Job Security Inquiry

Select Committee on Job Security
Department of the Senate
PO Box 6100
Canberra ACT 2600

Via: jobsecurity.sen@aph.gov.au

Dear Committee Members

The Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission to the Senate Select Committee on Job Security.

VTHC was founded in 1856 and is the peak body for unions in Victoria. VTHC represents over 40 unions and more than 430,000 workers in the state. These workers are members of unions that reach into every industry across Victoria, both in the public and private sectors.

Since gaining the Eight Hour Day in 1856, VTHC has advocated and fought tirelessly to reverse the casualisation of our workforce, particularly with the rise of the gig economy and the increasingly prevalent use of short-term contracts. VTHC is committed to winning better entitlements for all workers, including workers employed in insecure, casual and temporary arrangements.

This job security inquiry is an opportunity to recognise that job insecurity is being used by employers to increase flexibility at the expense of workers' lives and the economy more broadly. It is also an opportunity to fix the system and ensure that every worker has a good, secure job they can count on.

This submission should be read in conjunction with the submissions of the Australian Council of Trade Unions and Victorian trade unions. Nothing in VTHC's submission is intended to override or conflict with the submissions of Victorian unions.

VTHC looks forward to subsequent actions that will be taken to strengthen the workplace rights of and improve workplace conditions for workers under insecure, casual and temporary work arrangements.

If you have any questions or would like further information, please do not hesitate to contact Politics and Research Lead, Ted Sussex,

Sincerely

Carina Garland
Assistant Secretary

LUKE HILAKARI
Secretary

CARINA GARLAND
Assistant Secretary

WILHELMINA STRACKE
Assistant Secretary

Trades Hall
54 Victoria Street Carlton 3054

Background

Insecure employment practices are used by employers to increase flexibility at the expense of working people's ability to have a say over their working lives. VTHC opposes the practice of diminishing worker's rights, entitlements and job security through the use of insecure employment practices, and is especially concerned about the alarming rate at which workers are being employed in insecure work. However, the Covid-19 Pandemic presents all governments with an opportunity to rebuild our economy with fairness at its heart. The Federal Government in particular is presented with an important and historic opportunity to tackle insecure work and deliver good jobs for our communities. This Inquiry should be the beginning of significant positive changes in our systems of work that bring fairness and security back into the job market.

We take insecure work to include casual work, labour hire arrangements, short-term contract work, gig work, as well as "cash in hand" work outside the tax system. Currently, about 4 million people, or 40% of Australia's workforce, are engaged in 'non-standard' employment including casual work, short-term or part-time contracts, labour hire work and independent contracting.[1]

Whether the insecurity comes from labour hire work, sham contracting, or working in the gig economy, insecure workers are unable to know what hours they'll get or what pay they will take home at the end of the week. They have no safety net if they are sick or need to care for somebody.

2017 VTHC analysis of 618 public submissions from ordinary working people with experience of insecure work revealed that 86% of workers in insecure work did not feel confident about the future of their job or income; 55% of workers could not speak up about their pay and conditions without risking their jobs; 50% of workers did not have a predictable roster and felt that they could not take leave without fear of losing their job; 43% of workers were not told about WorkCover or what to do if they were injured; 25% of workers could not always pay their rent or mortgage, and; 18% of workers could not always pay their bills or buy food.

As job insecurity increases, these negative impacts are becoming normalised. It is unacceptable that insecure work arrangements are creating an underclass of workers who cannot meet their basic needs or fully exercise their rights in the workplace.

The Federal Government has a responsibility to the growing proportion of insecure workers in Australia to discourage dodgy practices that profit off job insecurity and introduce safety nets that work to protect people who fall through the gaps of standard employment. The VTHC recommends that the Federal Government:

1. Introduce a national labour hire licensing scheme;
2. Introduce a portable annual leave and sick leave entitlements scheme;
3. Introduce a national portable long service leave scheme;

[1] Australian Council of Trade Unions (2018), 'Australia's insecure work crisis: Fixing it for the future', ACTU, accessed: https://www.actu.org.au/media/1033868/insecure-work_final-18052018-final.pdf

4. Establish itself as a best practice employer; and
5. Create a process or tool to assess policy proposals according to impacts on job security

VTHC also strongly supports submissions made by the Migrant Workers Centre and Victorian trade unions that call for recommendations such as improved work conditions on temporary visas and for workers without documentation.

