



**A•S•U**  
Australian Services Union

## **ASU Submission**

### **Increasing the integrity of the Commonwealth procurement process**

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<b>Date:</b>	15 June 2018

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## 1. Introduction

The Australian Services Union (ASU) is one of Australia's largest Unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Current ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Social and community services
- Local government
- State government
- Australian Tax Office
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and SA)

The ASU has members in every State and Territory of Australia, as well as in most regional centres as well.

## 2. Who we represent

The ASU has members in both in house call centres and call centres companies which perform "contract" call centre functions for other companies. The ASU also has members in private sector – clerical and administrative work in a variety of companies including private legal firms as well as IT professionals in companies like Qantas and IBM.

## 3. The Review

The ASU welcomes the opportunity to participate in the review aimed at increasing the integrity of the Commonwealth procurement process. Government procurement presents an opportunity and direct policy lever with which the government can influence the employment practices of call centres, ICT contractors and other suppliers in the services industry. The Australian Government should use their significant purchasing power to ensure those contracted to supply services to the Australian Government have decent employment practices and keep their operations onshore.

The federal government expends billions of dollars every year on the acquisition of goods and services. The ASU believes the Commonwealth needs to be mindful of, and committed to, the need to ensure that their expenditure of taxpayers' money encourages the creation and retention of good jobs within Australia.

Our campaign "Secure Jobs Secure Data" focusses on the crisis facing professional services workers whose jobs are being offshored at an alarming rate. The campaign is also concerned about the offshoring of Australian's sensitive personal data which follows the jobs going offshore, and how this affects our privacy and security.

## 4. Keep Australian Services Sector jobs onshore

Government procurement has changed rapidly and continues to do so. Today, the procurement life cycle spans sourcing strategy, supplier selection, contract management, supplier relationship management, and purchasing and supplier integration.

Procurement is now seen as one of the top value creators in any business or government agency, and fundamental to government service delivery.

The ASU acknowledges the importance of an effective procurement policy but maintains keeping Australian services sector jobs onshore is vital to Australia's ability to stay afloat as a modern economy. Below are six important strategies our Service Sector should implement:

### 1. **Develop a Services Sector Industry plan**

Developing a white collar services sector plan that focuses on areas including; future job needs, skills and training, domestic and regional growth opportunities, leveraging new technologies, infrastructure development to support industry development and investment potential.

### 2. **Review tax incentives and disincentives to retain Australian jobs and competitiveness**

Building of tax incentives designed to retain jobs in Australia as these jobs will contribute to the ongoing development of Australian competencies and competitive advantage. These incentives must be aimed at creating a more favourable tax treatment for income earned in Australia compared to income earned from offshoring work that was/could be undertaken in Australia.

### 3. **Introduce "Right to Know" legislation – consumer consent and privacy**

Free Trade Agreements that amount to little more than political treaties that achieve diplomatic purposes but do not advance Australia's trade position should be immediately re-examined. Future agreements must be negotiated on the basis of real benefit to Australia generally and specifically for those parts of the economy regarded as Australia's core competencies.

### 4. **Free trade agreements need to benefit Australians**

Given that services often involve the passing of information and data on individuals, Australia should introduce 'country of origin' legislation for services to match similar requirements for manufactured goods. This will involve the development of a framework to:

- ensure that consumers, businesses and government have transparency as to where services are provided from.
- allow consumers to make decisions about where their data is stored.

Government will lead the way in ensuring the private, personal, financial and health records of its citizens that it maintains is kept secure onshore and protected in accordance with Australian laws.

### 5. **Government procurement policy needs to focus on supply chains, Australian providers**

As a major purchaser of goods and services, Government policy will ensure through its own procurement arrangements to only contract companies to provide goods and services to and for the government that:

- have transparent supply chains
- onshore its labour needs and forego off shoring
- have a track record of ethical employment practices.

## **6. Local spending means local jobs**

Governments should use their purchasing power to generate better jobs and conditions for all Australians including:

- Commonwealth procurement in the IT sector should include as one of its goals the transference of knowledge and capability to the public sector
- establish a single centralised office for the oversight of all contracts for goods and services
- set requirements on the use of labour hire
- consider companies' occupational health and safety and secure employment record when evaluating tendering for government contracts
- Commonwealth procurement of services should not be allowed to undercut the salaries or conditions of employment of public sector employees
- Work with state and territory governments through the COAG process to ensure the data security of all Australians, including through tendering processes to ensure that companies tendering for work have the highest data security standards through on-shore facilities.
- establish a Services and Financial Sectors Procurement Register of suppliers from which the Government will source its services and financial sector purchase.

