

Research Paper  
No. 9 2003–04

## Labour hire: issues and responses

Labour hire is an alternative form of employment to the direct employer-employee relationship. Labour hire involves relationships between a principal, an employment agency and the person performing the tasks. While labour hire arrangements have been a feature of the Australian labour market for decades, the relatively recent data now being compiled on this sector suggests it is a growth industry, with many large employers increasing their use of labour hire arrangements in preference to direct employment. This paper reviews the factors behind the growth of labour hire and provides updates on responses to the issue within the courts, by governments and by labour unions.

Steve O'Neill  
Economics, Commerce and Industrial Relations Group  
8 March 2004

ISSN 13328-7478

© Copyright Commonwealth of Australia 2004

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

## Enquiries

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.apl.gov.au/library/>

IRS Publications Office

Telephone: (02) 6277 2778

Published by Information and Research Services, Parliamentary Library,  
Department of Parliamentary Services, 2004.

## Contents

Executive summary. . . . .	1
Introduction . . . . .	3
Key features of the labour hire industry . . . . .	4
Value of the industry . . . . .	4
The rise of labour hire companies . . . . .	5
Phases of growth . . . . .	6
The legal issues with agency employment . . . . .	7
Labour hire or employment? . . . . .	8
ODCO (Troubleshooters Available) . . . . .	10
Country Metropolitan Agency Contracting Services . . . . .	11
Oanh Nguyen. . . . .	12
Endoxos. . . . .	12
Union issues. . . . .	14
International aspects of temporary work and employment agencies . . . . .	16
OECD perceptions of Australian employment protection laws. . . . .	16
European Union . . . . .	16
International Labour Organisation . . . . .	17
State inquiries into labour hire . . . . .	18
New South Wales. . . . .	18
Queensland . . . . .	19
South Australia. . . . .	19
Victoria . . . . .	20
Western Australia . . . . .	21
Tasmania . . . . .	22
Conclusion. . . . .	22
Endnotes . . . . .	23



## Executive summary

Labour hire is a form of indirect employment relationship in which an agency supplies workers to work at a workplace controlled by a third party (the host), usually in return for a fee from the host. Labour hire arrangements are similar to employment placement services, and comprise a part of the employment services industry. However, it may be assumed that when an employment placement agency secures a worker a job, their relationship is likely to finish. With labour hire arrangements, the three-way relationship between host, agency and worker will continue for the period of the assignment.

The most recent Australian Bureau of Statistics data on number employed through labour hire arrangements suggests that 290 100 employees were 'on-hired' through agencies in June 2002 and 162 000 workers were paid by labour hire firms in November 2001 (almost doubling from 84 300 some three years earlier). The Australian Council of Trade Unions (ACTU) estimates that one in five workplaces uses labour hire, while in the largest workplaces (by employment) more than half use labour hire agencies. While reasons for the growth of labour hire vary, it appears that companies will turn to employment services after their own company's internal personnel management or human resource management functions have been reduced or contracted out.

The Bureau of Statistics estimates that the value of the employment services industry in 2001–02 was \$10.2 billion, although it notes that the industry generated a 30 per cent increase in income over the three years 1998–99 to 2001–02. The growth of this industry has generated concerns for Labor governments in particular, as unions have put political and industrial demands on governments to curb the use of labour hire. Also, the recent debate over the casualisation of the workforce is one manifestation of the growth of labour hire.<sup>1</sup>

Labour hire workers may be denied access to the benefits of the collectively negotiated labour agreements of the principal business and these businesses may deny responsibility for the welfare of this class of worker, particularly in the areas of health and safety and training.<sup>2</sup> The problems for injured labour hire workers are compounded in that they are less likely to have a specific work site to which to return for rehabilitation and return-to-work duties.

One issue that unions often raise is that labour hire workers at a particular site may be paid the award rate, while their directly employed colleagues at the same site may be paid at a higher enterprise bargaining rate.<sup>3</sup>

As labour hire workers have pursued grievances over their employment terms or health and safety issues, industrial tribunals in a number of cases have also questioned the use of a labour supply intermediary, and have chosen to impose some employer obligations on the host business. It should be stressed that such approaches do not constitute the norm, as one of the key ongoing issues with labour hire is whether the worker is: an employee, an independent contractor or a dependent contractor. The definition of the form of

employment or engagement has major consequences in respect of related rights; for example, only employees can commence legal action against an unfair dismissal.

The growth of unstable, non-regular work routines has implications for the living standards of agency workers.<sup>4</sup> It also has implications for potential union members and the administration of trade unions. ACTU Congress policy has reflected concern with labour hire and, generally, unions have sought to ‘rope-in’ the major labour hire firms into the relevant industry awards, or to create special purpose labour hire awards that may have reference to the industry awards.

The focus in 2004 will be on a NSW Labor Council test case on casual and labour hire work, which will be heard by the NSW Industrial Relations Commission. This case seeks, among other things, the conversion of labour hire employment to direct employment after six months of work. The federal government has signalled its intention to intervene in this case, which is scheduled to begin in May 2004.

Employment placement or labour hire arrangements have benefits for workers in the sense of having an agent scouting for work and perhaps tailoring the conditions—say, short hours or temporary periods—to suit the worker. For businesses the immediate advantage is ‘numerical’ flexibility, particularly the ability to add labour during periods of demand, while not increasing the prime workforce numbers. In many respects then, labour hire appears to be a feature of a modern labour market.

Australia is noted in international comparisons of the conditions of temporary work as having few restrictions on the use of temporary contracts. The OECD has undertaken studies of the strictness of labour law in the use of temporary workers. In Australia, there are no restrictions on the type of work or areas of economic activity where temporary work agencies may choose to operate. From the OECD’s perspective: ‘[Australia’s] labour law neither specifies a maximum number of successive contracts or contract renewals’.<sup>5</sup>

Against this relatively liberal background, governments have taken initiatives to curb the worst features of the labour hire industry. The New South Wales Government conducted an inquiry into the labour hire industry in 2001 ([NSW Labour Hire Task Force Report](#)), but has been reluctant to implement all of its recommendations, although a tripartite council governing the industry has been formed. A key recommendation was registration of businesses operating to supply labour. Queensland expanded its industrial relations law in 1999 to govern the operation of the labour hire industry. Victoria will conduct its own inquiry into labour hire in 2004. South Australia has also considered the growth of ‘atypical’ employment in a recent review of the state’s industrial relations system and laws. Tasmania has sought to remove an exemption on the payment of payroll tax by labour hire firms, thus increasing their cost of operation. Western Australia has included labour hire employment within its definition of an employer.

State governments may be able to control the worst features of labour hire by placing conditions on the agencies through registration or by amending state labour laws. (The

exception may be Victoria, which transferred its industrial system to the Commonwealth in 1996.) However, as almost all the states have either acted to control or review the labour hire industry, a national inquiry into its operation would seem warranted.

## Introduction

The term 'labour hire' elicits many connotations but few firm definitions. It can refer to the use of 'alternative' workforces by businesses, where a supplier provides short or long term labour to a principal (the host). The service might be comprised of a total function formerly performed by the host but subsequently performed by the labour supplier, or the service may simply be the referral of individual workers to be directed to perform the work by the host. Employment placement services form the broader group of services in which labour hire operates. Where a person referred for a position from an employment agency is accepted by the host, it is usual for the relationship between the person referred and the employment agency to terminate immediately (assuming fees and so on have been met). Under labour hire arrangements, the three-way relation of host, agency and worker continues for the period of the worker's engagement with the host.

