

The Senate

Select Committee on Job Security

Third interim report: labour hire and
contracting

November 2021

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List of Recommendations

Recommendation 1

2.85 The committee recommends that the Australian Government amends the *Fair Work Act 2009* to ensure that the wages and conditions of labour hire workers are at least equivalent to those that would apply had these workers been directly employed by their host entities.

Recommendation 2

2.92 The committee recommends that the Australian Government immediately introduces a comprehensive national labour hire licensing scheme covering all business sectors, and requiring mandatory registration and continuous compliance with all legal obligations. It is recommended that significant penalties apply for those entities which continue to operate without being registered, and for those organisations which engage the workers of such unregistered operators.

Recommendation 3

2.98 The committee recommends that the Australian Bureau of Statistics enhances its labour hire data collection techniques for labour hire operators, labour hire workers, and host entities which engage their services, with the aim of better determining the prevalence, and scope, of this form of workforce arrangement in Australia.

Recommendation 4

2.102 The committee recommends that the Australian Government enhances its monitoring and compliance activities of labour hire operators to ensure that they are compliant with all their legal obligations. It is envisaged that such an approach would promote collaboration with unions, data-sharing amongst government entities, and utilise joint investigations, as required.

Recommendation 5

2.107 The committee recommends that the Australian Government investigates whether labour hire workers are more reluctant to raise safety concerns due to fears of reprisal from their employer and/or host and, if this is found to be the case:

- develop effective methods for the Fair Work Ombudsman to safeguard these workers from such reprisals, and to promote their capacity to promptly raise workplace health and safety concerns with both their host organisations and their labour hire operators; and

- improve the general protections provisions of the *Fair Work Act 2009* to ensure labour hire workers are effectively protected when speaking out.

Recommendation 6

3.57 The committee recommends that the Australian Government requires mining operators to conduct local labour market testing prior to engaging fly-in-fly-out and drive-in-drive out workforces.

Recommendation 7

3.58 The committee recommends that the Australian Government requires mining operators to meet best-practice in managing the physical and mental health and safety of their fly-in-fly-out and drive-in-drive-out workforces.

Recommendation 8

3.59 The committee recommends that the Australian Government commissions comprehensive contemporary research into the economic and health impacts resulting from mining operators utilising fly-in-fly-out and drive-in-drive-out workforces. Amongst other things, such research would assess the impacts on:

- demand for services delivered by local governments;
- the ability of local governments to raise revenues through taxation;
- small and medium businesses located in towns located close to mine sites; and
- the physical and mental health of workers and their families.

Recommendation 9

3.71 The committee recommends that the Australian Government commissions comprehensive research to determine the specific impacts of insecure employment on workers in the mining industry, with a focus on determining its effects on their ability to secure home loans; and on decisions such as place of residence, schooling, and major purchases; and their mental health.

Recommendation 10

4.72 The committee recommends that the Australian Government works with unions and experts to build upon the minor improvements to worker protections introduced through the Pacific Labour Scheme and Seasonal Worker Program, to introduce superior protections for these workers, and for workers arriving through the Australian Agricultural Visa.

Recommendation 11

4.76 The committee recommends that the Australian Government consults with unions to identify how right of entry laws can be improved to deliver better protections for workers, particularly in industries identified as high-risk for exploitation and wage theft by the Fair Work Ombudsman, such as in horticulture, higher education, and meat processing.

Recommendation 12

4.82 The committee recommends that the Australian Government works closely with, and provides additional funding for, the Fair Work Ombudsman to:

- enhance the provision of translating and interpreting services for migrant workers seeking information or lodging a complaint;
- expedite the investigation of complaints and enforcement of industry awards in the horticultural and meat processing industries; and
- work collaboratively with unions to ensure migrant workers are made aware of their legal entitlements, and have access to a union. Relevant unions should also be provided with a greater proactive auditing role.

Recommendation 13

4.83 The committee recommends that the Australian Government implements protections which ensure that migrant workers' personal information is not disclosed by the Fair Work Ombudsman to immigration authorities (including the Department of Home Affairs).