## **5. Victorian inquiry into the Labour Hire Industry and Insecure Work**

In November 2015 our Victorian Private Sector Branch made a submission to the Victorian inquiry into the Labour Hire Industry and Insecure Work (see Attachment A). Our Branch urged the State Government to ensure government procurement arrangements promote ethical and secure employment through government grants and tenders being given to businesses and organisations that demonstrate a commitment to secure, sustainable and local jobs.

## **6. Conclusion**

Government procurement has the potential to become a powerful tool for increasing the quantity and quality of employment in key parts of the services sector. Our community pays taxes to government on the basis that these taxes are used to preserve and improve our collective quality of life. It is therefore legitimate to expect that when government spends our money via public procurement it is used partly to help enhance the quantity and quality of jobs in Australia.

At the very least, government should be leading the way with a responsible procurement policy.

## **7. Recommendations**

It is proposed that the following legislative measures be enacted:

### **Preference in Contracting**

1. That the Government require agencies bidding for government contracts through a tender process or providing quotes to government for other procurement to disclose where the relevant work will be performed.
2. That preference be given to bidders who will perform the work in Australia.

### **Ethical Procurement in the Service Sector**

1. That Government is committed to using its purchasing power to ensure that workplaces in the service sector contracted to perform work for the Commonwealth are ethical, fair and safe.
2. That Government procurement decisions are based on ethical as well as value for money considerations.
3. That Government has a responsibility to lead by example. This means that Government should not be associated with the purchase of services produced from the labour of exploited workers.
4. That only companies who comply with relevant legislation including the Fair Work Act and workers compensation legislation, awards and collective agreements will be considered for government contracts.



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**Australian Services Union  
Victorian Private Sector Branch**

**Victorian Inquiry into the Labour Hire Industry  
and Insecure Work**

**November 2015**

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## 1. Background

The Australian Municipal Administrative Clerical and Services Union (known as the Australian Services Union – ASU) – Victorian Private Sector Branch covers clerical, administrative and customer service employees in the private and not for profit sectors.

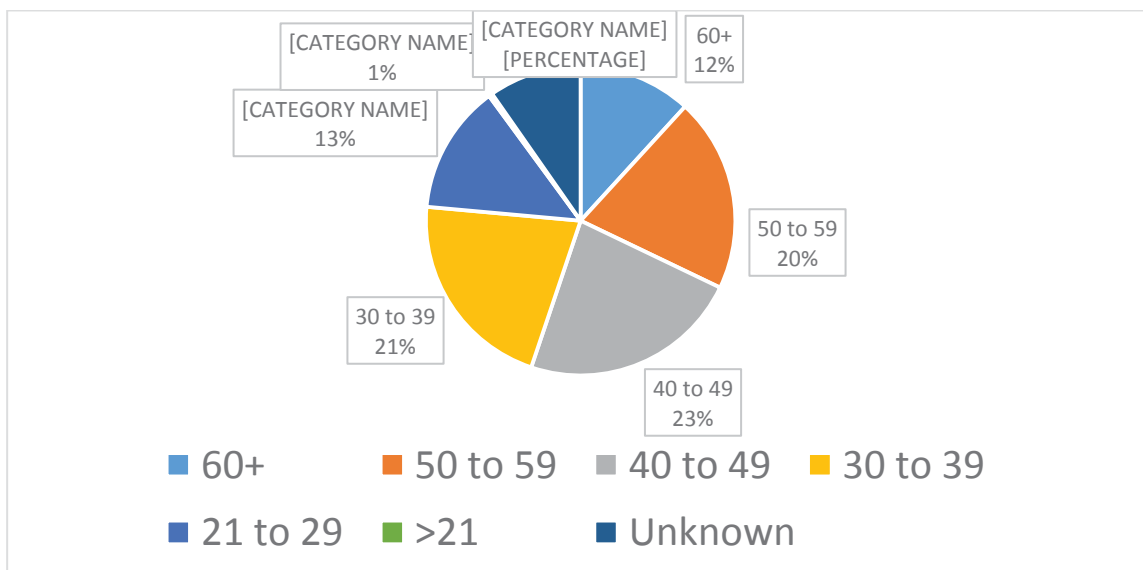
The ASU has members in a range of industries including but not limited to:

- Airlines and Related Industries;
- Call Centres;
- Armoured Transportation;
- Road Transport, Freight & Logistics;
- Manufacturing;
- Pharmaceutical;
- Gaming & Wagering;
- Non-profit Organisations;
- Retail;
- Legal Services;
- General Clerical & Administrative

The majority of ASU members employed in the above industries have their employment conditions regulated by Federal Awards and/or Certified Agreements in the Federal jurisdiction.