Workers may be engaged under labour hire as employees or non-employees (independent contractors or dependent contractors). Employers gain considerable benefits from engaging workers as non-employees. Workers engaged this way are not entitled to forms of paid leave and cannot contest an unfair dismissal; employers do not need to provide superannuation or workers' compensation cover.

The courts refer to longstanding employment assessment criteria to determine whether an engagement is one of employment or a contract for service (see below), although weighting is also given to the terms of an agreement for the performance of work. Under the usual circumstances, labour hire workers are required to sign a contract with their agency. This may specify that the relation is *not* one of employment. The often ambiguous circumstances of the engagement of labour hire workers has been explained to the Senate Community Affairs Committee's Inquiry into Poverty and Financial Hardship in the following terms:

One [employment option] is that the labour hire worker will become a casual employee of the labour hire agency. They should be covered by either a state common rule award or, in some very rare instances, by a federal award. However, alongside that there will be a contract that that labour hire employee will also sign. It is a common law contract; it is not registered in any of our commissions under any of the provisions of the state or federal legislation. It will run in conjunction with the award provisions. But, really, most of those workers would not know what their award provisions are...

The other [option], and this is even harder, is that the labour hire employee will be stated by the labour hire company to be a contractor ... So that relationship is even more tenuous.<sup>6</sup>

Those who seek work via employment agencies may feel supported by having an agency seek employment on their behalf and they may enjoy the freedoms associated with limited term appointments. Labour hire of a short-term nature allows employers some flexibilities, usually in what is called numerical flexibility, functional flexibility, hours flexibility or wages flexibility, to meet business peak demand or trough periods. For workers and contractors, there is an advantage to signing with an agency, as the agency has an interest in securing work and thus income for those registering to work. But at least some of this growth of labour hire appears to be coming from the replacement of directly employed labour. There also seems to be more evidence—for example, from major companies such as Telstra and Qantas—that companies are seeking to increase the labour hire component of their workforce at the expense of ongoing employees.<sup>7</sup>

This paper considers the labour hire industry in terms of its value and recent growth. It reviews some analyses of the stages of development of labour hire. The developments in employment law and contract law that have assisted the growth of the industry are considered, as well as certain instances where the courts have imposed obligations on the host employer. The paper considers union responses, particularly ACTU policy on labour hire and casualisation, and the issues behind a test case on labour hire in the NSW industrial jurisdiction in 2004, which has attracted federal intervention. The paper concludes with an overview of responses taken by certain state governments, and options for responses to labour hire.

## **Key features of the labour hire industry**

### **Value of the industry**

The industry body representing the labour hire industry, the Recruitment and Contract Services Association, conducted a survey in 1999 that indicated that the recruitment industry generates around \$10 billion in annual sales in Australia.<sup>8</sup> This data is more or less in line with Australian Bureau of Statistics (ABS) estimates of the value of the employment services industry in 2001–02, although the bureau noted that the industry generated a 30 per cent increase in income over the three years 1998–99 to 2001–02. In addition, it noted that employment placement agencies including those operating under the Job Network, as well as bodies such as group training organisations, would account for a part of this growth.<sup>9</sup> Labour hire constitutes a part of the employment services industry.

The numbers placed into work via employment placement agencies increased by 44 per cent, from 2.3 million to 3.3 million placements in the three years to June 2002.<sup>10</sup> The most recent ABS data on the number employed through labour hire arrangements suggests that 290 100 employees were on-hired through agencies in June 2002.<sup>11</sup> The bureau also estimates that 162 000 workers were paid by labour hire firms in November 2001 as compared to 84 000 three years earlier.<sup>12</sup> Thus, there appears a discrepancy in estimates of labour hire workers.



Companies may be reluctant to directly employ staff beyond the core staff needed to administer a trading business; instead, they will use a labour hire agency to find and scrutinise labour and have the agency 'employ' that labour, relying on provisions of the contract with the supplier that allows workers to be recalled. In other words, the host may exercise some choice and control over who is selected and recalled for work periods. The arrangement may lead to the displacement of the host's ongoing workforce or part of it, as was recently reported in *The Australian*:

Because of the difficulties small business faces in managing employment and complying with the rules, many small businesses now use labour hire companies for all or part of their workforce. Although it can be more expensive than straight employment, labour hire delivers flexibility.<sup>13</sup>

Another dimension to labour hire is its capacity to contribute in strike breaking, particularly as the old arbitration system continues in decline and non-union bargaining of various forms continues to spread.<sup>14</sup> The use of a replacement workforce was a conspicuous feature of the 1998 waterfront dispute involving the Maritime Union of Australia and various Patrick stevedoring companies.<sup>15</sup>

### The rise of labour hire companies

The use of labour hire accelerated over the 1990s and has allowed businesses to shed many of the obligations that they would otherwise have to their 'direct' employees. While much union concern with labour supply agencies has been with the possible undercutting of standard pay rates, CCH labour law editor Peter Punch observes that one important reason for the growth of labour supply agencies and arrangements has been the advantages of these schemes to large companies for tax planning purposes.<sup>16</sup> Other factors behind outside recruitment have been the contracting out of previously in-house personnel and human resource management functions.<sup>17</sup>

In the public sector, reductions in agency budgets have led to staff reductions, including outsourcing of in-house work and redundancies of in-house staff.<sup>18</sup> Rules on the subsequent re-employment of key individuals within a certain timeframe has meant that their 're-employment' can be facilitated more easily through a labour-hire arrangement, as it circumvents an otherwise direct employment relationship.<sup>19</sup> Perhaps another factor underlying the public sector's use of temporary employment and labour hire has been the linking of items of agency funding to specific term programs often to be funded under competitive tender arrangements.<sup>20</sup>

Consequently, there are few sectors of the economy now in which labour hire is not used. As the Queensland Government report [\*Managing Health and Safety in the Labour Hire Industry\*](#) (1999) put it:

The growth and expanse in labour hire organisations can be crudely measured by simply examining the listings in the Yellow Pages of the Telephone Directory. It is hard to find an industry in which these organisations do not operate. Labour hire organisations

continue to support traditional services such as clerical, construction, transport and cleaning, and have expanded into computer related and administrative tasks in the public and private sector, home-based child care, security services and many others.<sup>21</sup>

Also, local labour supply firms have been displaced by larger local—and some overseas-based—labour supply firms:

The contemporary industry in Australia features a number of very large, high profile international labour hire, or ‘flexible labour’ firms that have moved in over the top of the domestic operators, on occasion acquiring ownership and control of those companies. Adecco and Manpower are amongst the largest labour hire operators in Australia. Those operators have spread their supply of labour across the entire labour market while other big established players such as Skilled Engineering retain more specialised operations. In 2000 it was estimated that Adecco had revenues in Australia of over \$700 million which were anticipated to top \$1 billion within two years.<sup>22</sup>

While the debate over labour hire is couched in terms of national borders, the reality, as evident from the quote above, is very much of an international industry that is capable of finding overseas employment opportunities for local job seekers as well as finding labour from developed countries. There is also the related issues of labour hire and both legal and illegal migration, which is currently a major political issue in the United States that has not been explored here.<sup>23</sup>

### Phases of growth

Richard Hall, a labour market researcher reporting on labour hire arrangements, refers to three antecedents to the labour hire industry:

- the **traditional agency employment industry**. ‘Temping agencies’ have long specialised in the provision of workers to help client companies cope with fluctuations in demand or the temporary absence of employees
- the **recruitment industry**. **This industry** expanded in the 1970s and 1980s when firms outsourced their human-resource functions and then looked to specialist recruitment companies to provide shortlists of suitable candidates or to test such candidates through the recruitment firm before making an offer of direct employment
- the **‘pure’ labour hire industry**. **This industry** grew in the late 1980s when several small specialist firms began to offer contract labour as a replacement for, or supplement to, existing employees in companies in several highly unionised and dispute-prone industries, such as building and construction and shearing.