Introduce a national labour hire licensing scheme

The labour hire industry is rampant with sham contracting, which disguise employment relationships and allow employers to shirk their responsibility to provide minimum legal entitlements to their workers, including a legal minimum wage, leave entitlements and safe work conditions. As 'independent' contractors, workers are meant to be able to make decisions about pay rates, duties, and hours, yet 64 % of people who are classified as 'independent contractors' indicate they do not have authority over their own work.[2]

Labour hire is no longer simply used to supplement permanent workers, but has practically replaced them with easily replaceable workers. As a result, some labour hire workers are employed for years for the same position despite being engaged on a casual basis.[3] Many migrant workers fall victim to sham contracting in the labour hire industry and, in fact, some labour hire companies exclusively hire migrant workers to exploit their lack of familiarity with their workplace rights.[4]

To address the problem of exploitation in the labour hire system, VTHC recommends that the Federal Government establish a comprehensive National Labour Hire Licensing Scheme that includes all industries. It is important that the establishment of a licensing scheme go beyond the priority industries – horticulture, meat processing, cleaning, and security – identified by former Attorney-General Christian Porter and the Migrant Worker Taskforce.[5] This is because the scale and scope of insecure work and exploitation extends beyond these industries There is a need for a broader scheme as evidenced by the regimes in Victoria and Queensland.
A National Labour Hire Licensing Scheme should also share information with state government authorities on license applications, reports, and complaints. It should also give state government authorities the power to audit and investigate providers and hosts and propose to the Federal Government rejections to applications, cancelation of licenses, and penalties.

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[2] Australian Council of Trade Unions (2018), 'ABN Abuse: The rise of sham contracting', Australian Council of Trade Unions, accessed: https://www.actu.org.au/media/1385230/d182-the-rise-of-sham-contracting-and-abuse-of-the-abn-system-14-september-2018.pdf
[3] Migrant Workers Centre (2019), 'Report of the National Conference on Labour Hire Reform', Migrant Workers Centre.
[4] Ibid, p. 6.
[5] https://www.aph.gov.au/-/media/Estimates/eet/supp1920/6_Correspondence_from_the_AG_to_states_and_territories.pdf?la=en&hash=8A8AAACD8DEDBF0F92ED0DBB324177BEE3C460A7

A National Labour Hire Licensing Authority established as part of the National Labour Hire Licensing Scheme should also have entry, search and seizure powers with or without consent, with significant penalties for operators who provide labour hire without a license.

Importantly, unions must have the capacity to report breaches or suspected breaches to the Authority to investigate. Union representatives have familiarity with the exploitative practices common within the labour hire industry. Unions are therefore well-placed to identify breaches and represent workers collectively experiencing exploitation. Given the difficulty and risk for individual workers to raise concerns about their conditions as a result of their job insecurity, unions must play a core role in bringing complaints.

Recommendation 1.1: Make it mandatory for labour hire providers in every industry to be licensed by the Federal Government

Recommendation 1.2: Introduce a fit and proper person test on license applicants

Recommendation 1.3: Make it unlawful to engage with unlicensed providers and penalize both unlicensed providers and hosts that engage with them

Recommendation 1.4: Establish a statutory, independent authority that is responsible for licensing providers and overseeing compliance with federal and state workplace and OHS laws

Recommendation 1.5: Institutionalise tripartite consultations on protecting labour hire workers and regulating providers and hosts to advise the authority

Recommendation 1.6: Impose on providers the responsibility to report any change to business as well as to regularly report data on business, employment, and compliance with workplace relations, taxation, superannuation and migration laws

Recommendation 1.7: Share with state government authorities information on license applications, reports from licensed providers, and complaints against providers and hosts for periodic audits and investigations

Recommendation 1.8: Give state government authorities discretionary power to audit and investigate providers and hosts and propose to the Federal Government rejections to applications, cancelation of licenses, and penalties

Recommendation 1.9: Ensure unions have the capacity to report breaches and suspected breaches to the authority for investigation.