The union's gender break down is currently 68% women and 32% male.

The union's age demographic is currently:



Average age of ASU members: 39



There are a number of sectors within the union's membership that have a significantly younger age profile. These include Airlines, call centres, community organisations and the legal services industry.

The ASU had input into the VTHC submission to this Inquiry and supports the broad recommendations being made by the Victorian peak union body.

In addition we support the submissions of the ASU Victorian/Tasmanian Authorities and Services Branch.

## **2. Impact of Precarious and Insecure Employment on Workers**

A secure, meaningful job is a fundamental source of self-respect and identity. A decent job provides dignity and fosters social inclusion.

However, inequality in Australia is growing and so is the prevalence of insecure forms of employment.

The impact of labour hire and precarious employment on workers has been well documented in research and submissions to this and other related Inquiries.

In particular the following issues are prevalent amongst the labour hire and temporary workers the ASU organises:

- Lack of job and income security;
- Fluctuation in earnings from one week to the next;
- Long periods with one host employer without access to annual, long service or sick leave entitlements;
- Being employed by the 'contract' or 'campaign' – particularly prevalent in the contract call centre industry;
- Fear of raising work and OHS concerns;
- Lack of training;
- Lack of career or training opportunities;
- Often poorer wages and conditions than the host employer;
- Adverse Superannuation outcomes and lack of retirement income particularly for women;
- Lack of compliance by some employers with industrial law;
- Use of sham contracting arrangements to avoid the rights that flow from an employer/employee relationship

### **3. Labour Hire & Other Forms of Insecure Work in ASU Industries**

The ASU, as a white-collar union predominantly in the private sector, has been exposed to labour hire, casual, temporary and precarious work arrangements for many years.

As a union campaigning and organising in female dominated industries, predominantly in the private sector, our union has an insight into the negative impacts precarious forms of employment models can have on workers and their families.

In the traditional office environment the 'temp' has been an established method of hire by businesses for over 25 years.

Consistent with the employment data across industry the use of labour hire and agency temp arrangements in the past decade has increased significantly in the union's coverage area.

It has been the experience of the ASU that labour hire and temporary arrangements can undermine permanent employment, job security and employment conditions if there is no mechanism to limit and/or regulate their use.

The degree to which the sector is industrially organised and the relative industrial power of the workforce can also determine the extent to which labour hire and precarious forms of employment exist and are able to flourish.

In the ASU's experience it is common for labour hire or agency temps to be placed with host employers for protracted periods of time and remain employed 'by the hour' by the labour hire company despite their role being an ongoing requirement within the host employers' business.

It has been the practice of the ASU to seek provisions within collective agreements that may include:

- Consultation over the use of labour hire, noting that there are some restrictions to what can be included in a collective agreement – 'non-permitted' matters;
- Ensuring labour hire workers enjoy the same wages and conditions as employees of the host employer and that they are extended the provisions of the collective Agreement;
- Seeking to ensure that labour hire and or temporary employment arrangements have a specific purpose or life eg: a special project, seasonal requirement or to allow for flexible work arrangements and various forms of leave coverage – eg: maternity leave, backfilling flexible work arrangements.

Regulating the use of labour hire employment via collective agreements has been made more difficult over time as federal industrial legislation has become more restrictive and as a result of case law.<sup>1</sup>

There are also issues with enforceability of commitments with labour hire providers/employers contained in collective agreements with the host employer under such an approach that we detail further in this submission.

Further, this approach will only succeed in those areas of the workforce that are strongly unionised and where unions have the industrial strength to successfully pursue these claims through collective bargaining.

Notwithstanding this approach it is still very difficult to ensure that labour hire arrangements do not undermine permanent work and industry employment standards.

Even with Federal Modern Award and Collective Agreement regulation, all too often labour hire workers slip through the gaps and many employers argue that labour hire workers are employed by a separate company and therefore not their responsibility.

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<sup>1</sup> Westfarmers Premier Coal Ltd v AMWU (no 2) [2004]

#### 4. ASU Case Study - The Call Centre Sector

For over three decades the ASU has campaigned for the workplace rights and safety of workers in the call centre sector.