Since the early 1990s, employers have increased their use of casual, contractor and labour-hire forms of employment, often on a long-term basis. Employers have used these forms of labour not only to increase flexibilities, but also to discard many of the conventional obligations of employers to employees, most notably workers’ compensation coverage,

superannuation contributions and paid leave. It is the proliferation of labour hire as the alternative to direct employment that raises difficulties, according to Hall's study:

The problem with labour hire in the contemporary Australian labour market is not its existence per se—it has, after all existed in one form or another for at least 50 years—but rather in its proliferation as an alternative form of employment ... Regardless of the exact number of labour hire workers, it is apparent that they constitute a large and growing proportion of the labour market.<sup>24</sup>

A recent media report on Telstra highlights the separation between a company's employed workforce with its (usually) collectively negotiated labour agreements, and the company's subcontract workforce. In an effort to save \$800 million on costs in 2003, Telstra switched the head contractors it uses to service parts of its network. The sub-contractors remain the same, but their rates are reported to have fallen by 15–20 per cent. *The Australian* reports:

If the subcontractors were employees of Telstra or Foxtel, there's no way their pay could be cut 15 or 20 per cent without a riot. There's no way Telstra would be promising an \$800 million cost-cutting campaign if all its work was being done by employees as it used to be. That's because employees are governed by the Workplace Relations Act and explicitly allowed to act collectively; subcontractors are governed by the Trade Practices Act and explicitly prohibited from colluding.<sup>25</sup>

## The legal issues with agency employment

The use of labour-hire arrangements involves splitting what would otherwise be a direct employment contract into a number of contracts for the provision and supply of labour between the labour supplier and the host and between the worker and the labour supplier.

The legal definition of labour-hire employment that employment and industrial lawyer Charles Power suggests contains the following:

Labour hire is a form of indirect employment relationship in which the employer (the agency) supplies its employees to work at a workplace controlled by a third party (the client) in return for a fee from the client. A typical agency will direct an employee to work for a client for a period (assignment) ranging from a single day to a number of years.<sup>26</sup>

During an assignment the agency will pay the employee casual rates of pay, although the employee will often work the same hours as the client's permanent employees. When the host or agency terminates the assignment, the employee may wait on the agency's 'books' to be reassigned to another client or to the same client. From submissions to the NSW labour hire inquiry ([NSW Labour Hire Task Force Report](#)), one major employers' association, the Australian Industry Group (AiG) estimates that almost 97 per cent of labour-hire workers are engaged as 'casuals'. While some labour-hire workers are on long-term contracts (the ACTU has estimated that over 10 per cent of labour-hire workers have

been with the one client for over two years<sup>27</sup>), the Recruitment and Contract Services Association has estimated that the *average* length of labour hire assignment is six weeks.<sup>28</sup>

Power also notes that most labour-hire assignments are for less than 12 months meaning that, should the employment relationship fall under the federal jurisdiction, the employee would be ‘excluded’ from the *Workplace Relations Act*’s unfair dismissal provisions. (This is also the case under some, but not all, state dismissal laws.) Should the employee not be regarded as such, but instead be viewed as providing a contract for service, then the *Workplace Relations Act*, under sections 127A-C, allows for such a contract to be reviewed for unfairness, providing constitutional constraints underpinning these provisions can be met.<sup>29</sup>

However, Power’s research traces a number of unfair dismissal cases in the federal jurisdiction to ascertain what leverage ‘agency’ workers can use under the *Workplace Relations Act*. He gives considerable weight to the *Hamzy* case in the Federal Court, which allowed short-term casual employees access to the Act’s unfair dismissal jurisdiction.<sup>30</sup> The point should be made that the case pertained to the rights of casual employees and the decision hinged on an employee being required on a regular basis to work to the business’s roster (not via labour-hire arrangements). An attempt to overturn the *Hamzy* decision has been made via an amendment to the *Workplace Relations Act* in the *Workplace Relations Amendment (Fair Termination) Act 2003* (operative from 27 November 2003), which excludes casuals with less than 12 months of sequential employment periods with the one employer from making unfair dismissal applications.

### Labour hire or employment?

Two issues concerning labour hire and labour subcontracting receive considerable legal scrutiny. One concerns the exemptions provided by the *Trade Practices Act 1974* to labour arrangements, and whether the Act’s exemption for collective bargaining should apply to labour-supply arrangements, and indeed whether sub-contractors might be obliged to meet or abide by terms of the ‘framework’ employment agreements. The other concern is whether the terms of a labour-supply contract will stand and in so doing override any assumptions that, without the labour contract, the arrangement would be seen as a direct employment relationship. A direct employment relationship would impose greater obligations on the employer (which at first instance is likely to be assumed to be the labour hire agency).

Where an enterprise agreement contains a provision purporting to restrict the use of labour-hire arrangements, the provision may be questioned as to whether it conflicts with provisions of the *Trade Practices Act* (section 45E) by preventing or hindering contractors from acquiring services from sub-contractors, labour-hire companies or other organisations such as group training companies. On the other hand, direct employment arrangements and bargaining are exempted from the *Trade Practices Act* [paragraph 51(2)(a)], which reads:

51(2): In determining whether a contravention of a provision of this Part other than section 45D, 45DA, 45E, 45EA or 48 has been committed, regard shall not be had:

(a) to any act done in relation to, or to the making of a contract or arrangement or the entering into of an understanding, or to any provision of a contract, arrangement or understanding, to the extent that the contract, arrangement or understanding, or the provision, relates to the remuneration, conditions of employment, hours of work or working conditions of employees.

As was pointed out by the National Competition Council in its review of certain provisions of the *Trade Practices Act*:

Section 51(2)(a) ... serves to minimise the transactions, compliance and regulatory costs which may, in the absence of the exemption, be associated with enforcing Part IV of the TPA in respect of all employment agreements and arrangements ...

The exemption provided by section 51(2)(a) is aligned with Australia's framework for industrial relations. By exempting **both** employers and employees from the application of Part IV, section 51(2)(a) allows employers and employees to collectively bargain on employment agreements, as recognised by Australia's industrial relations framework.<sup>31</sup>

Nevertheless, employer groups such as the Australian Chamber of Commerce and Industry (ACCI) argue that section 51(2) of the *Trade Practices Act* provides only a *limited* exemption for collective bargaining over matters such as wages and conditions of employment. However, the issue also hinges on whether a subcontractor's workforce are contractors (managing their own business) or dependent contractors (for example, reliant on one client for the majority of their work and income) or are considered to be employees. Thus, the other major task before tribunals may be either to uphold a labour hire contract or to set it aside by making the observation that, on the facts, the relationship is one of employment.

The tribunals give considerable weight to the formal instruments used to convert an employment relationship into another arrangement. In *Damevski v. Endoxos* the Australian Industrial Relations Commission initially found that Riste Damevski was not an employee of Endoxos, but rather that he had become an independent contractor. Damevski had been an employee of the company, but was found to have resigned his employment and entered into a contractual arrangement with a third party, MLC, which then entered into contracts with Endoxos for the supply of labour.<sup>32</sup> As will be noted, this view was overturned on appeal.