National portable annual leave and sick leave entitlements scheme

During the COVID-19 pandemic, many community transmissions occurred in the workplace.[6] When workers employed in insecure arrangements have to make the difficult choice between putting food on the table or staying home sick, it is clear that insecure work is a public health risk. Even before the pandemic, presenteeism cost the Australian economy in excess of $34 billion every year, due to the increased number of workers getting sick, and the increased likelihood of serious accidents at work.[7] All workers, no matter their employment arrangement, must have genuine access to sick leave to keep workplaces safe.

The National Employment Standards provide for 10 days paid time off to help workers deal with personal illness, caring responsibilities and family emergencies. However, analysis by the McKell Institute has found that 3.7 million Australians have no access to paid leave.[8] This includes the 2.6 million workers with no paid leave provisions, and the 1.1 million workers who work under a contract who must provide their own leave.[9]

Annual leave entitlements are also vital to the wellbeing of our workforce and our communities. Leave entitlements allow workers to engage in recreation, spend time with family, observe cultural or religious ceremonies, and enjoy work-life balance. However the rise of insecure work means leave entitlements, as they currently stand, are inadequate in achieving these benefits for millions of workers in Australia. Leave entitlements need to be revised and updated to maintain equity in our system of work as it goes through unprecedented technological and economic changes.

The Federal Government should amend the personal and annual leave provisions within the National Employment Standards to extend to all workers who perform work at the request or direction of another person regardless of the method of their employment or contracting.

A further solution to the problem of increasingly mobile workers working under multiple employment relationships, or non-standard or disguised employment relationships, is the creation of Portable Entitlement Schemes.

The McKell Institute has analysed in-depth the benefits of portable entitlements and recommends introduction of these on an industry basis. The McKell Institute recommends a model akin to the superannuation system which is run on a trustee model, as a genuine

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[6] ABC News (2020), 'Workplace coronavirus transmission driving Victorian case numbers, including in aged care', ABC News, accessed: https://www.abc.net.au/news/2020-07-19/workplace-coronavirus-transmission-in-victoria-in-aged-care/12470704
[7] Carter, L (2016), 'Presenteeism costs economy $34 billion a year through lost productivity, report shows', ABC Online, accessed: https://www.abc.net.au/news/2016-04-12/presenteeism-costing-the-economy-billions/7318832
[8] McKell Institute (2021), 'Insecure Work & Portable Entitlements: A solution for Australia', accessed: https://mckellinstitute.org.au/app/uploads/McKell-Insecure-Work-Portable-Entitlements.pdf
[9] Ibid.

partnership between employers and employees, and subject to regulation, would be an effective way to structure a system[10]

A Portable Annual and Personal Leave Entitlement Scheme would operate by employers paying an amount (or credit) into a central fund an amount equivalent to designated leave accumulated by workers over the period. This would usually be on a pro-rata basis, at regular intervals. Workers could then draw down on those account balances to take their leave, subject to normal requirements about taking leave. These usually involve agreement between the parties about when and how much leave is to be taken. In the case of termination or severance benefits, this also takes into account when the employment period ends.

The introduction of the Portable Annual and Personal Leave Entitlement Scheme for all workers who do not have access to paid leave entitlements would ensure that all workers are able to keep themselves, their coworkers, their customers and the community safe by guaranteeing 10 days of sick and carers leave with pay, and provide healthy work-life balance by ensuring all workers have access to annual leave. The Portable Annual and Personal Leave Entitlement Scheme would be funded by a levy that would reduce over time as the fund becomes self-sufficient.

Under a levy model, such as the model used in the Portable Long Service Leave schemes, employers would be required to report their employment of workers without leave entitlements to the fund and pay an appropriate levy. The fund would then invest the monies accrued to ensure that the liability can always be met and that the levy can reduce over time as investment returns increase. When a worker is sick or has caring responsibilities and unable to attend work they will notify their employer and be paid as per normal. The employer would then be reimbursed by the fund.

Recommendation 2.1: Introduce a national portable annual leave and personal leave entitlements scheme

Recommendation 2.2: Ensure workers in all insecure employment relationships have access to the scheme, including casual workers, labour hire workers and gig workers.

Recommendation 2.3: Ensure migrant workers are able to draw down on earned annual leave entitlements from the Fund upon departure from Australia.