These efforts have resulted in a number of important achievements and initiatives being adopted. These include:

- Adoption by the former Bracks/Brumby Victorian State Government of the Victorian Government Call Centre Code governing call centre employment within the state public sector and procurement for state government call centre contracts;
- Recommitment by the Andrews Labor Government to the Victorian Government Call Centre Code;
- Creation of the first federal award for call centre workers – The Contract Call Centre Award (now a Modern Award);
- In conjunction with Worksafe the development of the Good Practice Guide for Occupational Health & Safety in Call Centres;
- Development of an off-shoring protocol with other call centre sector unions – FSU, CEPU & CPSU;
- Two major national surveys of workers in the industry in 1998 and 2009; and,
- research into off-shoring in 2008 and 2012

Despite these efforts call centre workers still identify significant unfair employment practices. These issues range in nature but include:

- Health & safety concerns in the context of a call centre environment;
- Excessive monitoring of employees;
- Unreasonable sales targets and KPI's linked to job security;
- A lack of access to union representation and/or collective bargaining;
- Some evidence of a lack of compliance with minimum employment standards
- Inability to balance work & family – eg: access to leave
- Insufficient training and lack of management support
- And,
- **A significant use of casual labour, labour hire, temporary contracts and other precarious forms of employment;**

The results of the ASU 2009 call centre industry survey of workers indicates that stress related to job insecurity is a major factor impacting workers in call centres. 45% of respondents felt their job was not secure.<sup>2</sup>

In many of the industries where the ASU has membership and industrial regulation, the level of labour hire and casualisation is lower than in some of the less well unionised sectors that the union covers and organises within.

The Contract Call Centre sector is a stark example of this.

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<sup>2</sup> It's Your Call – Improving Australian call centres for Workers – ASU survey 2009

In the experience of the ASU labour hire and temporary employment arrangements in this sector are far more prevalent and represent a much higher proportion of the workforce than in in-house call centres, and other sectors the union has coverage and organises within.

Another feature of the contract call centre industry is the high turnover of labour.

It is not uncommon for a contract call centre to employ 40% or more of its workforce on labour hire or other temporary or fixed term employment arrangements. More often than not labour hire workers are not covered by the industrial instruments in place at the host employer. This practice effectively creates two classes of workers within the same company.

It is increasingly common practice to employ call centre operators 'by the contract' despite the call centre skills being transferrable to other work contracted to the business. In these circumstances workers contracts can be terminated with the minimal notice period when the contract call centre loses a particular commercial contract, or if part or all of the work is off-shored.

Many employers in this sector will argue that the fixed term nature of commercial contracts necessitate flexible employment arrangements such as labour hire or fixed term contracts, or limited tenure contracts attached to the campaign they work on. This is hard to reconcile when labour hire and fixed term/temporary workers can remain for significant periods of time within one call centre and be subject to all the same performance and/or sales targets as permanent employees but have none of the benefits of permanent employment. This practice also serves to entrench the disadvantage experienced by those workers in insecure work, both financially and industrially.

In some instances these labour hire or temporary employees are subject to the host company's performance appraisal system and have reviews conducted on them by supervisory staff of the host employer. With these sorts of practices in place the line between directly and indirectly employed workers can become very blurred.

Difficulties can arise when a long-term labour hire placement ceases without explanation. The ASU has sought to help numerous labour hire workers who have been unable to get an explanation from either the host employer or the labour hire agency as to why their placement has been terminated. There is no access to proper dispute resolution procedures when a labour hire worker is in this situation and there are little to no legislative rights available to the worker other than to pursue a constructive dismissal case.

The extent of the use of labour hire arrangements in the contract call centre sector is a worrying trend in the view of the ASU. All of the problems associated with precarious employment are prevalent as a result.

The ASU is also seeing an increase in so called 'independent contractor' arrangements in call centres including an increase in home-based call centre work characterised by, in the union's view, sham contracting arrangements dressed up as flexibility.

Our union has spoken to home based call centre operators who are engaged as independent contractors and who work on campaigns for some of Australia's best known companies.

This is what they have told us<sup>3</sup>:

- Operators are paid as little as \$1.98 per call. There is no protection for the operators as to how long a call can go on for.
- If the operators do not meet the 'Quality Assurance' and 'Adherence' targets the call rate is halved not just for that call, but for all of the calls that week.
- Operators are not allowed a transcript of their call or to ask why they failed when they fail the above targets.
- Operators pay for their own costs including superannuation and insurance
- Operators are located across regional & metro areas.
- Operators log onto to a portal every week to nominate the shifts they are available for. Drawing up the roster can take up to 3 hours and none of the operators are paid for their time doing this.
- We are advised that if an Operator cannot do a shift they must provide a Doctor's certificate – hardly consistent with an independent contractor arrangement.
- Operators must re-sign a contract on the portal every couple of weeks – presumably to give the appearance that they are genuine contractors as opposed to employees.

At the time the ASU formed the view that the arrangements were not a legitimate independent contractor arrangement. For a range of reasons the case was not tested in the courts.

In November 2011 the Fair Work Ombudsman released a report into sham contracting in the cleaning, hair and beauty and call centre industries.