That such arrangements are seen in the first instance as legitimate is attributable, mainly, to the precedent set in the Federal Court's *Odco* decision (see below).<sup>33</sup> Even in cases where a contract for the performance of work specifies two parties in a direct work relationship (as principal and subcontractor), the courts are reluctant to override the contract, and in its place imply an employer—employee relationship.<sup>34</sup> However, some employment agency cases, noted below, indicate a willingness by industrial (and related)

tribunals to consider the role of the host employer in directing the performance of work. Thus, on occasions they find reasons not to follow the Odco decision, and impart employment obligations on the host.

ODCO (Troubleshooters Available)

The Federal Court considered the ‘Odco labour hire’ scheme in a number of cases in the late 1980s, culminating in 1991 with a full bench of the Federal Court upholding an earlier finding that the use of labour hire was not one of employment of the workers sent to various building sites. Odco is regarded as an important case in the development of employment law and the tests used to determine whether an employment arrangement is either: a contract of service (employee) or a contract for service (contractor). Thus a court takes evidence and asks questions concerning the specifics of an employment arrangement, such as:

- were PAYE taxation deductions made by the employer or not?
- were the workers paid annual leave or sick leave?
- did the employer exert a substantial degree of control over the work being performed?
- could the contractor subcontract work?
- Was the worker liable to rectify defects in workmanship?<sup>35</sup>

The Federal Court decided that building workers who had entered into contracts with the labour hire agency Odco, trading as Troubleshooters Available, and who were placed by that agency with principal contractors, were not employees of either the agency or the building contractors. They were regarded as sub-contractors.

The Minister for Industrial Relations at the time, Senator Peter Cook, responded that if the Court’s decision represented the law on labour hire, then the law was an ‘ass’.<sup>36</sup> Amendments were proposed to the federal industrial law giving the Australian Industrial Relations Commission the power to review unfair labour contracts; the amendments would have allowed the commission to compare the terms of a contract for the performance of work with the terms of an otherwise applicable instrument, such as a relevant award. Many of the proposed amendments were opposed by the then Opposition in the Senate and a slimmer set of provisions dealing with unfair labour contracts were incorporated into the federal labour law (*Workplace Relations Act*: sections 127A-C). The Coalition Government unsuccessfully sought to have these provisions removed in 1996.<sup>37</sup>

Prior to the Odco decision, businesses had developed other employment arrangements designed to conceal a direct employment relationship, sometimes through the use of a related entity, such as a trust.<sup>38</sup> The [Odco system](#) of labour supply is now managed under

license by Labour Supply Australia Pty Ltd. Developments in taxation law have assisted in defining what may be regarded as non-genuine contracting arrangements.

While the *Income Tax Assessment Act 1997* prescribes tests for ascertaining whether an employee is a contractor or directly employed, additional rules about genuine contracting and 'dependent' contracting have come about in the federal government's laws on the alienation of personal service's income—the 80 per cent rule as prescribed in *Taxation Laws Amendment Act(No.6) 2001*. The Parliamentary Library's [Bills Digest 52 2001-02](#) noted the concern expressed at the time on implications for employment agency contractors by this new rule:

... most concern [about the 80 per cent rule] had been expressed by employment agencies and their clients who, under the rules, would be treated as employees of the agency.<sup>39</sup>

### Country Metropolitan Agency Contracting Services

Another tribunal, the South Australian Workers Compensation tribunal, has also declined to follow the Odco decision in a claim where the employment arrangement appeared to emulate the Odco system. The case involved a labour-hire intermediary placing labour for tomato picking work.<sup>40</sup> The tribunal decided, as a preliminary issue, that the applicant worker who was engaged as a tomato picker by a company (Country Metropolitan Agency Contracting Services Pty Ltd), which described itself as an agency contracting service, was in fact an employee of that labour-hire agency.

The labour-hire agency had argued that it had no contractual relationship as an employer with the worker who had signed a contract with it; a contract that acknowledged that no employment relationship existed and that the employee was self-employed. The labour-hire company argued that it simply supplied personnel to third parties such as Chiquita, the host employer in the case. Country Metropolitan had supplied the worker to Chiquita Brands to pick tomatoes. The applicant, who was seeking rights to workers' compensation, claimed that she was an employee of either the labour-hire company or the host employer, and the court upheld her application.

The finding by the Deputy President Gilchrist that the 'labour hire contractor' was an employee for workers compensation purposes was then upheld by a full bench of South Australia's Workers Compensation Tribunal.<sup>41</sup> It ruled that the worker was an employee of Country Metropolitan Agency Contracting Services Pty Ltd, clearing the way for her to pursue a workers' compensation claim for a wrist injury. The full bench upheld Gilchrist's finding that the indicators pointed strongly to the worker being an employee, despite the fact that she had signed a contract that clearly stipulated that she was an independent contractor.

Oanh Nguyen

The case of Oanh Nguyen shows that the industrial tribunals are prepared to consider the role of the host company in awarding a claim for an unfair dismissal. Oanh Nguyen was a process worker who was found to have been unfairly dismissed in 2002 when she was told she was no longer required at the Thiess recycling centre in Chullora, Sydney, where she had worked as a labour-hire casual for more than two years. At the time of her dismissal, she was seven months' pregnant. Her dismissal was ordered despite a medical report—prepared by a company doctor—saying that she could carry out her duties with some restrictions.<sup>42</sup>

Commissioner Donna McKenna, of the NSW Industrial Relations Commission, ruled that Nguyen was unfairly dismissed without any attempt to accommodate her pregnancy. Thiess had argued that it would have breached its health and safety obligations if it had allowed her to continue to work. McKenna determined:

It is not an appropriate response to peremptorily dismiss on account of pregnancy in circumstances where there may be, or is, a temporary need for added occupational health and safety measures ... As a result of making direct contact with Thiess seeking employment, the applicant was directly employed by Thiess for at least a short period of time. After working for Thiess for a shift or so, the applicant was then given paperwork to complete. Thiess typically engages casuals through labour hire agencies and, in this case, all relevant documentation was to the effect that the applicant was henceforth to be an employee of A-N-T. Thiess then forwarded the documentation to A-N-T ... Although the evidence was not particularly well-developed in this respect, at least some aspects of the applicant's conditions of employment, such as hours, were referable to the site agreement Thiess had for its (own) employees rather than to any other industrial instrument applicable to A-N-T and by operation of a clause which applies conditions to those working at the site.<sup>43</sup>

In a second element in the case, counsel for Nguyen argued that Thiess and A-N-T Personnel were jointly liable for the dismissal. Thiess and A-N-T said Thiess was not the employer and that neither company had dismissed Nguyen because she remained on A-N-T's books after Thiess stood her down. But Cr McKenna found Thiess was liable because it had control over Nguyen's recruitment, employment and termination. She ordered that Thiess pay Nguyen \$10 000 in compensation.

## Endoxos

This case related to the conversion of direct, ongoing employment to a labour-supply arrangement using an intermediary and 'transferring' an existing employee. Justices Murray Wilcox, Shane Marshall and Ron Merkel found in three separate judgments that there was a contract of employment between a contract cleaner Riste Damevski and the business, Endoxos, despite the role of a labour-hire agency.<sup>44</sup>



Justice Wilcox said it was clear that Endoxos managing director Lindsay Burke intended that nothing would change in the employment relationship after Endoxos moved to the use of a labour-supply intermediary, MLC.