Recommendation 14

4.84 The committee recommends that the Australian Government imposes significant penalties for employers who demonstrate a pattern of non-compliance with their statutory employment obligations, including criminalising wage theft.

Recommendation 15

4.85 The committee recommends that the Australian Government implements an efficient, accessible, and inexpensive mechanism for workers to promptly recover all unpaid wages and superannuation to which they are entitled.

Recommendation 16

5.133 The committee recognises the merit of an independent body with the power to make and enforce binding standards on aviation supply chain participants, including airports and their central role. Those standards include 'same job, same pay' for outsourced and labour hire workers performing functions directly connected to aviation operations, job security

protections, and fair procurement standards. The committee recommends the Australian Government consults with industry participants, including unions, employers, and other stakeholders on the development of this body.

Recommendation 17

5.134 The committee recommends the Australian Government imposes obligations upon companies in receipt of future public bailouts, which prioritise job security and guarantee that companies cannot follow Qantas' lead, and exploit emergencies to engage in illegal workforce restructuring.

Recommendation 18

5.146 The committee recommends the Australian Government works with the Transport Workers' Union, the transport industry, and relevant stakeholders to establish an independent body, such as a National Transport Tribunal, which would:

- review and set minimum standards for safety, pay and conditions for all operators and workers including contractors in the transport sector;
- ensure minimum standards are enforceable on all supply chain and contracting parties, including by providing an effective enforcement regime and penalties for infringements;
- adjudicate transport contract network disputes, including in relation to the unfair termination of engagements; and
- defend the rights of all workers, including contractors, to join and be represented by their union and facilitate collective bargaining.

Chapter 1

Introduction

Labour hire and contracting

- 1.1 Over recent decades there has been a continued increase in workplace productivity and workforce flexibility, with the majority of these benefits flowing to corporate interests. This 'flexibility' has manifested itself in numerous ways, such as increased rates of casualisation and the utilisation of insecure labour hire workers and independent contractors.¹
- 1.2 This shift continues to transfer risks from employers to their workers, and has resulted in everyday Australians forgoing job security, paid leave, minimum rates of pay, and workplace insurance.² Evidence provided during the inquiry has indicated that this ongoing trend towards outsourcing through the engagement of contractors and labour hire workers is endemic in sectors such as mining, agriculture and horticulture, and transport and distribution.
- 1.3 It has been argued that these forms of insecure work leave large sections of the Australian workforce unable to share in the nation's economic prosperity. The Australian Council of Trade Unions has submitted that these workers:

... have inferior rights, entitlements, and job security to their counterparts in ongoing employment. It makes it tough for working families to plan for their future when they cannot rely on regular incomes, but have rising household costs, and are shouldering more and more household debt.³
- 1.4 Labour hire contracting has existed in Australia since the 1950s. Originally it was used to provide temporary staffing options for businesses, with entities operating within the industry colloquially known as 'temping' agencies.⁴ From the late 1980s, and through the 1990s, the industry saw significant growth, and now provides contract labour across a wide range of industries as a flexible alternative to the traditional direct ongoing employment model.⁵
- 1.5 Recent figures suggest that the labour hire sector is now worth \$19 billion a year,⁶ and the Recruitment, Consulting and Staffing Association estimated that labour hire firms, or job agencies, now employ approximately 360 000 people

¹ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 42.

² ACTU, *Submission 98*, p. 42.

³ ACTU, *Submission 98*, p. 42.

⁴ Victorian Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Victorian Inquiry), 31 August 2016, p. 48.

⁵ Victorian Government, *Victorian Inquiry*, p. 49.