The audit of 102 businesses was conducted in April and May of 2011. Of the call centres audited (that number is unclear from the report) 7 instances of sham contracting were identified and 14 instances of 'misclassification of employees as independent contractors were discovered. Given the 102 businesses were across cleaning, hair & beauty AND call centres these are alarming statistics from a fairly small sample of employers.<sup>4</sup>

The ASU believes that this report represents the tip of the ice-berg in respect to sham contracting in the sector. Home based call centre workers are isolated and out of sight. Regulation and compliance for home based workers

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<sup>3</sup> based on information provided at the time of the union receiving initial complaints in 2010

<sup>4</sup> Sham Contracting and Misclassification of Workers in the Cleaning Services, Hair & Beauty and Call Centre Industries – Fair Work Ombudsman Report November 2011

in a range of industries is an area that requires different resources and approaches from regulators if exploitation is to be uncovered and remedied.

Of the home based call centre workers the ASU has had contact from all of them reported fear about making a complaint. Overwhelmingly they felt that they would lose the income and ability to work from home if they sought to pursue any action.

We must not let the attraction of the flexibility associated with home based work mask exploitation of vulnerable and isolated workers.

One of the barriers to effectively stopping instances of sham contracting is the factors used to determine the difference between an employee and an independent contractor are not always clear cut.

Even if the common indicators point to a person being an employee the cost of legal action can be beyond the reach of many vulnerable workers.

A strengthening of the laws prohibiting sham contracting is required at the federal level, as well as ensuring that remedies to sham contracting are affordable and accessible to workers and their unions.



## 5. ASU Case Study – Aviation Services

The ASU has significant membership and a long history of campaigning for the rights and industrial interests of ground staff across the aviation sector.

In 2013 a new entrant in the aviation services sector, providing 'special needs' passengers with assistance on a contractual basis with certain ground handling companies in the sector, set up on the eastern seaboard.

The ASU has chosen not to name this company, the host company or any of the impacted employees in this submission for privacy considerations, however on a confidential basis we provide relevant documents supporting this case study at **Appendix 1** of this submission.

In Melbourne the ASU Victorian Private Sector Branch became involved when workers employed by the new entrant became aware that they were being paid significantly lower rates of pay and conditions compared with those workers directly employed by the host company.

The ASU had significant concerns about the wages and conditions that employees of the new entrant had been engaged under. The ASU also had concerns regarding the impact that lower industry terms and conditions would have across the sector.

These workers joined the ASU and the union started work on pursuing their rights.

Despite being shift workers, employees were receiving:

- A flat rate of \$16 per hour – no penalty rates for shifts that would normally attract penalty rates in the industry;
- No public holiday rates of pay;
- Employees were required to pay for their own uniforms;
- Employees were required to pay for their own Aviation Security Identification Card.

In the course of representing our members concerns with regard to their employment arrangements, the company claimed that they have been issued with a 'ruling' from the Fair Work Ombudsman that the work performed by their employees was outside of any existing Modern Award. As a result the employees were being treated as 'award free' by their employer.

It later became apparent that the Fair Work Ombudsman had given no such 'ruling' and the employer was relying on a phone call made to the Fair Work Ombudsman information line where very little information was provided by the employer about the nature of the work being undertaken.

As was later confirmed by the Fair Work Ombudsman, employees were performing duties covered by the scope of an existing Modern Award - the Airline Operations – Ground Staff Award 2010. This Modern Award covers all other contractors, ground handlers and airlines not covered by an existing Enterprise Award in the industry of airline operations and specifically covers the duties these workers were performing.

Clause 4 – Coverage – of the Award, the Airline Operations – Ground Staff Award 2010, states:  
*4.1 This award covers employers throughout Australia in the airline operations industry with respect to all their employees throughout Australia in the classifications listed in Schedule B— Classification Definitions and to those employees. This award applies to the exclusion of any other modern award.*

Further at clause 4.5 of the Airline Operations – Ground Staff Award 2010, states:

*4.5 This award covers any employer which **supplies labour on an on-hire basis** in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.*

Under the Airline Operations – Ground Staff Award 2010 at clause 21.5 Aviation Security Identification Card (ASIC), the cost of the application fee, and other fees required by legislation for an ASIC, will be reimbursed by the employer.

Clause 21.13 of the Airline Operations – Ground Staff Award 2010 – Uniform and Protective Clothing Allowance, requires that where an employee is required to wear a uniform the employer must reimburse the employee for the reasonable cost of obtaining the uniform.

In addition the company was not paying the correct hourly rates of pay, penalty rates for shift work or public holiday loadings in accordance with the Airline Operations – Ground Staff Award 2010.