It is clear that nobody connected with MLC ever had a subjective intention of effecting a contract between Mr Damevski and Endoxos. The whole point of MLC's intervention was to replace the existing employment contract between Mr Damevski and Endoxos with an arrangement that would enable Endoxos to avoid some of the obligations that attached to the employment contract.<sup>45</sup>

There was no oral or written contract between the cleaner and MLC. Justice Wilcox also stressed that while Endoxos had relied on the Odco decision, the facts in that case were 'significantly different'.

In his judgment, Justice Marshall said that MLC had been engaged solely to be the 'paymaster' for the cleaning company:

On 19 August 2001, Mr Damevski 'resigned' from his employment with Endoxos. Mr Damevski was given the 'choice' by Endoxos to resign and 'contract' his services to a company called MLC Workplace Solutions ('MLC'), or not be provided with any work by Endoxos.<sup>46</sup>

Justice Marshall said that 'Endoxos held the position of responsibility and wielded the power', and there was no evidence that the cleaner was an independent contractor. He criticised the Australian Industrial Relations Commission full bench for assuming that the cleaner was tied to the deal struck between Endoxos and MLC, saying that it had failed to consider whether the cleaner had entered a 'separate but different' contract with each party and had 'ignored' the possibility of joint employment. Justice Marshall warned labour-hire companies against seeking to use Odco arrangements illegitimately to allow employers to avoid award and statutory obligations. MLC had clearly been trying to replicate the Odco arrangements, but labour-hire companies attempting to follow the same course should beware, he said. 'When attempting to replicate the arrangement discussed in Odco, it is not sufficient to give lip service to it.'

In his judgment, Justice Merkel said that courts have generally held that the existence of a labour-hire company between its client and a worker it hires out does not result in an employer-employee relationship between the client and the worker. But, he said, those cases involved a number of features not present in the Endoxos case, including that:

- the labour supplier interviewed and selected the workers and determined their remuneration without reference to the client
- clients requested workers with particular skills and were provided with them from those 'on the books' of the labour hire company
- labour-hire workers were required to keep the agency informed of their availability and directed specifically not to undertake work directly for the client

- equipment was supplied by the worker or by the labour-hire company (except for specialist safety equipment) and
- dismissal of the worker could only be done by the labour hire company; the client could only advise the labour-hire company that a particular worker's services were no longer required.<sup>47</sup>

The Federal Court full bench quashed the Australian Industrial Relations Commission full-bench decision and directed the commission to determine the unfair dismissal application in accordance with the law.

## Union issues

Labour unions regard labour-hire arrangements as providing a means for avoiding collective employment agreements and thereby treating a class of the workforce on inferior terms compared to directly employed workers, and thus as a means for the host company to increase its profitability. It is therefore possible for the host company to deny or limit its responsibility for the welfare of this class of employee, in regard to health and safety and training.

In *The Future of Work*, the ACTU claims that between 1990 and 1995:

- the proportion of all workplaces using labour-hire workers increased from 14 per cent to 21 per cent
- the proportion of large workplaces (more than 500 employees) using labour-hire workers increased from 16 per cent to 55 per cent.<sup>48</sup>

The growth of unstable, non-regular work routines has significant consequences for the living standards of labour-hire employees. Unions have provided [submissions](#) and evidence to the Senate's Community Affairs Committee Inquiry into Poverty and Financial Hardship on the effects on living standards of labour hire, casual employment and short hours.<sup>49</sup> The growth of labour hire also has consequences for the growth and administration of trade unions. ACTU Congress policy has reflected concern with this growth and, generally, unions have sought to rope-in the major labour-hire firms into the relevant industry awards or to negotiate new awards for particular situations.<sup>50</sup> Item 4 of the [2000 Congress's Employment Standards](#) Policy includes the following:

4.1 The ACTU will encourage union bargaining for contract and labour hire workers to receive the same pay and conditions as directly employed workers at the enterprise.

4.2 The ACTU will pursue full enforcement of all legal obligations relating to contracting out and transmission of business.

4.3 The ACTU will seek legislative change for employment security in line with the Industrial Legislation policy.<sup>51</sup>

These principles have been expanded in the ACTU's 2003 [Casual and Insecure Forms Of Employment Background Paper](#). While unions regard award undercutting as a major concern with labour hire, safety practices—or the difficulty of attributing safety responsibilities—is also high on the union agenda. According to the Secretary of the NSW Labour Council, John Robertson, neither labour-hire firms nor host employers regard safety as their obligation.<sup>52</sup> He argues that the problems for injured labour-hire workers are compounded by the fact that they are less likely to have a specific work site to return to for rehabilitation or return-to-work duties.

Given that industrial awards are made to cover 'employees', efforts to extend award conditions to labour-supply firms have been protracted. The growth of labour hire and its accompanying union and award evasion prompted Victorian union officials to trash the offices of labour-hire firm Skilled Engineering and another firm, Johnson Tiles, on 15 June 2001. This action resulted in court proceedings against the offenders and divided the labour movement as to what an appropriate response to labour hire should be.<sup>53</sup> The ACTU announced in its *Casual and Insecure Forms of Employment Policy* (2003) that it would pursue the following agenda on labour hire over the next three years:

- campaign against federal government moves to restrict casual employee entitlements
- lobby state governments to change laws and support union applications to improve entitlements, such as portable long service leave
- support unions in seeking the right of casuals to convert to full-time or part-time employment after a specific period of time, and consider a test case
- initiate and support bargaining concerning the recruitment of casuals and labour-hire employees, the length of their employment and the right to convert to full-time or part-time employment
- lobby for new federal and state laws to ensure labour-hire workers, dependent contractors and home-based outworkers are covered by appropriate awards and subject to the jurisdiction of commissions
- lobby for increased resources to ensure that enforcement agencies are able to make sure that labour-hire workers, dependent contractors and home-based outworkers receive all their legal entitlements
- support the NSW Labor Council and the Australian Manufacturing Workers Union in seeking labour-hire awards
- campaign for labour-hire workers to receive the same wages that the employer's direct employees receive
- develop a contractor and labour-hire code of practice and campaign for its adoption and

- support the Textile Clothing and Footwear Union of Australia (TCFUA) in seeking federal and state law changes that ensure the union's outworkers receive the same wages and conditions as factory workers.<sup>54</sup>

Another issue that concerns the union movement is the impact of labour hire on the labour market, in so far as any skills shortages may be exacerbated because labour-supply firms are likely to have fewer facilities to train staff, a point also reflected in the Building Industry Royal Commission's report.<sup>55</sup> Unions such as the Australian Manufacturing Workers Union have reported extensively on labour-hire practices in its submission to the Senate Community Affairs Committee's Inquiry into Poverty and Financial Hardship. However, some unions have set up labour-hire co-operatives, realising that the consequences of industry downsizing and the rise of casualisation warrants some union presence in the labour-hire market.<sup>56</sup> While these union concerns are no doubt legitimate, it has not been unknown for former union officials themselves to set up labour-hire businesses.<sup>57</sup>

## International aspects of temporary work and employment agencies

### OECD perceptions of Australian employment protection laws

The OECD has conducted studies on the laws of member countries that grade restrictions on the ease of dismissing labour from employment as well as restrictions on using temporary labour as employment protection measures. The OECD regards Australia's employment protection measures (state and federal) as being relatively lax. As the OECD reported in a recent survey on the Australian economy:

