

Senate Select Committee on Job Security

Inquiry dated 8 December 2021

Questions on Notice

CBA01QON	Grogan	<p>Senator GROGAN: In June this year there was an article in the <i>Sydney Morning Herald</i> about some of the labour hire people and the fact that you were using them as a basis for dealing with a shortage of people. The article reported that they were working in very high-risk customer and suspicious transaction areas—so basically your financial crimes area. Is that the case, and do you see any risks there in using labour hire for those very risky and sensitive areas rather than employing people directly?</p> <p>Mr Culleton: I'm not sufficiently close to that article but I can make some broad comments around your question of whether it is risky. Our preference, particularly in financial crime, is for our employees to be permanent; it's certainly what we seek. In relation to the way we onboard our labour hire employees: from a day-to-day experience they're just like any of us, particularly when you get into the financial crime area. They go through the same onboarding. They are obligated to do the same training and mandatory learning as we are. They are absolutely supported the same way as an employee is. As you can appreciate, we put them through fairly rigorous and thorough testing and support to make sure we are keeping our customers' money safe and sound.</p> <p>Senator GROGAN: You say they're doing the same training. My understanding is your permanent employees' training in that arena is a 12-week program. Would you be putting labour hire people in a 12-week training program as well? Is that what you're saying?</p> <p>Mr Culleton: I'm not familiar with the 12-week training program. I can certainly take that away and come back. I can confirm that.</p> <p>Senator GROGAN: If you could take that on notice, that would be very helpful.</p>	Hansard, p. 39 8/12/21
	CBA Response	We have confirmed there are no differences in training requirements between labour hire and permanent employees with respect to the 12-week training programme referred to during the inquiry by Senator Grogan.	
CBA02QON	Sheldon	<p>CHAIR: Thank you, Senator Grogan. A piece of correspondence has been sent over to the secretariat, in relation to a question asked by Senator Small, regarding the casual conversion numbers the FSU gave us this morning. I understood you weren't aware of those figures, where they came from. In the correspondence I've just sent over, through the secretariat—has that got to everybody on the committee? It has? Thank you. It should be in your inbox as well, Mr Culleton and Mr Robertson. Can you confirm that correspondence is correct? I understand it says there have only been 38 casual conversion offers and four accepted.</p> <p>Mr Robertson: We're not in front of our computers or phones at the moment, so it may be better if we confirm that with you by correspondence after the session if that's acceptable.</p>	Hansard, p. 39-40 8/12/21
	CBA Response	We confirm that the letter provided to us by the Committee secretariat, namely a letter from CBA to the FSU on 11 November	

		2021, accurately reflects the number of offers of casual conversion made and accepted following the casual conversion changes to the Fair Work Act.	
CBA03QON	Sheldon	<p>CHAIR: You referred to the group operations team, which does line processing—I am just going back to some answers to previous questions—and the accounting for a lot of your labour hire staff in that particular area. Do you also have any direct employees doing the same work?</p> <p>Mr Culleton: We do, yes.</p> <p>CHAIR: Would most of these have started off in labour hire?</p> <p>Mr Culleton: I would need to confirm that, but, from what I've seen, I would be surprised if that was the case. But I certainly can confirm that.</p> <p>CHAIR: Thank you.</p> <p>Mr Culleton: Most of our financial crime analysts and most of our people on operations are permanent employees. Only a fraction of them are labour hire. The majority of people supporting these two critical functions are permanent employees. But I will confirm that.</p>	Hansard, p. 40 8/12/21
	CBA Response	<p>Since March 2018 there have been around 5 per cent of employees who were once labour hire workers in CBA's Group Operations Retail Lending team.</p> <p>For all operations teams in the Chief Operations Office, around 13 per cent were once labour hire workers.</p>	
CBA04QON	Sheldon	<p>CHAIR: Thank you. I just want to go to an article that was in the Financial Review on 22 November, saying that the Commonwealth Bank had fired a worker who had discussed their pay with colleagues. The first line of the article states:</p> <p>The Commonwealth Bank fired a newly recruited employee in part because he discussed his pay with colleagues ...</p> <p>Is that correct?</p> <p>Mr Robertson: I understand that this is a matter which, if it's not before the Fair Work Commissioner, is likely to go to the Fair Work Commission. I think so. It's difficult for us to provide much commentary. I'd refer you to the comments that we provided to the AFR, at the time, where we said:</p> <p>... the lender's employment with the bank was terminated before the end of his probation period "for a range of conduct issues that were raised with him on a number of occasions".</p> <p>"[We] therefore refute the suggestion that his termination was as a direct consequence of pay secrecy."</p> <p>CHAIR: So the issue of pay secrecy wasn't included as a reason or cause for termination that was given.</p> <p>Mr Robertson: Again, as the matter is likely to be before the Fair Work Commission, I would have to go back to those comments that we made at the time.</p> <p>CHAIR: Mr Robertson, the great advantage of being in the Senate inquiries is there are some obligations in answering questions. It is outside the normal legal process. What we do make sure is that</p>	Hansard, p. 41 8/12/21