The ASU has collective agreements with the host employer in a number of states including Victoria, NSW and Queensland. These Agreements contain provisions requiring contractors to be paid the same rates of pay as those staff covered by the host company.

The host employer took steps to ensure that they were complying with the provisions of the collective agreement by insisting that the contractor pay the host company EBA rates of pay to their employees. This occurred in Melbourne some 6 weeks after the new entrant set up.

The host employer subsequently terminated the contract with the contractor in all states less than three months into the contract.

The ASU pursued the new entrant for the pack-pay owed to employees without success.

It became the strong view of the ASU that the entire business model of the new entrant was based on undercutting the industry rates and conditions.

The company went into liquidation less than six months into operation owing approximately 17 employees in Victoria over \$34,000 in lost wages and unspecified amounts of accrued leave and unpaid Superannuation contributions.

This figure could have been significantly higher if not for the provisions contained in the host employers' collective agreement with the ASU, requiring contractors and labour hire workers to be paid the same rates of pay as the host employers' workforce.

No assets were realised through the liquidation so former employees were forced to make application through the Fair Entitlements Guarantee (FEG) for lost wages and entitlements.

Ultimately the workers were left out of pocket and most were left unemployed. A small number of the employees were engaged by the host employer as direct employees.

From the ASU's perspective this case highlighted a number of concerns, including:

- The current lack of regulation of labour hire companies means that any operation can set up regardless of whether they have the required capital available to operate adequately within the law, or ethically;

- There are inadequate enforcement options available in a timely manner for enforcement of even the most basic workplace rights;
- Lack of adequate protection of employee entitlements;

Confidential supporting material is available at **Appendix 1** of this submission.

## 6. Insecure Work and Leave Entitlements

One of the significant impacts of insecure, casual and temporary work is the lack of access to paid leave for such workers.

The ASU has membership in the racing and wagering industry where the nature of the work is both casual and seasonal. This has been a challenging model when it comes to negotiating leave provisions for these workers. The ASU has had some success in securing a combination of paid and unpaid leave for casuals working within the racing industry.

The ASU membership in the franchised Tab Agency network have a particularly unique issue in respect to long service leave that arises from the definition of 'employer' in the Victorian Long Service Leave Act.

We raise this issue in these submissions on the basis of the casual and insecure nature of the employment and the impact this has in a franchised business model on leave entitlements and continuity of employment.

There are other continuity of employment issues that arise from an employee in a franchised network moving between franchisees.

The following is an extract from the ASU submission to the 2015 Victorian Economic, Education, Jobs & Skills Committee Inquiry into Portability of Long Service Leave Entitlements:

*The ASU was proud to win long service leave entitlements for Tabcorp casuals in the 1990's. This was significant given the seasonal and fluctuating nature of the racing industry and the casual tenure of the majority of the workforce.*

*Despite the casual nature of employment at Tabcorp, the length of casual employment of individual employees was, and remains, long. The Long Service Leave provisions covered casual employees in telephone betting, on-course and in Tabcorp operated retail outlets.*

*This is still the case today for Tabcorp casuals working On-Course.*

*In the franchised Tabcorp retail outlets the long service leave arrangements are not ideal.*

*Each Tabcorp Agent operating a retail outlet is treated as a separate employer. Because of the casual and low paid nature of this employment it is common for Tab Retail Operators to work for more than one Agent at a time, and/or over their employment history.*

*Currently employees (whether casual or permanent) working for consecutive Agents do not qualify for continuity for the purposes of long service leave. An employee would have to be with the same Agent (or multiple Agents over the required years) in order to be eligible for pro-rata LSL.*

*Up until 2008 Tabcorp facilitated all long service leave for Agency staff through a central arrangement.*

*In 2008 a new contract was negotiated between the Agents Association and Tabcorp.*

*The ASU understands that as part of the arrangements under the new contract, Tabcorp no longer administer the LSL for Agency staff.*

*For any service up to 2008 the Tab Agents Association set up a designated Trust Fund overseen by Trustees from the Agents Association where all long service leave accruals up to 2008 were paid into.*

*There is a process whereby each Agent has to make an application to the Trust fund on behalf of their Agency staff for any LSL applications accrued prior to 2008.*

*Any LSL payments post 2008 are the responsibility of the individual Agent to administer and pay.*

*It is not un-common for ASU members employed in Tab Agencies to move between outlets. Under the provisions of the LSL Act each Tab Agent is considered a separate employer even though they are a franchised network.*

*Under the current provisions of the Victorian Long Service Leave Act each Agent is treated as a separate employer even though the Tabcorp brand and retail operations are generic.*

*This is a barrier for Agency staff to accrue enough continuous service to qualify for long service leave.*

***The ASU recommends that the definition of separate employer be reviewed and amended for franchised businesses. In addition a portable scheme would mean such consecutive service would count towards an entitlement to long service leave.***

## **7. Supporting Flexible Work Arrangements**

The ASU membership is heavily feminised (currently 68%) and accordingly workplace provisions that support these workers seeking to balance their work and family responsibilities are a priority for the union.