OECD assessments consistently show that Australia's employment protection legislation (EPL) is one of the least strict in the OECD area, the only countries with more relaxed EPL being the United States, United Kingdom, Canada and Ireland ... regulations for temporary employment are comparatively light handed. There are no restrictions on the type of work or areas of economic activity where temporary work agencies can become active. Current legislation neither specifies a maximum number of successive contracts or contract renewals (emphasis added).<sup>58</sup>

### European Union

The European Union sought to respond to the issue of temporary or atypical work in consultations over a possible directive binding member states to setting employment conditions for temporary workers, commencing in 1995. As of June 2003, differences between the 'social' partners (employers, unions and governments) had still not been resolved as to the wording of the proposed directive. The differences centred on:

- the need for a specific derogation in order to help unemployed people gain access to the labour market
- a review and possible deletion of restrictions to temporary agency work and

- the nature of the exemption from the principle of equal treatment between agency workers and user company workers.<sup>59</sup>

### International Labour Organisation

The relevant International Labour Organisation convention, *Convention No. 181, Private Employment Agencies, 1997* lists the general principles protecting workers in employment and job seekers against poor terms and conditions of employment. Member states must take measures to prevent abuses from labour-hire arrangements. The convention provides general guidelines for the operation of private employment agencies as well as for the protection of workers using the services of these agencies. Australia has not ratified this convention to date.

Under the convention, ratifying members (states) must take measures to prevent:

- denial of the right of workers to freedom of association and the right to bargain collectively
- abuse of migrant workers recruited by private employment agencies
- the use of child labour
- the discrimination of workers (but not in such a way as to prevent agencies from providing special services or targeted programs designed to assist the most disadvantaged workers) and
- the misuse of personal data (by ensuring respect for workers privacy and limiting data collection to matters related to qualifications and professional experience).

Member states must also ensure adequate protection for workers and determine and allocate the respective responsibilities of private agencies and host employers in relation to:

- collective bargaining
- minimum wages
- working time and other working conditions
- statutory social security benefits
- access to training
- protection in the field of occupational health and safety
- compensation in case of occupational accidents or diseases

- compensation in case of insolvency and protection of workers claims and
- maternity and parental protection and benefits.

## State inquiries into labour hire

The growth of labour hire practices has prompted some states to review the labour-hire industry, and some of these reviews are currently under way. Most states and territories register labour-hire agencies.<sup>60</sup> The trend toward licensing and regulation of the industry indicates that labour hire and the employment placement industry play a useful role in a modern economy, serving the needs of their clients as well as business. In other words, governments are likely to respond to the growth of labour hire and other arrangements described as 'atypical' work arrangements by seeking to have labour-hire workers treated on the same or similar terms to directly employed workers (rather than adopting more restrictive methods). These approaches are detailed below.

### New South Wales

While the NSW Government conducted an inquiry into the labour-hire industry over 2000–01, NSW unions have been dissatisfied with the lack of follow-up by the government. Thus, in April 2002, Labor Council NSW secretary John Robertson announced a NSW test case aimed at placing labour-hire workers on the same wages and conditions as workers at the host firm. He said labour hire was one of the new growth sectors of employment, and it was important to ensure that those workers had adequate protection via their awards, as did those they would be working alongside. A report in *WorkplaceInfo* quotes him as saying:

Unions recognise that there is a legitimate role for labour hire in enterprises where labour demands may ebb and flow ... But labour hire should not be used as a sly way of reducing wages and conditions that workers are entitled to receive. Legitimate labour hire employers have also accepted that there needs to be regulation to prevent the exploitative practices of some of the bottom-feeders.<sup>61</sup>

The NSW Labor Council wants the following standards introduced in order to support the principle of equal pay for equal work:

- casuals who have worked on a regular basis with the same employer for more than six months will be entitled to 'opt' for permanent work
- labour-hire employees who have worked for an employer for more than six months will be entitled to employment with the host employer and
- employers are to consult with employees and relevant unions prior to contracting, and to guarantee existing jobs, wages and conditions.

The claim also includes union consultation provisions prior to outsourcing. Before the 2003 state election, the NSW Labor Party released an industrial relations policy that committed the Carr Government to further reforms in the labour-hire industry arising from the NSW Labour Hire Task Force. The main reforms are to form an employer, government and union labour-hire industry council, to develop occupational health and safety legislation that binds both host and supplier and to set up a registration scheme for labour-hire firms.

The NSW Labor Council has continued with its 'secure employment' application, and hearings are set for May 2004. Federal Workplace Relations Minister Kevin Andrews has responded by proposing to intervene in the NSW test case.<sup>62</sup>

## Queensland

On the change of government in 1998, the Queensland Government set up a task force into industrial relations, the report of which provided a blueprint for the current *Industrial Relations Act 1999* (Qld). Labour-hire issues were addressed by a) broadening the definition of employee to include outworkers and b) creating a new section (s. 275), which allows the Queensland Industrial Relations Commission to declare a class of persons (contractors) to be employees. The two-year report into the Act revealed that only two cases had been pursued under s. 275.<sup>63</sup>

After a recent review of the legislation, the Queensland Government introduced the Private Employment Agencies and Other Acts Amendment Bill 2001 into Parliament on 12 December 2001 which came into effect as an Act on 26 April 2002.<sup>64</sup> The Act amends the *Private Employment Agencies Act 1983* to implement the review's recommendations, which were as follows:

- to provide for the expiry of the Act over a period of two years
- to simplify the licensing process for private employment agents
- to establish an Employment Agents Advisory Committee to oversee the Act's expiry process and also to develop a draft code of conduct for the future regulation of employment agents and
- to transfer the provisions that protect job applicants from being charged inappropriate fees to coverage by the Industrial Relations Act 1999.

## South Australia

The October 2002 review of the South Australian Industrial Relations System considered the issue of protection necessary for labour hire employees and recommended that:

- individuals employed by labour-hire companies be prevented from receiving lower remuneration and working conditions than those provided to employees of the host employer under the relevant award
- the legislation require that an employer of a labour-hire employee be identified
- labour-hire employees be able to take action in the Industrial Relations Court or Commission against the labour-hire company, host employer, or both in certain circumstances; for example, when there was underpayment of entitlements or unfair dismissal<sup>65</sup>
- the concept of employment be redefined to make it harder for employment relationships to be disguised as contracts for services or avoided through the use of interposed entities such as labour-hire agencies or personnel companies. As an alternative, the report suggests a greater use of deeming provisions, including a Queensland-style power for the Industrial Relations Commission to deem groups of workers to be employees
- the Industrial Relations Commission be allowed to determine 'fair contract rates' for selected types of contractor and, on a discretionary basis, be allowed to treat labour-hire workers as being jointly employed by the agency and the 'host' for whom they work, and
- award provisions permitting regular casuals to convert to permanent employment be encouraged, with a similar entitlement ultimately to be created for non-award employees either through legislation or by the Industrial Relations Commission exercising what is proposed to be a general power to make awards of general application.

