

INQUIRY INTO INSECURE EMPLOYMENT IN THE ACT

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND YOUTH
AFFAIRS

DISCUSSION PAPER

MAY 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 and report by 31 October 2017:

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.

¹ Legislative Assembly for the ACT, Minutes of Proceedings No. 2, 13 December 2016, pp. 13-16, accessible at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0008/1017980/MoP002F2.pdf

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

CONDUCT OF THE INQUIRY

- 1.1 On 13 December 2016, the Legislative Assembly for the ACT (Legislative Assembly) established a Standing Committee on Education, Employment and Youth Affairs (the EEYA Committee). The EEYA Committee's responsibilities are set out in the introductory part of the Discussion Paper.²
- 1.2 On 28 March 2017, the EEYA 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 in the introductory part of the Discussion Paper.
- 1.3 The Committee advertised for submissions to the inquiry by 1 May 2017. In late April 2017, the Committee extended this date to 30 June 2017.
- 1.4 As part of the of the inquiry process, this Discussion Paper has been prepared to provide additional information about the terms of reference and some of the key issues the EEYA Committee wishes to address. It is anticipated that this information will assist individuals and organisations with the preparation of submissions.
- 1.5 Groups and individuals are invited to submit comments on any or all of the issues raised in this Paper or any other issue they consider is relevant to the terms of reference of this Inquiry.
- 1.6 Public hearings for the Inquiry are expected to be held in the second half of 2017. Information about public hearings will be provided on the [Inquiry webpage](#).

² Legislative Assembly for the ACT, *Minutes of Proceedings No.4*, 15 December 2017, pp. 42-43

2 INQUIRY ISSUES AND THEMES

- 2.1 The Committee has initiated an inquiry to find out more about how a range of work and employment arrangements operate in the ACT labour hire industry, and the extent and nature of insecure work in the ACT.
- 2.2 The Committee's Inquiry follows a number of other parliamentary, government and industry inquiries into the labour hire industry and the issue of insecure work. Reports on these inquiries include the [Victorian Inquiry into the Labour Hire Industry and Insecure Work](#), the South Australian parliamentary committee [Inquiry into the Labour Hire Industry](#), the Queensland parliamentary committee [Inquiry into the practices of the labour hire industry in Queensland](#) and the [Independent Inquiry into Insecure Work in Australia](#) commissioned by the Australian Council of Trade Unions and chaired by former Deputy Prime Minister Brian Howe.
- 2.3 In addition to the issues and themes outlined in this discussion paper, the Committee encourages submitters to look at the discussion papers and reports of these inquiries for further information on matters of relevance to this inquiry.

EXTENT AND NATURE OF INSECURE WORK IN THE ACT

- 2.4 The primary focus of the Inquiry will be the issue of insecure work in the ACT. There has been a shift away from the traditional Australian employment structure of full-time, ongoing employment to new forms of employment, such as casual employment and independent contracting.
- 2.5 While providing benefits such as flexibility in working times and arrangements, in other cases, workers can be presented with a choice of contractor relationships through 'sham' arrangements set up to get around legal protections for employees.
- 2.6 In some workplaces, the substitution of long-term casuals for ongoing employees, but without the protections of the established industrial system, has occurred with little appreciation of the long-term effect on employment.
- 2.7 As the Victorian Inquiry identified, insecure work is not a clearly defined concept. That Inquiry made reference to the definition used by the Independent Inquiry into Insecure Work, which 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.