In a range of collective agreements the ASU has negotiated across a number of industries, provisions for automatic access of up to two years (104 weeks) parental leave.

This provision has often been coupled with provision for the employer to back-fill the maternity/paternity leave vacancy on a fixed term basis for a period of up to 2 years.

These flexibilities have also been utilised to facilitate flexible work arrangements and return to work on a part time basis.

A typical provision will also provide the following safeguards:

- Consultation over the introduction of any fixed term employees;
- A commitment that the introduction of fixed term employment will not impact negatively on permanent employees or be used to replace attrition;
- Fixed term employees engaged under the same terms and conditions as permanent employees;
- Continuity of employment for all purposes should the fixed term employee be appointed as a permanent employee.

In such circumstances and with the required safeguards the ASU supports the use of temporary fixed term employees as a mechanism to support workers with family and other caring responsibilities.

## **8. Transparency in Contracting, Sub-contracting and the Supply Chain**

The complexity of labour supply chains can add to a lack of transparency in contracting arrangements.

Recent examples of exploitation of workers in the contract cleaning and food processing industries demonstrate that complex supply chains and sub-contracting arrangements are undermining the existence of appropriate labour standards.

This business model also serves to remove the head contractor at the apex of the supply chain from any responsibility for the workforce of companies down the supply chain.

This needs to change and a light should be shone on supply chains that hide exploitation and unethical employment practices.

In the services sector industries the ASU operates in this type of business model can be further complicated by some parts of the supply chain being off-shore.

The ASU recommends that the state government move to require employers at the head of the supply chain to keep detailed records of supply chains within their business, and for that information to be available for inspection by a compliance unit funded via a labour hire registration fee.

In addition detailed supply chain records should be made available for inspection by unions with rules coverage of the work being undertaken.

This approach, including requiring employers to keep detailed records and allowing union access to records, has been an effective tool in the textile clothing and footwear industry in ensuring transparency in contracting and supply chains for vulnerable outworkers for many years.<sup>5</sup>

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<sup>5</sup> TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010

## **9. Using Government Procurement and Investment to Promote Ethical and Secure Employment**

Two thirds of jobs in the Victoria are in the service sector.

The ASU has worked closely with the Andrew's Labor government to develop the policy - 'Plan to Secure Local Jobs for Local Workers in the Services Sector'.<sup>6</sup>

The policy recognises the unacceptable level of job losses in Victoria in the services sector as a result of off-shoring trends, and the policy commits to using the purchasing power of government to ensure that wherever possible services are sourced locally.

The policy commits to establishing government procurement arrangements that:

- Preference companies that provide sustainable, secure employment opportunities for local workers;
- Pre-qualification procurement arrangements in respect to government procurement of services in the services and financial sectors;
- Ethical procurement based decisions;
- Companies tendering for government work need to demonstrate compliance with all applicable employment and occupational health and safety related legislation including applicable collective agreements across supply chains;
- Compliance with the Victorian Call centre code for any call centre related procurement.

As the biggest purchaser of services the state government has an important role to play in ensuring that procurement and investment decisions promote ethical employment.

Accordingly government procurement and investment decision, including government grants, should only go to those businesses and organisations that can demonstrate a commitment to secure, sustainable and local jobs.

In addition tax-payers money should not go to those employers who cannot demonstrate compliance with all applicable employment and occupational health and safety related legislation including applicable collective agreements across supply chains.

Businesses that profit through the exploitation of vulnerable workers through unethical or insecure forms of work, contracting out, supply chains or sham contracting should not be the recipients of any government procurement, investment or grant assistance.

The state government should also consider whether there are other tax incentives or tax credits, such as payroll tax, that could apply for businesses that increase their permanent workforce.

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<sup>6</sup> Victorian Labor's Plan to Secure Local Jobs for Local Workers



## 10. The Views of ASU Members

In the lead up to this inquiry the ASU surveyed members about their experience with labour hire and/or other insecure forms of work.

Overwhelmingly the feedback we received from ASU members highlighted:

- ASU members experience with labour hire and/or insecure work was, in the vast majority of responses, negative;
- In the experience of ASU members the use of labour hire was to replace permanent work;
- The majority exposed to labour hire work did not have access to paid leave, shift penalties or overtime pay;
- Respondents strongly supported a licensing regime for labour hire companies and a requirement to comply with minimum employment standards.

