, and Defence Industry Advisory Board, amongst others.  

8.171 The Committee heard that the ACT does have mechanisms to gather business intelligence on insecure employment, for example the:

tripartite ministerial advisory work safety council on which business peak bodies are represented, and they have been tasked with making recommendations around insecure work and labour hire licensing.  

8.172 The Minister for Workplace Safety and Industrial Relations advised that the Apprentice and young Worker Safety Advisory Committee, recently established by the ACT Work Safety Council, aims amongst other things to:

facilitate tripartite stakeholder partnerships to drive industry safety improvements for apprentices, trainees and young workers through consultation awareness and training.  

COMMITTEE COMMENT

8.173 The Committee note the benefits of tripartite mechanisms to strengthen dialogue and cooperation between unions, business and government.

8.174 The Committee also notes that the proposed Secure Local Jobs Package includes a tripartite advisory body.

Recommendation 37

8.175 The Committee recommends the ACT Government institutionalise genuine tripartite mechanisms with unions and business across its various initiatives and public institutions to strengthen dialogue and cooperation.

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974 Unions ACT, Submission 34, p.40.
975 Mr Young, Proof Transcript of Evidence, 8 September 2017, p.70.
976 MS Stephen-Smith MLA, Proof Transcript of Evidence, 8 September 2017, p.70.
Mr Michael Pettersson MLA

Mr Chris Steel MLA

May 2018

Andrew Wall MLA and Elizabeth Kikkert MLA

In relation to the Inquiry into the Extent, Nature and Consequence of Insecure Work in the ACT we wish to provide dissenting comments in relation to the Inquiry.

Our comments reflect the content of a number of submissions received by the Committee and reiterates concerns and evidence presented by witnesses that was omitted in the initial draft Chairs Report.

We acknowledge that there are a range of Federal and Territory laws that currently govern employment in the ACT. These include but are not limited to the Fair Work Act 2009 (Cth), State based Health and Safety and workers compensation laws, Federal and State anti-discrimination laws, superannuation and taxation laws.

We believe that strong consideration must be given to national reform measures currently being undertaken by the Commonwealth Government as well as existing protections through Fair work legislation and other legislation and regulations before any changes are made to Territory laws.

Further, we submit that no formal evidence was presented to the Committee with regards to sham contracting or unscrupulous practices relating to Labour Hire occurring in the ACT at the present time.

We offer the following recommendations for consideration by the ACT Government:

Recommendation 1

The Committee recommends that the ACT Government not make any changes to Territory laws that would be inconsistent with the Fair Work Act 2009 (Cth) or any other Commonwealth Workplace legislation.

Recommendation 2

The Committee recommends that the ACT Government acknowledge that in 2010 the ACT along with all other Australian states, with the exception of Western Australia, referred workplace relation’s powers to the Commonwealth, through the introduction of the Fair Work Act 2009 (Cth), with the intent to create a more uniform and simple workplace relations system.

Recommendation 3

The Committee recommends that the ACT Government takes reasonable steps to measure the potential impact of additional regulatory burden on business when seeking to introduce legislation and or regulations with respect to labour hire or independent contracting arrangements.
Recommendation 4

The Committee recommends that the ACT Government continue to advocate through Council of Australian Governments (COAG) processes for the continuation of work on a national adoption of a labour hire licensing scheme that would provide consistency between states and Territories.

Recommendation 5

The Committee recommends that the ACT Government acknowledge that temporary work and casual work is an important and effective strategy for people with disability and other marginalised groups to enter the workforce, gain experience and progress to permanent employment.  

Recommendation 6

The Committee recommends that the ACT Government acknowledge the benefits of utilising the labour hire industry to employ personnel in the ACTPS and that the labour hire industry is used currently to fill positions in ACT Government agencies such as Access Canberra.

Recommendation 7

The Committee recommends that the ACT Government acknowledge that labour hire arrangements are a valuable form of access to work for people with a disability, carers, seniors, former Australian Defence Force personnel and their supporting family members.

Recommendation 8

The Committee recommends that the ACT Government acknowledge that the labour hire industry in the ACT is comprised predominantly of legitimate operators adhering to laws and regulations pertinent to their business.

Recommendation 9

The Committee recommends that the ACT Government acknowledge that apprenticeships have historically been viewed as a secure method of employing and training young people and other vulnerable workers.

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1 Submission No 5 – Enable Employment
2 Submission No 5 – Enabled Employment
3 Submission No 5 – Enabled Employment
4 Submission No 6 – 1300 Apprentice
Recommendation 10
The Committee recommends that the ACT Government acknowledge that employed Apprentices receive a high level of employment protection via the relevant modern Award and the Fair Work Act 2009.5

Recommendation 11
The Committee recommends that the ACT Government not impose any further regulations on Group Training Organisations in the ACT.

Recommendation 12
The Committee recommends that the ACT Government acknowledge that Labour hire companies provide a critical temporary work force to meet fluctuations in workload which are evident in many industries, including ACT Government projects, tourism and construction.6

Recommendation 13
The Committee recommends that the ACT Government not undermine the value or importance of casual employment to the ACT economy.

Recommendation 14
The Committee recommends that the ACT Government acknowledge that there is no evidence to suggest that operators of labour hire businesses or those using independent contractors in the ACT do so to avoid their workplace and statutory obligations.7

Recommendation 15
The Committee recommends that the ACT Government acknowledge that the use of Labour Hire enhances the ability of ACT businesses to adapt their workplaces to a rapidly changing technological and economic environment, and ensure they can attract, maintain and support the skilled workers they will rely on in the future.8

5 Submission No 10 – Master Builders Association
6 Submission No 10 Master Builders Association
7 Submission No 11 – Canberra Business Chamber
8 Submission No 16 – ApSCO
Recommendation 16

The Committee recommends that the ACT Government ensure that tendering and procurement practices in place for Government contracts encourage best practice in the supply of contracting and workforce services whilst ensuring value for money at every level.  

Recommendation 17

The Committee recommends that the ACT Government acknowledge that any additional regulation of group training providers would lead to higher costs for host employers and potentially increase barriers to the employment of apprentices, trainees and graduates.

Recommendation 18

The Committee recommends that the ACT Government advocate for greater resources for the Fair Work Ombudsman (FWO) to investigate and prosecute illegitimate labour hire businesses that are breaking the law as a national priority.

Recommendation 19

The Committee recommends that the ACT Government acknowledge that with regards to migrant workers, the Fair Work Act 2009 and awards apply to overseas workers working in Australia. In addition, the rights of working visa holders are protected by the Migration Act 1958 (Migration Act).

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9 Submission No 20 – Recruitment and Consulting Services Association “The ACT Government’s recent slashing of margins for on-hire firms supplying contractors to the ACT government is just one example of price-down procurement that encourages poor practices and cutting corners” page 3

10 Submission No 22 – Ai Group

11 Submission No 22 – Ai Group

12 Submission No 22 – Ai Group