		<p>people aren't disadvantaged. Since there has already been commentary on this, of a public nature, and you've just termed a response to this question about whether it was a matter that was included in the terms of dismissal, I'd appreciate—I haven't asked for weighting. I'll leave that to your own discretion, whether you want to make comment on it, but I don't think it's inappropriate to say whether a person was dismissed because one of the reasons given was that the pay issue was commented on and discussed with other workers.</p> <p>Mr Robertson: I understand that. I haven't seen the letter that was written to the employee at the time. The most detailed source of information I have about this matter is the AFR article that you're referring to. I've familiarised myself with that article in the expectation that it might be raised.</p> <p>Mr Culleton: I have seen the letter. Acknowledging your point around weighting, there were seven reasons why this employee was terminated and that was one of them. It would be fair to say that the practice, as our CEO has commented on, is not to enforce this but it was definitely one of the seven reasons that this employee was terminated from the group.</p> <p>CHAIR: The article goes on to say:</p> <p>... shortly after the conversation, the lender's then-manager allegedly advised him that discussing penalty rates was not acceptable and would result in disciplinary action in the form of a warning letter—which was not issued before his termination.</p> <p>Why can't employees talk about their pay? I'm not clear what the great issue is there.</p> <p>Mr Culleton: I would need to take that away. I'm not familiar with it either, too much. I'm more than happy to take that one way.</p> <p>CHAIR: Can you go to that question more generally, rather than talking about a specific case? Instilled in many of the arrangements entered into, with employees and the company, there is language that the employees aren't to discuss what they get paid. This has been identified as a gender issue, an equity issue, in lots of other forums. So I'm asking you, more generally, why is that contained in letters of appointment and employment?</p> <p>Mr Culleton: I would make a couple of comments. One is that at CBA, and I heard it this morning, there is pay parity in relation to remuneration arrangements. In relation to this being part of contracts, this is something we are currently reviewing, and I think this is something our CEO has taken away to look at. We are reviewing our confidentiality clauses as they relate to remuneration arrangements. That is something we are currently looking at.</p> <p>CHAIR: Thank you for that. I note that the matters raised in the <i>Financial Review</i> were on 22 November. The reasons given—one of the seven issues, if I remember correctly—from your evidence included the question of talking about, and comparing, colleagues' pay. Your CEO, Mr Comyn, told the House Standing Committee on Economics, back in September this year—and this transcript has been provided by the secretariat—that CBA does not seek to</p>	
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		<p>enforce these clauses. But the evidence in this case would appear to suggest that he wasn't telling the truth.</p> <p>Mr Robertson: I acknowledge that the secretariat sent through a copy of the <i>Hansard</i>. On my reading of the <i>Hansard</i>, it's pretty clear that Matt is talking about his experience, and, as Andrew says, it's clear that we don't rely on these clauses as a primary reason for taking disciplinary action. In fact, to refer to Matt's exact quote in response to the member for Dunkley, he said: 'I can't think of a single example in my more than 20 years at the Commonwealth Bank of ever hearing about anyone being questioned or queried or anything around revealing information about their remuneration. Personally, I haven't felt the need to do so.'</p> <p>CHAIR: Has he taken the opportunity to correct the record, are you aware?</p> <p>Mr Robertson: No, I wouldn't say we have seen the need to correct the record. As I've just said, I think Matt is clearly talking about his personal experience, and, as Andrew said, these are not clauses that we primarily rely upon, and Matt has said publicly that we're happy to take them away and have a look at how this could be done differently, particularly in light of the comments that you've made about concerns from a gender equity point of view.</p>	
	CBA Response	CBA's standard contract includes a general clause which states that conditions of employment (including remuneration) are confidential. As mentioned in the hearing, we are looking at this clause and whether a different approach could be taken.	
CBA05QON	Sheldon	<p>CHAIR: I wasn't limiting it to that. But thank you for taking that on board; I appreciate it.</p> <p>How many termination letters are there that have included the item of wage discussion—or where pay being discussed with colleagues has been one of the set of weighted issues leading to termination or disciplinary action? Are you aware of that, over the last 12 months?</p> <p>Mr Culleton: I am not.</p> <p>CHAIR: Are you able to come back to us, for the period of the last three years, as to what letters have included that question of discussing pay with colleagues?</p> <p>Mr Culleton: Yes. We can take—</p> <p>Mr Robertson: We will endeavour to do so. We'll see what we can produce for you, yes.</p> <p>CHAIR: Thank you very much. As to Mr Comyn's evidence to the House economics committee: I appreciate the language you have put to me about what the answer was, but what I inferred was that this doesn't happen. That's the inference taken on a normal person's reading of the language. On a different matter: [...<i>FWO question below</i>]</p>	<p>Hansard, p. 42 8/12/21</p>
	CBA Response	We have reviewed employees whose employment was terminated since 1 January 2019 and we have not identified any letters (other than the matter raised by the Committee) where	