When asked to suggest what remedies the state government should consider the most common and consistent response was:

- Deeming labour hire or temporary workers permanent after a period of time - most common response 12 months.

Other responses and suggestions received included<sup>7</sup>:

- Labour hire workers should be paid the same as direct employees of the host employer;
- The use of short term contracts should not be used by employers to avoid committing to an ongoing permanent role;
- Regulation of who is a 'fit and proper' person to operate in the labour hire industry;
- The ATO should keep records of those labour hire operators who have a history of phoenix activity or sham contracting;
- Compliance with minimum employment standards;
- Cap the number of labour hire workers in a particular workplace;
- Protections for casual and temporary workers in the NES;
- Tax incentives for those companies that provide secure jobs.

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<sup>7</sup> ASU email survey of members – Inquiry into Labour Hire and Insecure Work Nov 2015

## **11. Proposed Solutions & ASU Recommendations**

The ASU concurs with the recommendations put forward in the VTHC submission, specifically:

1. A threshold capital requirement before a company can get a license (in order to limit the number of operators and minimise the likelihood of phoenixing activities).
2. A bond or fee paid to the State of Victoria in order to be licensed (this fee would fund the compliance unit and allow for lost employee entitlements to be guaranteed by the State in certain circumstances (eg. liquidation)).
3. A compliance unit that: approves licenses (subject to 'fit and proper person' tests); monitors licensees and their activities; and investigations breaches of industrial and other laws (with operators who have found to have breached laws being at risk of their license being revoked or suspended).
4. A requirement for licensees to educate/inform new employees about the nature of their employment and their entitlements and rights (eg. through an information sheet or approved training; this should have a 'union rights' component).

In addition the ASU recommends the following initiatives in Victoria:

1. The state government should consider setting an objective test and/or guidelines for determining whether a worker is a genuine casual or temporary / fixed term employee or whether they are more appropriately classified as a permanent employee.
2. Strengthening of the provision of information about workplace rights to, and support for Victorian Workers, in particular vulnerable workers. Such a body should have independent statutory powers to investigate cases of exploitation.
3. The state government explore mechanisms to eliminate sham contracting in the state jurisdiction such as deeming certain workers as employees.
4. The state government should initiate best practice guidelines, including OHS standards to regulate home based work.
5. The Victorian Long Service Leave Act - the ASU recommends that the definition of separate employer be reviewed and amended for franchised businesses. In addition a portable scheme would mean such consecutive service would count towards an entitlement to long service leave.<sup>8</sup>

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<sup>8</sup> Recommendation also included in the ASU submission to 2015 Victorian Economic, Education, Jobs & Skills Committee Inquiry into Portability of Long Service Leave Entitlements

6. The state government should ensure that measures to assist workers balance their caring and work responsibilities, and other flexible work arrangements, are not facilitating unregulated and insecure forms of work.
7. The state government should move to require employers at the head of the supply chain to keep detailed records of supply chains within their business, and for that information to be available for inspection by a compliance unit funded via a labour hire registration fee. In addition detailed supply chain records should be made available for inspection by unions with rules coverage of the work being undertaken
8. State government procurement and investment decision, including government grants, should only go to those businesses and organisations that can demonstrate a commitment to secure, sustainable and local jobs.
9. Tax-payers money should not go to those employers who cannot demonstrate compliance with all applicable employment and occupational health and safety related legislation including applicable collective agreements across supply chains.
10. Businesses that profit through the exploitation of vulnerable workers through unethical or insecure forms of work, contracting out, supply chains or sham contracting should not be the recipients of any government procurement, investment or grant assistance.
11. The state government should also consider whether there are other tax incentives or tax credits, such as payroll tax, that could apply for businesses that increase their permanent workforce.
12. A 'fit and proper test' be required for operators and individual directors in the labour hire industry

The ASU recommends the Victorian Government to pursue the following initiatives with the Commonwealth Government:

1. A strengthening of the laws prohibiting sham contracting are required at the federal level, as well as ensuring that remedies to sham contracting are affordable and accessible to workers and their unions.
2. Provisions for deeming labour hire or temporary workers permanent after a specified period of time with a host employer in Modern Awards or the NES.

3. Provision of more resources to the ATO to stamp out phoenix activity.
4. Strengthen protections for casual and temporary workers in the NES

The ASU thanks the Committee for the opportunity to address these issues. We look forward to participating in the public hearing being conducted in Victoria.

Please contact the undersigned should you wish to discuss any aspect of the ASU submissions further.

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