⁶ ACTU, *Submission 98*, p. 18.

in Australia, including professionals, tradespeople, and skilled and semi-skilled workers.⁷

- 1.6 Notwithstanding these already significant numbers of workers, it was argued convincingly during the inquiry that the true number of labour hire workers in Australia may be underreported, partly due to these workers' confusion about their particular arrangements and whether they were being paid by a labour hire firm or their host. The Australian Bureau of Statistics' Jobs in Australia data indicated that the number of jobs in 'Labour Supply Services' (labour hire) increased from 584 312 in 2011–12 to 797 710 in 2018–19.⁸
- 1.7 During the inquiry, the committee heard numerous concerns from stakeholders regarding these arrangements and their increasing prevalence in workforces around Australia. These key concerns are discussed in detail further in this report; however, they generally related to:
- the insecure and precarious nature of the work;
 - the lack of workplace protections, and varying pay and conditions;
 - increased criminal activity;
 - lower levels of workplace safety;
 - increased tax avoidance and wage theft; and
 - the exploitation of vulnerable groups.
- 1.8 The committee is especially concerned that hosts' enterprise agreements do not commonly apply to labour hire employees, resulting in differential treatment between labour hire workers and those workers directly employed by host organisations. Although commonly working side-by-side with each other, the committee heard that labour hire workers frequently receive lower pay and conditions than their directly-employed counterparts.
- 1.9 Further, it became evident during the inquiry that labour hire arrangements are being utilised as a means of competition between directly and indirectly employed workers, with the aim of lowering wages and providing inferior conditions for all Australian workers.
- 1.10 Although many labour hire operators abide by the law and meet their legal obligations to their employees, evidence indicates that there may be significant lawlessness within the industry, with a number of jurisdictions mandating licensing schemes in an attempt to mitigate the most egregious examples of this poor behaviour, including harassment; wage theft; and serious workplace health and safety risks.
- 1.11 The committee also notes research that these arrangements negatively impact health and safety outcomes, including higher incidence or frequency of

⁷ Recruitment, Consulting and Staffing Association (RCSA), *Submission 73*, p. 4.

⁸ Jobs in administrative and support services between 2011–12 and 2018–19, 'Jobs in Australia', data provided by the ABS.

injuries, including fatalities; poorer physical and mental health, including susceptibility to bullying and drug use; and poorer knowledge of, and access to, regulatory employment rights, and less willingness to raise occupational health and safety concerns.

- 1.12 It also became evident that the unique industry characteristics of horticulture and meat processing have significant implications for the wages and conditions of its workforce. Specifically, the committee heard compelling evidence regarding the unconscionable exploitation of migrant workers; the creation of a two-tier workforce; and the facilitation of inadequate wages, and wage theft, through piece rates and the structural dependencies flowing from specific visa arrangements.

Outsourcing and subcontracting

- 1.13 Among other methods employed by firms looking to decrease costs, increase margins, and reduce obligations to workers, are outsourcing and subcontracting.
- 1.14 Firms outsource entire parts of their production, distribution, maintenance, or support functions, resulting in the loss of stable, secure jobs almost overnight. These jobs are often replaced 'the very next day' by lower-paid, less-secure, casual contracts that are offered by the successful contractor. Workers may end up unemployed, or they end up signing on to do the exact same job, with the new employer, on inferior terms and conditions and a lower rate of pay.
- 1.15 These decisions are always justified by companies with commercial reasoning. However, as in the case of the Qantas' decision in November 2020 to outsource its ground handling operations on the eve of the expiry of its enterprise agreements, there is evidence that companies are sometimes driven by a desire to 'prevent' the exercise of workplace rights—including preventing 'protected industrial action'.⁹
- 1.16 As well as outsourcing, firms use contracting and subcontracting to save money and reduce risk. Firms contract out parts of their business to other firms, who might then engage subcontractors to complete all of part of that work.
- 1.17 Inquiry participants highlighted the problems that can result from the pressures on supply chains where subcontracting is a dominant feature: each contractor takes a cut, until the business at the bottom—often an independent contractor or sole trader—is *squeezed* and has no choice but to 'take what they are given'.

⁹ Justice Michael Lee, *Transport Workers' Union of Australia v Qantas Airways Limited (No 2)* [2021] FCA 1012, www.judgments.fedcourt.gov.au/judgments/judgments/fca/single/2021/2021fca1012 (accessed 12 November 2021).