Many, but not necessarily all, of these measures have been included in new South Australian industrial legislation called the Industrial Law Reform (Fair Work) Bill 2004. A recent case before the South Australian Industrial Relations Commission has resulted in call-centre agency workers being converted to direct employees of the call centre (with its agreement).<sup>66</sup>

## **Victoria**

The Victorian Parliament's Economic Development Committee is conducting an inquiry into the labour-hire employment sector in Victoria. Industrial Relations Minister Rob Hulls has said:

The labour hire sector has grown rapidly over the past decade, but there is little research available on the nature of labour hire employment or the impact labour hire use has on the workforce. Contract labour hire employees are heavily relied upon in a range of industries, including manufacturing, construction, mining, transport, retail, government administration and communications. This inquiry will examine the extent and breadth of



labour hire employment in Victoria. It will give us an understanding on how labour hire use affects job security, wages, work conditions, training and compliance with legal obligations, particularly occupational health and safety considerations.<sup>67</sup>

Under its terms of reference the committee is required to inquire into and report on the extent and breadth of labour-hire employment in Victoria, including the:

- employment status of workers engaged by labour hire companies
- use of labour hire in particular industries and/or regions and
- the application of industrial relations, occupational health and safety, and workers' compensation legislation

The committee is also required to report on the consequences of the use of labour-hire employment. Consideration is to be given, but is not limited, to:

- the rights and obligations of labour-hire employees, labour-hire agencies and/or host employers under industrial relations, occupational health and safety, and workers' compensation legislation. Any ambiguity about the nature of rights and obligations between the three parties is also be considered
- the impact of labour hire on industry skills levels
- the contribution of labour hire to the casualisation of the workforce and
- the extent of any such consequences of labour hire.

The committee will then make recommendations based on an assessment of the above matters and including consideration of:

- the jurisdictional limitations of Victoria's industrial relations powers
- the recommendations of the NSW Labour Hire Task Force and the responsibilities of the NSW Labour Hire Industry Council (if established)
- the regulation of labour hire in other Australian jurisdictions
- the impact of labour hire on business and
- WorkSafe Victoria campaigns and activities (clarifying host and agency responsibilities for health and safety).

## Western Australia

In Western Australia, the *Labour Relations Reform Act 2002* (WA) extended the definition of an employer to include labour-hire companies. The Minister for Consumer and

Employment Protection and Training, Edward Kobelke, stated in the second reading speech to the Labour Reform Bill 2002:

There has been a growing concern that the labour hire industry has not been adequately regulated by awards, and by the industrial relations system in general. To ensure that the commission has the power it properly requires, the (Labour Reform) Bill makes it explicit that an employer also includes labour hire and group training organisations.<sup>68</sup>

## Tasmania

The Tasmanian Government has recently closed a loophole in its payroll tax legislation that will have the effect of placing heavy financial obligations on employment agencies operating in Tasmania.

Employment agencies can be liable for payroll tax in Tasmania. The *Pay-roll Tax 1978 Act* was amended in 2000 to ensure equity in the treatment of wages for payroll tax purposes, irrespective of whether workers were hired directly or through an employment agency. Currently payroll tax is levied on the wages paid by employers in excess of a threshold of \$1.01 million a year.

The Act deems employment agencies to be employers and the workers they hire out to be the employees of the agency for payroll tax purposes. An exception is provided where workers are on-hired to those clients who qualify for an exemption from payroll tax, meaning institutions such as hospitals and charitable institutions. However, employment agencies have challenged this view. They have attempted to argue that where workers are on-hired to clients who are not required to be registered because the client's wages fall below the threshold, then these clients should not be liable for payroll tax. A new amendment, the *Pay-roll Tax Amendment Bill 2003*, affirms the only grounds for an exemption as being where agency workers are on-hired to institutions which would be exempt, such as hospitals and charitable institutions.<sup>69</sup> The amendment thus has a back-date effect of three years, and has caused a ripple in the financial press.<sup>70</sup>

## Conclusion

The data on the employment placement services industry suggests that this is a fast-growing industry, recording a 30 per cent growth in income over the three years to 2002. The labour-hire sector constitutes an important element of the broader employment service industry. Thus, in many respects, the industry is here to stay. Clearly, from the various responses of state governments, the ongoing growth and role of the industry is of concern.

By international comparisons, Australia has few formal restrictions on the recurrent use of temporary work contracts, which in part helps to explain the growth of temporary work supplied through agencies. Other factors, such as the outsourcing of personnel management functions, have also contributed to the growth of employment placement.

Governments by contrast have, in recent times, sought to respond to the new role of labour hire in the economy. While it is prudent not to generalise on the views of governments on the industry, it appears that governments generally accept the usefulness of the industry, despite conducting a number of inquiries into labour-hire arrangements in recent years.

There also appears to be some consensus on the role of labour hire as a means to resolve demands for short-term labour, and the unions in the main acknowledge this. However, the debate becomes sharper where businesses, as a matter of policy, determine to hire otherwise ongoing workers through labour-hire agencies. From one point of view, the lack of regulation over repeat short-term contracts is likely to make this practice attractive. Union attempts in NSW to have both casual and labour-hire employment converted to ongoing and direct employment after six months service constitute an attempt to limit the repeat use of temporary workers.

To date, the focus of the major institutional players in Australia, including governments, industrial tribunals and unions, has been to attempt to have agency employees treated on the same terms as ongoing employees. Measures tightening or suspending the licensing of labour-hire agencies to prevent the undercutting of pay and conditions may be further considered, although questions might be raised as to the efficacy of such measures. In any case, a national review of the industry would seem warranted.

## Endnotes

---

1. See, for example, Ken Phillips, '[Casual alternative wrongly demonised](#)' *Australian Financial Review*, 22 January 2004.
2. Note the [evidence](#) of Sally-Ann Taylor, Australian Manufacturing Workers Union (AMWU) to the Senate Community Affairs Committee Inquiry into Poverty and Financial Hardship, 26 May 2003, p. 302.
3. *ibid.*
4. Note the evidence of Dale Carter to the Senate Community Affairs Committee: '... although the workload at my childcare centre has increased in recent months, management at the centre have decided to reduce staff hours. The decision came closely after the announcement of the recent living wage increase', 26 May 2003, p. 318.
5. *OECD Economic Surveys: Australia* (OECD, Paris, 2003), pp. 99–101.
6. Taylor to the Senate Community Affairs Committee, *op. cit.*, p. 312.
7. See, for example, 'Jetstar puts Qantas on collision course with unions', *Australian Financial Review*, 5 December 2003, and 'Wounded kangaroo, can Qantas survive?' *Business Review Weekly*, 10–16 July 2003.
8. [NSW Labour Hire Task Force Report](#) 2001, p. 18.
9. Australian Bureau of Statistics, [Employment Services, Australia 2001-02](#), cat. no. 8558.0, 5 August 2003.