These challenges are most often associated with nonpermanent forms of employment like casual work, fixed-term contracts, independent contracting and labour hire...³

- 2.8 Labour 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.⁴
- 2.9 Sham contracting is the practice of misclassifying employees as independent contractors. It can occur with the workers consent, or through misrepresentation or coercion. Employees classified as contractors do not receive the entitlements or protections of the Fair Work Act, the relevant award or enterprise agreement and don’t receive superannuation or worker’s compensation.⁵
- 2.10 Impermanent or alternative forms of employment such as independent contracting, labour hire and casual work are not necessarily insecure. Further, some individuals prefer a form of employment that others would consider insecure, because it better suits their needs or provides benefits not available with traditional forms of employment.
- 2.11 The Committee seeks submissions on the extent and nature of insecure work in the ACT, including:
- The use of group training, labour hire and sham contracting in particular industries and in the supply chains of particular sectors; and
- The use of working visas, particularly in insecure, low paid, unskilled or semi-skilled jobs and trades.

³ Independent Inquiry into Insecure Work in Australia (2012), *Lives on Hold: Unlocking the potential of Australia’s workforce*, p. 14, available at https://www.actu.org.au/media/349417/lives_on_hold.pdf

⁴ Victorian Inquiry into the Labour Hire Industry and Insecure Work (2015), *Background Paper*, p. 5, available at http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0012/1310205/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf

⁵ Productivity Commission (2015), *Workplace Relations Framework, Volume 2*, p. 807, available at <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume2.pdf>

What experience or evidence can you provide of the following in the ACT?

- Insecure work
 - Form of working arrangements
 - Industries in which it occurs
- Labour hire
 - Industries in which it is prevalent
 - What do labour hire suppliers look like (size, sectors they operate in, local or part of national/multinational business)
 - How are labour hire workers typically engaged (employees or independent contractors)
 - Working conditions of labour hire workers and difference, if any, between them and the conditions of direct employees of a host organisation
 - In what ways do hosts typically use labour hire workers (to supplement or replace ongoing workforces or direct employees)
 - Role of labour hire companies in supply chains
- Sham contracting
- Use or misuse of working visas
 - Industries in which it is prevalent
 - Kinds of jobs working visa holders obtain

CONSEQUENCES OF INSECURE WORK IN THE ACT

- 2.12 Alternative forms of employment such as independent contracting, labour hire, fixed term contracts and casual work can provide benefits to both employers and employees, but also present disadvantages and risks.
- 2.13 Independent contracting can offer greater autonomy, allowing an individual to choose what jobs they take, the hours they work, the way in which they complete the job, and the number of clients they work for simultaneously. Casual work can provide a higher rate of pay and appeals to workers who value flexible hours with the option of declining work, as well as workers entering or close to leaving the workforce. A labour hire arrangement might suit an individual looking to capitalise on an agency's ability to procure work, and can provide a path to other employment or ongoing employment. Fixed term contracts might appeal to an employee that likes to change jobs periodically or wants a finite horizon for their work relationship but doesn't want to be self-employed.⁶

⁶ Productivity Commission (2015), *Workplace Relations Framework, Volume 2*, pp. 801-802; Inquiry into the Labour Hire Industry and Insecure Work (2015), *Background Paper*, pp. 6, 10

2.14 Alternative forms of employment can also benefit employers. Where an employer's labour needs are sporadic, short term, cyclical or seasonal, or where an employer requires specific skills for a project with a definable end date, use of casual, labour hire or contract employees might better fit their business needs. Where the use of these alternative forms of employment lowers cost to business, the community could benefit from lower prices.⁷

2.15 However, there are detracting factors with alternative forms of employment. For some workers, engaging in casual, contract or labour hire employment is not their preference but, for a variety of reasons, may be the only option. They may have a workforce experience more akin to what the Independent Inquiry into Insecure Work described as a 'periphery' worker.