1.18 Mr Peter Anderson from the Victorian Transport Association and Australian Road Transport Industrial Organisation provided an example. When he previously ran a large national transport company, Mr Anderson lost a large contract 'to a company that was willing to give a stronger supply chain solution based on a lower cost'. Mr Anderson's company 'had about 50 per cent subcontractors and 50 per cent company trucks', and was told that his company would have needed to cut the rate they paid to their subcontractors in order to compete for the contract:

Those subcontractors had been working for us for years doing this contract, and all of a sudden their whole world was turned upside down. The regular work they had been doing and everything they had known in terms of the skill set applied to this type of freight was now challenged, and they had to accept \$300 per load less per load, which would be anywhere between \$600 and \$900 less income per week to do the same work that they had been doing. That's a real-life example of what can happen without proper standards.¹⁰

1.19 The committee has heard a number of examples where outsourcing, contracting and subcontracting have resulted in substantial and concerning threats to job security and undermined fair wages and conditions. A number of these examples are explored in this report.

Progress of the inquiry so far

1.20 Appointed by resolution of the Senate on 10 December 2020, the Senate Select Committee on Job Security (the committee) was established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions in Australia.¹¹

1.21 At the time of publication of this report, the committee has held 20 public hearings—hearing a broad range of diverse evidence from workers and employers, unions, experts, sector organisations and industry bodies—and published 219 submissions. The committee has also held six *in camera* hearings, during which it heard evidence from workers on a confidential basis to protect their identities.

1.22 The committee notes that it is a possible contempt for any person to inflict a 'penalty or injury upon' another person for giving evidence as part of Parliamentary proceedings, including a Parliamentary inquiry.¹² Where Senate committees are made aware of any concrete threats, or actions taken against

¹⁰ Mr Peter Anderson, Chief Executive Officer, Victorian Transport Association; and National Secretary, Australian Road Transport Industrial Organisation, *Proof Committee Hansard*, 13 October 2021, pp. 49–50.

¹¹ *Senate Journals*, No. 81—10 December 2020, pp. 2890–2891. The inquiry's full terms of reference are at page xi.

¹² Senate Privilege Resolution 6(11).

witnesses, such actions are treated with the utmost seriousness, and investigated.

- 1.23 Notwithstanding the protections offered by Parliamentary Privilege, it is the committee's preference to avoid placing workers in a situation where they felt their livelihoods may be at risk. Hence, some of the testimony received during the inquiry to-date has been received in camera, and, where utilised within the committee's reports, has been quoted anonymously with the permission of those individuals.
- 1.24 The committee has also collected a significant amount of data and information from government agencies, private companies and not-for-profit service providers in the form of answers to questions on notice. All of the public information is published on the committee's website.
- 1.25 On 24 June 2021, the committee tabled its first interim report titled *On-demand platform work in Australia*, which looked into employment arrangements in the gig economy and the adequacy of existing legislative and policy approaches, and proposed a number of reforms.
- 1.26 On 19 October 2021, the committee tabled its second interim report titled *Insecurity in publicly funded jobs*. This report analysed employment arrangements across the public sector, and was the result of concerning evidence provided to the committee relating to the precarious and insecure nature of work in a number of publicly-funded employment sectors.
- 1.27 In particular, testimony from workers in aged care and higher education prompted the committee to look more deeply into these troubled areas. The committee also sought evidence from a number of Australian Public Service agencies to better understand how they structured their workforces, and reviewed the role of Commonwealth procurement in promoting job security. This review of government procurement also included a comprehensive case study on the workforce practices employed by NBN Co, and its delivery partners, in the rollout and upgrade of Australia's National Broadband Network (NBN).
- 1.28 All reports tabled by the committee can be found on the committee's website, along with the committee's terms of reference, published submissions, information on all public hearings the committee has undertaken, as well as links to Hansard transcripts.

Extension of time to report

- 1.29 As discussed in the committee's second interim report, the COVID-19 pandemic has shone a light on the true nature and extent of insecure and precarious work in Australia. The pandemic has, and continues to, alter the employment landscape—its impacts are playing out in real time, and its effects are still being understood.