10. *ibid.*
11. *ibid.*
12. Australian Bureau of Statistics, [\*Forms of Employment, November 2001\*](#), cat. no. 6359, 13 September 2002.
13. Robert Gottlieb, 'Taxing tangle bedevils Tassie', *The Australian*, 2 December 2003.
14. See, for example, David Potter, 'Strike breakers tipped for stadium', *Courier Mail*, 1 March 2003, which reported on an industrial dispute at the Suncorp Stadium construction project and the use of group training companies to break a strike. A useful article explaining the relationship of bargaining forms, terms and levels, including 'federal and state jurisdictions', 'section 170LJ and 170LK agreements', 'AWAs' and so on, is Marcus Priest, 'Workplace options keep the bosses busy', *Australian Financial Review*, 20 January 2004.
15. See, for example, G. Griffin and S. Svensen, 'Industrial relations implications of the Australian waterside dispute', *Australian Bulletin of Labour* vol. 24, no. 3, 1998.
16. Peter Punch, 'Comment on *Morgan v Kitchside Nominees Pty Ltd* (PR 918793)', 13 June 2002, *CCH Australian Industrial Law News*, March 2002.
17. Richard Hall, 'Labour hire in Australia: motivation, dynamics and prospects' [ACIRRT Working Paper 76](#), p. 3.
18. See, for example, the [Community and Public Sector Union's](#), *The union view of outsourcing*, 5 December 2003.
19. See, for example, *Public Service Act 1999* (Cth), section 6 (3).
20. See, for example, the bidding process required under Victorian local government legislation in the specific-term provision of aged care services between the in-house provider and other tenderers in *Australian Municipal, Administrative, Clerical and Services Union v Greater Dandenong City Council v 248 of 1999*; decision by Madgwick J. (FCA) on 4 September 2000.
21. Queensland Department of Employment, Training and Industrial Relations, [Managing Health and Safety in the Labour Hire Industry](#) (1999), pp. 3–4.
22. *ibid.*, p. 4.
23. See 'Wal-Mart vs the workers: labour grievances are stacking up at the world's biggest company', *Financial Times*, 20 November 2003. The article reports on 'illegal' immigrants working for Wal-Mart through contract labour-hire arrangements.
24. Hall *op. cit.* p.7.
25. Alan Kohler, 'Industrial relations revolution seems to be turning full circle', *The Age*, 6 December 2003. The 'full circle' relates to Telstra employees and union members being terminated and working as contractors, but now joining the relevant union (CEPU).
26. Charles Power, 'Labour hire: the new industrial law frontier', *Law Institute Journal*, vol. 76, no. 6, July 2002, p. 64.

27. ACTU Submission to the New South Wales Labour Hire Task Force Report 2001; <http://www.actu.asn.au/public/papers/nswsub/nswsub.rtf>
28. *ibid.*
29. The High Court: *re Dingjan & Ors; Ex parte Wagner & Anor (1995)* 183 CLR 323.
30. *Hamzy v Tricon International Restaurants trading as KFC* [2001] FCA 1589.
31. National Competition Council, *Review of Sections 51(2) and 51(3) of the Trade Practices Act 1974*, 1999.
32. Australian Industrial Relations Commission *PR920525*, 25 July 2002. The commission's consideration of the possibility of joint employment of labour-hire workers by agencies and host employers features in *Morgan v Kittochside Nominees'* *PR918793*, 13 June 2002.
33. *BWIU & Ors v Odco Pty Ltd.*, 99 ALR 735, 21 March 1991.
34. *Roy Morgan Research Centre Pty Ltd v Commissioner for State Taxation* (2003) South Australian Supreme Court, 342.
35. See also High Court of Australia, *Stevens v Brodribb Sawmilling Co Pty Ltd*, 160 CLR 16.
36. As noted by Peter Costello MP in the House of Representatives consideration of the Industrial Relations Reform Bill 1992, *Parliamentary Debates* 24 June 1992, p. 3841.
37. The unfair labour contracts provisions were proposed for repeal under Schedule 6 of the Workplace Relations and Other Legislation Amendment Bill 1996, as introduced to the House of Representatives on 23 May 1996.
38. See, for example, *Wilson Parking (NSW) Pty Ltd v Federated Miscellaneous Workers' Union of Australia (NSW Branch)* 1982 AILR ¶264, in which car parking attendants entered into a partnership with Wilson Parking, which then submitted a tender for the management of car parking services.
39. Taxation Laws Amendment Bill (No. 6), Parliamentary Library, *Bills Digest 52, 2001-02* p. 2.
40. *Slater v WorkCover/Allianz Aust (Chiquita Brands Adelaide Pty Ltd)/CGU & Anor* [2002] SAWCT 27 (14 March 2002).
41. [\*Country Metropolitan Agency Contracting Services \(SA\) Pty Ltd v Slater and WorkCover/CGU Workers Compensation Insurance SAWCT 57 \(30 May 2003\)\*](#).
42. Sherill Nixon, 'Pregnant, casual and unfairly sacked', *Sydney Morning Herald*, 4 March 2003.
43. Oanh Nguyen and A-N-T Contract Packers Pty Ltd t/as A-N-T Personnel & Thiess Services Pty Ltd t/as Thiess Services [2003] NSWIR Comm (1006) 3 March 2003, <http://www.austlii.edu.au/au/cases/nsw/NSWIRComm/2003>
44. [\*Damevski v Guidice\* \[2003\] FCAFC 252 \(13 November 2003\)](#)
45. *ibid.*, paragraph 3.
46. *Ibid.*, paragraph 12.

47. Ibid., paragraph 172.
48. Australian Council of Trade Unions, *The Future of Work*, <http://www.actu.asn.au/public/futurework/>
49. Taylor to the Senate Community Affairs Committee, op. cit. and Carter to the Senate Community Affairs Committee, op. cit.
50. See the Royal Commission into the Building and Construction Industry, <http://www.royalcombcgi.gov.au/hearings/reports.asp>, vol. 8, chapter 10 on Labour Hire, p. 86. Note also the Australian Industrial Relations Commission awards such as the Telecommunications Services Industry (Customer Contact, Clerical and Administrative) Labour Hire (Roping-In No 3) Award, which binds call-centre operators who supply labour hire for Telstra.
51. Australian Council of Trade Unions, 'Employment Standards Policy' Congress 2000. See also Background Paper (for ACTU Congress 2003: [Casual and Insecure Forms Of Employment Background Paper](#)).
52. 'Safety, the labour hire problem no-one wants to own', *WorkplaceInfo* ([www.workplaceinfo.com.au](http://www.workplaceinfo.com.au)), 14 August 2001.
53. Philip Cullen, 'Union rampage charges', *Herald Sun*, 22 July 2003.
54. 'NSW unions and ACTU rev up casual conversion campaign', *WorkplaceInfo*, 3 August 2003.
55. <http://www.royalcombcgi.gov.au/hearings/reports.asp>, vol. 8, chapter 10, p. 81.
56. In the Hunter Valley (NSW), a union-based labour-hire co-operative, the Hunter Valley Employment Co-operative, has functioned since the mid 1980s.
57. See the report of Maurice Alexander Management in 'The secret Qantas', *Business Review Weekly*, 10–16 July 2003, p. 39.
58. OECD, op. cit., pp. 99–101.
59. See 'Social policy state of play', *European Industrial Relations Review*, issue 354, July 2003, pp. 19–20.
60. The [NSW Labour Hire Task Force Report](#) (2001) reviewed the labour-hire licensing approaches of the states and territories. See p. 41 of the report.
61. 'NSW unions to run labour hire test case', *WorkplaceInfo*, 30 April 2002.
62. 'Federal Government gatecrashes NSW casuals' case', *WorkplaceInfo*, 19 December 2003.
63. <http://www.ir.qld.gov.au/reports&submissions/iract-first2yrs.pdf>
64. See [http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PrivatEmpAgA83\\_02A.pdf](http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PrivatEmpAgA83_02A.pdf)
65. G. Stevens, *Review of the South Australian Industrial Relations System: Report, Workplace Services*, Adelaide, 2002.
66. Clerks South Australia Award [2004] SAIR Commission 4, (28 January 2004).

67. The Hon. Rob Hulls, 'Inquiry into labour hire employment sector', *Media Release*, 26 May 2003. The committee is due to report by December 2004.
68. Edward Kobelke, 'Labour Reform Bill 2002', Western Australia, Legislative Assembly, *Debates*, 19 February 2002, p. 7521.
69. Steven Kons, '[Second Reading Speech](#): 'Pay-roll Tax Amendment Bill 2003'', Tasmania, Legislative Assembly, *Debates*, 25 November 2003, pp.32–93.
70. See, for example, Gottliebsen, *op. cit.*