Many do not know what hours they will work from week to week, and often juggle multiple jobs to attempt to earn what they need. If their skills are low, or outdated, they are not offered training through work. They shift between periods of unemployment and underemployment that destroy their ability to save money. Their work is not a "career"; it is a series of unrelated temporary positions that they need to pay rent, bills and food. For them flexibility is not knowing when and where they will work, facing the risk of being laid off with no warning, and being required to fit family responsibilities around unpredictable periods of work.⁸

2.16 The Victorian Inquiry noted that some research suggested that labour hire workers were more likely to be in insecure work, leading to uncertainty around employment and income continuity. There are also concerns that labour hire may be used to replace, rather than supplement an ongoing workforce. Further, labour hire workers might not receive the same pay and conditions or have as much influence in the workplace on these issues as the host's direct employees.⁹

2.17 The Committee seeks submissions on the consequences of insecure work in the ACT, including:

The impact of insecure work on workers, their families and relationships, and on the local community, including financial and housing stress;

The impact of insecure work arrangements on vulnerable workers including young people, the unemployed and under-employed, migrants and short term visa holders; and

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

⁷ Productivity Commission (2015), *Workplace Relations Framework, Volume 2*, p. 802

⁸ Independent Inquiry into Insecure Work in Australia (2012), *Lives on Hold: Unlocking the potential of Australia's workforce*, p. 5

⁹ Inquiry into the Labour Hire Industry and Insecure Work (2015), *Background Paper*, p. 7

What experience or evidence can you provide of the following in the ACT?

- The effects of insecure work on ACT workers, including their family life, community involvement, housing and financial arrangements
- Positive or negative outcomes for ACT workers, businesses and the broader community from the use of labour hire arrangements
- The impact of labour hire on the availability of apprenticeships and traineeships

Other questions

- Do workers experiencing insecure work desire more traditional working arrangements, and if so, of what kind?
- What barriers are encountered in obtaining more secure working arrangements?

CONDUCT AND REGULATION OF INSECURE WORK IN THE ACT

2.18 Other inquiries into labour hire and insecure work have revealed examples of worker exploitation and breaches of workplace, health and safety, tax and migration laws. This has included underpayment or non-payment of wages, poor workplace health and safety, and breaches of visa restrictions. While the Inquiry is primarily a fact-finding inquiry, the Committee may consider options for regulatory reform.

2.19 Employment in the ACT is covered by various Federal and Territory laws, including:

- Fair Work Act 2009 (Cth)
- Competition and Consumer Act 2010 (Cth)
- Independent Contractors Act 2006 (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)
- Work Health and Safety Act 2011 (ACT)
- Workers Compensation Act 1951 (ACT)

2.20 The Committee seeks submissions on the conduct and regulation of insecure work in the ACT, including:

Evidence 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;

Evidence of exploitation, harassment and other mistreatment of workers employed by group training organisations and labour hire companies;

Evidence related to the exploitation of vulnerable classes of workers including working visa holders, young people, the under-employed and migrants;

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;

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; and

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.

What experience or evidence can you provide of the following in the ACT?

- Labour hire companies avoiding workplace laws and other statutory obligations
 - Payment of wages and entitlements
 - Avoidance of payroll and income tax
- Exploitation, harassment and other mistreatment of workers employed by group training organisations and labour hire companies
- The exploitation of vulnerable workers

Other questions

- Why are labour hire workers vulnerable to exploitation, harassment and other mistreatment?
- What steps are taken to ensure that labour hire workers understand their rights and the rights and obligations of their employers?
- What issues prevent or reduce the incidence of labour hire workers enforcing their rights as workers and how can this be addressed?
- What assistance is provided to vulnerable workers to understand their rights?

3 INVITATION FOR SUBMISSION

- 3.1 The Committee invites comments to the issues raised in this Discussion Paper from interested individuals and organisations. Submissions can cover any matter that is relevant to the terms of reference.
- 3.2 The information provided in this Discussion Paper should not be regarded as exhaustive. Interested parties are invited to bring other information or relevant case studies to the Committee's attention, and to canvass other issues relating to the terms of reference not outlined in this Discussion Paper.
- 3.3 Further information about making a submission can be found in [*Making a Submission or Appearing before a Committee of the Legislative Assembly for the ACT.*](#)

Mr Michael Pettersson MLA

Chair