- 1.30 Playing a vital role in this process of discovery, the committee's inquiry is also giving voice to the concerns of Australians affected by insecure work at this critical time. The committee believes it has never been more important for the Parliament to hear these stories directly and to give these matters their due consideration.
- 1.31 Given this, the committee sought an extension to its inquiry from 30 November 2021 until the last sitting day in February 2022. The committee's aim in requesting this modest extension of time was to allow it to hear from additional key witnesses, as well as provide critical additional time for the due consideration and reporting on the substantial body of evidence the committee has already gathered.
- 1.32 On 19 October 2021, the Senate agreed to the committee's request to extend the presentation of the final report until the last sitting day in February 2022. Amongst other things, this vital extension has allowed the preparation of this third interim report focusing on the labour hire sector and contracting across key industries within Australia. These sectoral studies provide a powerful way for the committee to explore issues of job insecurity, with concrete examples of the exploitative nature of some labour hire and contracting arrangements.

The third interim report: labour hire and contracting

- 1.33 This third interim report is comprised of the following five chapters:
- Chapter 1—Introduction
 - Chapter 2—Labour hire and its impacts
 - Chapter 3—Workforce arrangements in the mining sector
 - Chapter 4—Workforce arrangements in the agriculture sector
 - Chapter 5—Workforce arrangements in the transport and distribution sector
- 1.34 The current chapter, Chapter 1, provides a brief introduction to the topics of labour hire, contracting, and outsourcing, and highlights a number of key themes which are returned to throughout the report. It also provides information on the progress of the inquiry so far, and the rationale for the committee's decision to seek an extension of time to report.
- 1.35 Chapter two provides a detailed discussion of the labour hire industry, providing key information on its history and current size, as well as the rationale explaining why workers and entities utilise this form of work. Key concerns are also highlighted and discussed, along with a number of proposed reforms, and the committee's views and headline recommendations.
- 1.36 Chapters three through five take a sectoral approach in their analysis of labour hire, contracting, and outsourcing, and review the workforce arrangements commonly in place across the mining, agriculture, and the transport and distribution sectors in Australia, respectively.

1.37 These chapters discuss the key issues and concerns raised during the inquiry, as well as utilising prior relevant research undertaken by boards of inquiry, taskforces, and other entities and processes. Each chapter provides the committee's view on the concerns raised and associated recommendations for reform.

Acknowledgements

1.38 The committee would like to acknowledge all submitters and witnesses who gave evidence at public hearings, including many via video or teleconference during COVID lockdowns. We particularly acknowledge the workers who shared their stories with the committee, sometimes under difficult circumstances.

Chapter 2

Labour hire and its impacts

Background and definition

- 2.1 Labour hire arrangements commonly involve a 'triangular relationship' whereby a labour hire firm provides the labour of a worker to a third party, also known as a host, in exchange for payment. The Australian Council of Trade Unions (ACTU) submitted that these hosts are commonly large companies who, in many cases, utilise their own employees alongside externally sourced labour hire.¹
- 2.2 Emeritus Professor Michael Quinlan at the University of New South Wales noted that the term 'labour hire' is specific to Australia and New Zealand, and that in other jurisdictions around the world firms performing essentially the same role are referred to as 'agency labour' and 'temp agencies'.²
- 2.3 A comprehensive explanation of the common labour hire arrangement was referenced in the final report of the 2015–16 Victorian inquiry into the labour hire industry and insecure work (the Victorian Inquiry):

... [it] involves the agency entering into an agreement with the worker, and arranging to hire out their services to a host, or to a series of hosts. The worker generally performs these services at the host's premises, and may be supervised (if their work requires supervision at all) either by the host's staff or by other workers supplied by the same, or a different, agency. The worker is paid by the agency, but aside from any requirement to submit timesheets may have relatively little contact with it. The host, on the other hand, pays a fee to the agency which covers the worker's remuneration and any associated on-costs. ... In many instances the nature of the arrangement is such that there is no obligation on either side to give or accept work. If an assignment is accepted, a contract is formed (usually on the agency's standard terms). But in between assignments, there may be no mutuality of obligation and hence no contract.³

