

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

Mr Michael Pettersson MLA	Chair
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.

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

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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 Paper² 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.

² Standing Committee on Education, Employment and Youth Affairs, *Inquiry into Insecure Employment in the ACT - Discussion Paper*, available at: https://www.parliament.act.gov.au/data/assets/pdf_file/0008/1063556/9th-EEYA-Insecure-Employment-Discussion-paper-May-2017.pdf

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,³ the South Australian parliamentary committee 2016 Inquiry into the Labour Hire Industry,⁴ the Queensland parliamentary committee 2016 Inquiry into the practices of the labour hire industry in Queensland⁵ and the 2012 Independent Inquiry into Insecure Work in Australia⁶ 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

³ Victorian Department of Economic Development, Jobs, Transport and Resources, *Victorian Inquiry into the Labour Hire Industry and Insecure Work*, 2016, available at: http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf.

⁴ The Parliament of South Australia, Economic and Finance Committee, *Inquiry into the Labour Hire Industry*, Report no.93 of the Second Session, Fifty-Third Parliament, 2016, available at: <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CId=173>.

⁵ Parliament of Queensland, Finance and Administration Committee, *Inquiry into the practices of the labour hire industry in Queensland*, Report no.25, 55th Parliament (June 2016), available at: <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1028.pdf>.

⁶ Australian Council of Trade Unions, Report of the Independent Inquiry into Insecure Work in Australia, *Lives on Hold, Unlocking the potential of Australia's workforce*, 2012, available at: https://www.actu.org.au/media/349417/lives_on_hold.pdf.

Appendix A Submissions and additional information received by the Committee

Submissions

Submission Number	Submitter	Received
1	Maritime Union of Australia	28 April 2017
2	Shop, Distributive and Allied Employees' Association NSW & ACT	14 June 2017
3	Apprentice Employment Network NSW & ACT	19 June 2017
4	Legal Aid ACT	26 June 2017
4b	Legal Aid ACT – Supplementary Submission	21 November 2017
5	Enabled Employment	28 June 2017
6	1300 Apprentice	29 June 2017
7	Community and Public Sector Union (PSU Group)	29 June 2017
8	Maurice Blackburn Lawyers	30 June 2017
9	Women's Centre for Health Matters	30 June 2017
10	Master Builders Association ACT	30 June 2017
11	Canberra Business Chamber	30 June 2017
12	Youth Coalition of the ACT	30 June 2017
13	Australian Nursing and Midwifery Federation ACT Branch	30 June 2017
14	ACT Regional Building and Construction Industry Training Council Inc.	30 June 2017
15	Housing Industry Association	30 June 2017
16	Association of Professional Staffing Companies Australia	30 June 2017
17	Federation of Ethnic Communities' Councils of Australia	30 June 2017
18	St Vincent de Paul Society Canberra/Goulburn	30 June 2017
19	Carers ACT	3 July 2017
20	Recruitment and Consulting Services Association	7 July 2017

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Submission Number	Submitter	Received
21	ACT Council of Social Service	7 July 2017
22	Ai Group	13 July 2017
23	ACT Government	18 July 2017
24	Abigail Nelson	31 May 2017
25	Beck Edwards	20 June 2017
26	Tracey Yurtbilir	20 June 2017
27	Charles Campbell Macknight	20 June 2017
28	Linda Mitchell	22 June 2017
29	Robert Easterbrook	23 June 2017
30	Bruce Stephenson	26 June 2017
31	James Costin	26 June 2017
32	Bradley Bell	29 June 2017
33	Construction, Forestry, Mining and Energy Union (ACT Branch)	30 June 2017
34	Unions ACT	6 July 2017
34b	Unions ACT	11 January 2018
35	United Voice	7 July 2017
36	Anonymous	4 July 2017
37	Connor Drum	17 July 2017
38	National Tertiary Education Union (NTEU)	25 August 2017
39	David Allen	24 February 2018

Tabled Documents

- Refugee Council of Australia, June 2010, *What Works: Employment Strategies for Refugee and Humanitarian Entrants*, available at: https://www.refugeecouncil.org.au/docs/resources/reports/What_Works.pdf
- Fairfield Multicultural Interagency Refugee Council of Australia, *Not Working: Experiences of Refugees and Migrants with Jobactive*, August 2017, available at: <https://www.refugeecouncil.org.au/wp-content/uploads/2017/08/Jobactive.pdf>
- NTEU, *The rising tide of insecure employment at Australian universities*, March 2016, available at: <https://www.nteu.org.au/women/article/The-rising-tide-of-insecure-employment-at-Australian-universities-18365>
- UNSW, prepared for ACTCOSS, *State of the Community Service Sector in the ACT 2016 Report*, December 2016, <https://www.actcoss.org.au/publications/advocacy-publications/state-community-service-sector-act-2016-report>
- UNSW, *Reasonable, necessary and valued: Pricing disability services for quality support and decent jobs*, June 2017, prepared for Health Services Union, Australian Services Union, and United Voice, available at: https://www.sprc.unsw.edu.au/media/SPRCFile/NDIS_Pricing_Report.pdf
- 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.

- 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

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

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.