		discussion of an employee's remuneration arrangements was an issue raised with the employee.	
CBA06QON	Sheldon	<p>CHAIR: On a different matter: separately, the Fair Work Ombudsman announced in October that it is pursuing CBA for thousands of underpayments, totalling more than \$16 million, created by IFAs that undercut your enterprise agreements. Why does CBA use IFAs? Why do they continue to use them? If IFAs are still in place—</p> <p>Mr Culleton: Yes we—</p> <p>CHAIR: Do you still use IFAs, or have you got rid of them all?</p> <p>Mr Culleton: We certainly don't continue to use them. Obviously, we have a number of employees who remain on an IA.</p> <p>CHAIR: What numbers are they?</p> <p>Mr Culleton: I haven't got the latest—</p> <p>CHAIR: A rough estimate would be fine. Have you got a rough estimate?</p> <p>Mr Culleton: A rough estimate would probably be somewhere between 15 and maybe 15,000.</p>	Hansard, p. 42 8/12/21
	CBA Response	As at 09 December 2021 approximately 13,600 employees across the Group are engaged on agreements described as an individual flexibility arrangement (IFA) or individual arrangement.	
CBA07QON	Sheldon	<p>CHAIR: On the question of IFAs I appreciate the evidence you've just given, but I'm going to put to you something from the AFR article on 11 October 2021. It's titled 'CBA "knowingly" underpaid staff \$16 m in mass use of individual agreements'. The article says:</p> <p>The Commonwealth Bank is facing millions of dollars in fines as part of a court action that alleges it "knowingly" underpaid thousands of employees more than \$16 million by getting them to sign on to individual agreements that undercut union deals.</p> <p>Is that allegation correct? I'm putting it to you this way, that one of the things the Fair Work Ombudsman is prosecuting the Commonwealth Bank for is the knowingly underpaying thousands of employees.</p> <p>Mr Culleton: I couldn't comment on this because I'm not across the particular point that the Fair Work Ombudsman is taking us to court on. I couldn't comment on whether or not I could agree or disagree with that. I'm not in a position to know what they are referring to, in relation to 'knowingly'.</p> <p>CHAIR: Can I take that on notice?</p> <p>Mr Culleton: I can take it away, yes.</p>	Hansard, p. 42 8/12/21
	CBA Response	As the Committee is aware, there are legal proceedings that have been commenced by the FWO that are before the Court that, amongst other things, relate to IFAs, including an allegation that after September 2017 CBA engaged in "serious contraventions" under the Fair Work Act. A serious contravention occurs where the contravention occurred knowingly and on a systematic basis. The Court will determine this matter and the other allegations in	

		the FWO proceedings at a hearing date which we expect to be set in late 2022.	
CBA08QON	Sheldon	<p>CHAIR: Can you tell me, then, why the IFAs were discontinued?</p> <p>Mr Culleton: There are a couple of things. One is that while we got the pay right 99.7 per cent of the time, we obviously had instances where people were failing the boot and, for us, that simply wasn't good enough. The second reason is it no longer was fit for purpose for our organisation, so we stopped offering them.</p> <p>CHAIR: Thank you for that evidence. With that \$16 million figure, I'm not quite clear on how many workers have allegedly been underpaid.</p> <p>Mr Culleton: I would have to confirm, but from memory—I could be wrong—it was 7,000 or 6,500. Again, I would need to confirm.</p> <p>CHAIR: That's okay. I appreciate you giving us an approximation and you'll come back with detail. So it's roughly half of those on IFAs.</p> <p>Mr Culleton: Providing my 15,000 number was accurate too. I need to confirm that as well.</p>	Hansard, p. 43 8/12/21
	CBA Response	The FWO proceedings relate to a subset of remediated employees, being approximately 7000 current and former employees. The remediation amount for those current and former employees is approximately \$16m.	