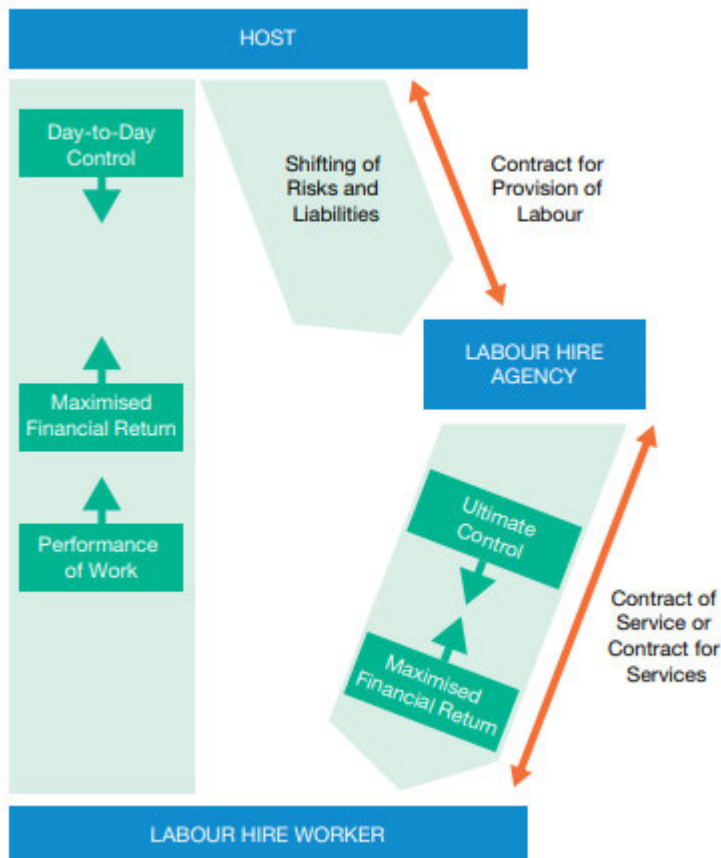
¹ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 18.

² Emeritus Professor Michael Quinlan, *Report on a number of matters with regard to the Board of Inquiry Investigation into the methane incident at the Anglo American Grosvenor Mine at Moranbah on 6 May 2020 and related matters* (Quinlan Report), p. 5. Accessible at: <https://coalminesinquiry.qld.gov.au/wp-content/uploads/2021/07/BOI.001.004.0001-Report-on-matters-regarding-BOI-investigation-into-methane-incident-Grosvenor-mine-and-related-matters-by-Emeritus-Professor-Michael-Quinlan.pdf>.

³ Victorian Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Victorian Inquiry), 31 August 2016, p. 49. For further information on this explanation, see: Andrew Stewart, Anthony Forsyth, Mark Irving, Richard Johnstone and Shae McCrystal, *Creighton and Stewart's Labour Law: 6th edition*, The Federation Press, Annandale, 2016.

- 2.4 Under these arrangements there are no direct or contractual relationships between the host and the worker; instead, the worker is engaged by the labour hire agency as an employee or an independent contractor, depending on the circumstances.⁴ A typical labour hire arrangement is shown in Figure 2.1 below.

Figure 2.1 A typical labour-hire arrangement



Victorian Government, Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report, p. 48.

- 2.5 Importantly, the party with the actual control over how tasks are performed is the host firm; not the labour hire firm. The Victorian Inquiry described the working environment, and the temporary nature of these engagements, as follows:

The employee commences and concludes work in accordance with the requirements of the host, works at the direction of the host, at the host's workplace, and in many cases alongside direct employees of the host. Further, irrespective of the length and regularity of a labour hire employee's work for a host, the labour hire employee's engagement at the host's business is, of its nature, temporary.⁵

⁴ Victorian Government, *Victorian Inquiry*, p. 48.

⁵ Victorian Government, *Victorian Inquiry*, p. 88.