National portable long service leave scheme

[10] McKell Institute (2021), 'Insecure Work & Portable Entitlements: A solution for Australia', McKell Institute

McKell Institute research estimates that 33% of Australian workers did not have any access or entitlement to long service leave at all, this being a common scenario[11] for workers who work on short contracts for many different employers such as mining; wholesale trade; transport and logistics; rental, hiring and real estate; business and personal services; and healthcare.[12]

Long service leave provides a much needed break from the demands and stresses of work, to encourage rest and recovery before again returning to work. Long service leave is not a 'reward' for years of service to a particular employer, it is an earned entitlement that has been circumvented by employers through the use of a casualised workforce or workers on a series of short-term contracts, but in on-going work.

In Victoria, there is a portable long service leave scheme for the contract cleaning, security and community services industries, as well as a private sector scheme in the construction industry. The Federal Government should create a national portable long service leave scheme to ensure that no worker in Australia misses out on these important entitlements. An effective national scheme could work towards replacing state schemes to guarantee uniform entitlements across all industries and jurisdictions, or may supplement existing schemes.

Portable long service leave would mean workers were again able to access leave entitlements after a sustained period in the workforce. It would encourage workers to take holidays or breaks to spend more time with their families. In addition, portable long service leave would provide substantial benefits to employers including the retention and increased productivity of staff.

A national Portable Long Service Leave Scheme should be compulsory for all businesses operating in Australia and all workers regardless of employment status. It should provide at least 8.67 weeks leave paid at ordinary pay after 10 years of work (pro-rata at 7 years) plus payout on retirement.

These schemes have proven themselves over the longer term to be of a financial advantage to businesses as the investments from these schemes become self-funding over time, allowing for a gradual reduction of future contributions from employers. As such, the Scheme should be initially funded by a levy on employers and invested by a National Portable Long Service Leave Authority, with the aim of decreasing the levy until it is self-sustaining when it can be removed entirely.

The Scheme must guarantee no loss of entitlements for workers already able to access a long service leave scheme.

Recommendation 3.1: Introduce a National portable long service leave scheme

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[11] McKell Institute (2013), 'The Case for a National Portable Long Service Leave Scheme in Australia', McKell Institute, accessed: https://mckellinstitute.org.au/app/uploads/McKell_Portable_LongService.pdf
[12] Ibid, p. 11.

Recommendation 3.2: Ensure that the Scheme guarantees no loss of entitlements for workers with existing access to a long service leave scheme.

Recommendation 3.3: Ensure migrant workers are able to draw down on earned annual leave entitlements from the Fund upon departure from Australia.

Government as best practice employer and procurer

The reliance on insecure work through casual employment and short term contracts in the public sector has been exposed by the pandemic. The Federal Government should use its position as an employer to model best practice employment standards to begin to address the scourge of insecure work.

This means that staff should only be employed as casuals where absolutely necessary with guaranteed rights to casual conversion after six months service. This policy should apply to public entities as well as the public service.

The use of short-term contracts should be limited to genuine short-term work rather than as a result of funding cycles. In order to ensure job security ongoing jobs should be maintained through funding cycles.

The Federal Government should review and radically reduce the contracting of overpriced consultants to do policy development and other related public service work, to ensure value for money and good public service jobs for our communities. The outsourcing of work in this manner has led to the deskilling of the public service, the poaching of talented public servants to private consultancies, an underinvestment in the development and training, below executive level, of public sector workers and ends up costing taxpayers more money.

In the 2019-20 Financial Year the Federal Government spent $53.975 billion on procurement.[13] Spending on this scale has the power to transform Australia as we emerge from the COVID-19 crisis by not only delivering the infrastructure, goods and services that Australians need, but doing so in a way that also ensures workers and their communities have jobs they can count on. Australians across all industries and sectors need assurances that where public money is spent, there is public benefit.

The Federal Government should ensure that across all portfolios and Departments jobs on projects, jobs funded by grants, and through the provision of goods and services funded by government and its agencies are good, secure jobs.

The Federal Government should collate and set standards expected of businesses and organisations tendering for public money resulting in a standardised, all of government procurement policy.