- 2.6 Although both the labour hire agency and host have a number of duties and obligations regarding their labour hire workers and the workplace environment, the precise allocation between the parties will depend on the circumstances.⁶
- 2.7 The Construction and General Division of the Construction, Forestry, Maritime, Mining, and Energy Union (CFMMEU) highlighted the myriad forms that labour hire can take and noted a number of the complications:

Despite the typical forms of labour hire arrangement, in reality there is often variation in how such workers are engaged: workers may be hired as employees or independent contractors, employees may then be casual, fixed-term or ongoing. Complicating these arrangements even further is the fact that hosts may outsource only some work to a labour hire agency, thus creating a situation where direct employees and labour hire workers perform the same duties side-by-side. Further, in some instances labour hire agencies themselves may further outsource or contract out their labour needs, creating a multi-tier relationship.⁷

Industry profile and size

- 2.8 There has been substantial growth in the labour hire industry in recent years, with estimates suggesting that the sector is now worth \$19 billion a year.⁸ The Recruitment, Consulting and Staffing Association (RCSA) estimated that labour hire firms, or job agencies, employ approximately 360 000 people in Australia, including professionals, tradespeople, and skilled and semi-skilled workers. It submitted that:
- ... they are young, old and middle-aged and they are assigned to work for business, and government, across hundreds of different industries, ranging from IT and engineering through to health and manufacturing.⁹
- 2.9 The CFMMEU contended that the utilisation of labour hire in the construction industry is becoming increasingly widespread and that it has been a 'significant factor in undermining job security and the entitlements of construction workers'.¹⁰
- 2.10 In its submission to the inquiry, the Queensland Government stated that, in 2018, just under 4 per cent of employees in Australia, or approximately 400 000 people were registered with labour hire firms. It highlighted that between 2014 and 2018, the number of these workers increased by around 24 000, or 6.3 per

⁶ Victorian Government, *Victorian Inquiry*, p. 133.

⁷ Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) (CFMMEU), *Submission 79*, p. 5.

⁸ ACTU, *Submission 98*, p. 18.

⁹ Recruitment, Consulting and Staffing Association (RCSA), *Submission 73*, p. 4.

¹⁰ CFMMEU, *Submission 79*, p. 5.

cent, and that their median weekly earnings were 4 per cent lower than the median weekly earnings of other employees.¹¹

2.11 The Western Australian Government (WA Government) submitted that, as at August 2020, an estimated 14 600 employees, representing 1.3 per cent of all employees in Western Australia, were paid by labour hire firms or employment agencies. It also noted that, in 2015, the Productivity Commission estimated that labour hire accounted for approximately 1.8 per cent of the national labour market.¹²

2.12 In its final report, the Migrant Workers' Taskforce argued that the number of labour hire workers in Australia was uncertain, stating that estimates varied depending on which data source was utilised.¹³ With regards to the number of businesses operating in the sector, the taskforce similarly said the following:

Based on existing data, it is unclear how many labour hire businesses are currently operating in Australia. This is because of the way labour hire is captured in government datasets, how businesses record their labour hire activities (where it might not be the primary service they deliver) and the increased likelihood that unscrupulous labour hire operators will operate within the black economy.¹⁴

2.13 The Migrant Workers' Taskforce also highlighted another significant deficiency in data collection by noting that there are currently 'no data to determine how many migrant workers are engaged by labour hire operators'.¹⁵

2.14 The joint submission to this inquiry made by the Attorney-General's Department; the Department of Education, Skills, and Employment; and the Department of Industry, Science, Energy, and Resources (the Joint Departmental Submission) argued that ABS data showed that the relative share of most individual forms of work had remained 'relatively stable' over the last decade, with the exception of part-time employment. It articulated this further:

... as per ABS definitions, the number of casual employees as a share of all employees, the number of individual contractors as a share of all employed persons, the number of labour hire workers as a share of all employees, and the number of employees on fixed-term contracts as a share of all employees have all remained relatively stable (notwithstanding the decline in casual employment experienced during the COVID-19 pandemic ...¹⁶

¹¹ Queensland Government, *Submission 104*, p. 7.