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[13] Australian Government Department of Finance, (2021) 'Statistics on Australian Government Procurment', accessed 30/3/21 at: https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts-

An all of government procurement policy should be backed by rigorous compliance, auditing and enforcement responsibilities to ensure that social procurement and other procurement policies relating to the supply of goods and services are complied with.

A key part of this procurement policy should include ensuring that quotas for apprentices, women, and First Nations workers on government work are set and then met.

In all of its employment and contracting practices the Government should maximise the delivery of secure jobs and model best practice employment.

Recommendation 4.1: Review and radically reduce the contracting of private consultants for policy work

Recommendation 4.2: Commit to minimising the use of short-term contracts in government employment and procurement practices, including in public entities

Recommendation 4.3: Establish guaranteed rights to casual conversion after six months of continuous employment for workers in the public service

Recommendation 4.4: Invest in professional development and training to encourage retention and maintain the skills capabilities of the public service

Recommendation 4.5: Develop a whole of government procurement policy that ensures government spending has as a key objective the delivery of secure jobs.

Create a process or tool to assess policy proposals according to impacts on job security

In post-COVID-19 recovery, the Federal Government will need to take leadership and utilise fiscal and economic mechanisms to create new, secure jobs for workers in Australia. While efforts have been made to boost jobs growth, they have been unsuccessful in creating full-time, permanent or well-paid jobs. Instead, many have created perverse incentives that make the job market more insecure. This includes the 2017 PaTH Internship scheme and the more recent JobMaker Hiring Credit. Both schemes incentivised hiring young people for low-paid and part-time work, with no guarantee of continued employment after the scheme. This often also incentivised firing older full-time workers and replacing them with multiple part-time subsidised workers. In fact, neither of these schemes have met goals of job creation either.

Loopholes within the disability wage subsidy is another example. Some employers rort the scheme by using a ‘revolving door’ of workers hired through government subsidies, who are guaranteed as little as 8 hours’ work a week and who are then fired at the end of 26 weeks. Employers should not be able to receive more government funds on a business model of hiring multiple workers on low hours with no job security once the subsidy runs out. This has a negative impact on the job security of not only the worker engaged in the scheme, but all workers in the industry who must compete with subsidised workers. Wage subsidies can

be powerful tools for job creation, but these jobs need to be good, secure jobs that grow our economy. This is why impacts on job security needs to be a key consideration in evaluating the merit of policy proposals.

VTHC recommends that the Federal Government develop an evaluation tool whereby policy proposals can be assessed for its impact on job security. This would allow policymakers to identify loopholes that unwittingly incentivise employment practices that increase underemployment and job insecurity. At the same time, an evaluation framework that centres job security may also bring to light other policy mechanisms that may be utilised to encourage more secure and permanent employment. For example, such a framework may be utilised to consider whether company tax discounts could be used to reward employers who employ staff in secure arrangements.

Alongside the development of this tool, the Federal Government must also invest in producing better data about insecure work and underemployment in Australia. Without reliable public data about the number and demographics of workers in Australia who are worried in insecure work, who have no access to paid leave, and who are engaged in platform-operated gig work, policymakers are unable to address the problem with the best possible information.

Recommendation 5.1: Create a policy evaluation framework that assesses whether policy proposals carry risks to job security.

Recommendation 5.2: Adjust or abandon policy proposals that create perverse incentives which contribute to job insecurity.

Conclusion

The Covid-19 pandemic has provided a platform upon which we can re-think and re-build our approach to work. It is now clearer than ever that every worker not only deserves but needs a job they can count on to plan their lives and access opportunities in the community. A strong economy and society can only be built on good, secure jobs and fair wages. Insecure work prevents us from achieving our goals as individuals and realising principles of fairness we value as a society.

Insecure work is perhaps the greatest public policy challenge of our time. The immense scale and far-reaching impacts of job insecurity is already widely documented. What working people need now is action.

The Select Committee of Job Security must make recommendations for urgent and effective action to address the job insecurity running rampant in our workforce. Job insecurity is an urgent and deep issue that will require leadership and the utilisation of all policy mechanisms available to resolve.

The pandemic has shown us just how rapidly livelihoods and economies deteriorate when job insecurity runs rife. This Inquiry is an opportunity to take significant and long-term action on job security, with the seriousness and urgency that it warrants.