¹² Western Australian Government, *Submission 100*, p. 2.

¹³ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 100.

¹⁴ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 101.

¹⁵ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 100.

¹⁶ Attorney-General's Department; Department of Education, Skills, and Employment; and Department of Industry and Science, Energy and Resources, *Submission 75*, p. 4.

- 2.15 Similarly, the Australian Chamber of Commerce and Industry (ACCI) argued that the labour hire workforce only represents a 'very small proportion' of the total workforce, and that the proportion has 'barely moved' over the last ten years. It noted that the largest users of labour hire and agency workforces in Australia were the professional, scientific and technical services sectors and the banking and finance industry, followed by construction and healthcare.¹⁷
- 2.16 Referencing a 2018 research paper published by the Australian Parliamentary Library, the Australasian Centre for Corporate Responsibility (ACCR) suggested that the true number of labour hire workers in Australia may be underreported partly due to these workers' confusion about their particular arrangements and whether they were being paid by a labour hire firm or their host.¹⁸
- 2.17 The ACCR also noted that it had recently reviewed how the top S&P/ASX 100 companies across the mining, construction, and property services sectors reported the composition of their workforces. Based on this review, it concluded the following:
- Very few companies report any information about their use of labour hire and/or contract workers, despite the fact that these workers often made up a large proportion of a company's total workforce. Of the companies analysed, 42% made no material disclosure about their labour hire and/or contracting workforce in annual reporting documents. When companies do disclose some information about their use of labour hire and/or contracted workers, it is often unclear how the companies are defining each of these categories of work.¹⁹
- 2.18 Notwithstanding the lack of available information, the ACCR said it was 'clear that labour hire workers constitute a staggering proportion of workers in some industry sectors'. In support of this assertion, the centre noted that, since 2012, many operators within the mining industry had moved to engaging predominantly labour hire workforces. The ACCR also raised the 'incursion' of these arrangements into the health and community sectors, highlighting that during 2019–20 the National Disability Insurance Scheme (NDIS) workforce included 1692 labour hire contractors and consultants; representing 15 per cent of the total workforce.²⁰

¹⁷ Australian Chamber of Commerce and Industry (ACCI), *Submission 71*, [p. 11].

¹⁸ Australasian Centre for Corporate Responsibility (ACCR), *Submission 46*, p. 2. For further information, see: https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/6383457/upload_binary/6383457.pdf

¹⁹ ACCR, *Submission 46*, p. 4.

²⁰ ACCR, *Submission 46*, pp. 2–3.

Australian Bureau of Statistics data

2.19 The Program Manager of the Labour Statistics Branch at the Australian Bureau of Statistics, Mr Bjorn Jarvis, told the committee that the Labour Force data, which is commonly used to estimate the number of labour hire workers in Australia, is not the best source of data on labour hire. He contended that this is because it is often underreported by employees who do not know they work for a labour hire company:

... a lot of those people who are persistently employed by labour hire firms who are—using an example of working in mining—doing it over a long period of time, end up identifying that they're employed in mining rather than employed by a labour hire firm that is contracting work to the mining industry.²¹

2.20 As an alternative, Mr Jarvis suggested that the Labour Account data, which is a collection of data from industry and other sources, 'provide[s] the best indication of the size of the industry'.²² He explained that labour hire falls within the Administrative and Support Services Industry Division, under 'Labour Supply Services', and to get a more accurate picture of the growth in the sector, the Labour Account:

... gives us the best sense of the size of the industry, how many people are employed by the industry, the jobs within that industry, the hours that are worked within that industry, and also the total remuneration for people employed within that particular industry.²³

2.21 According to the ABS' Jobs in Australia data, the number of jobs in 'Labour Supply Services' (labour hire) has increased from 584 312 in 2011–12 to 797 710 in 2018–19 (latest available data).²⁴ This figure is higher in real terms than the figures provided by the Labour Force data, and higher than industry estimates. Importantly, it indicates material growth in this precarious and insecure form of employment over time.

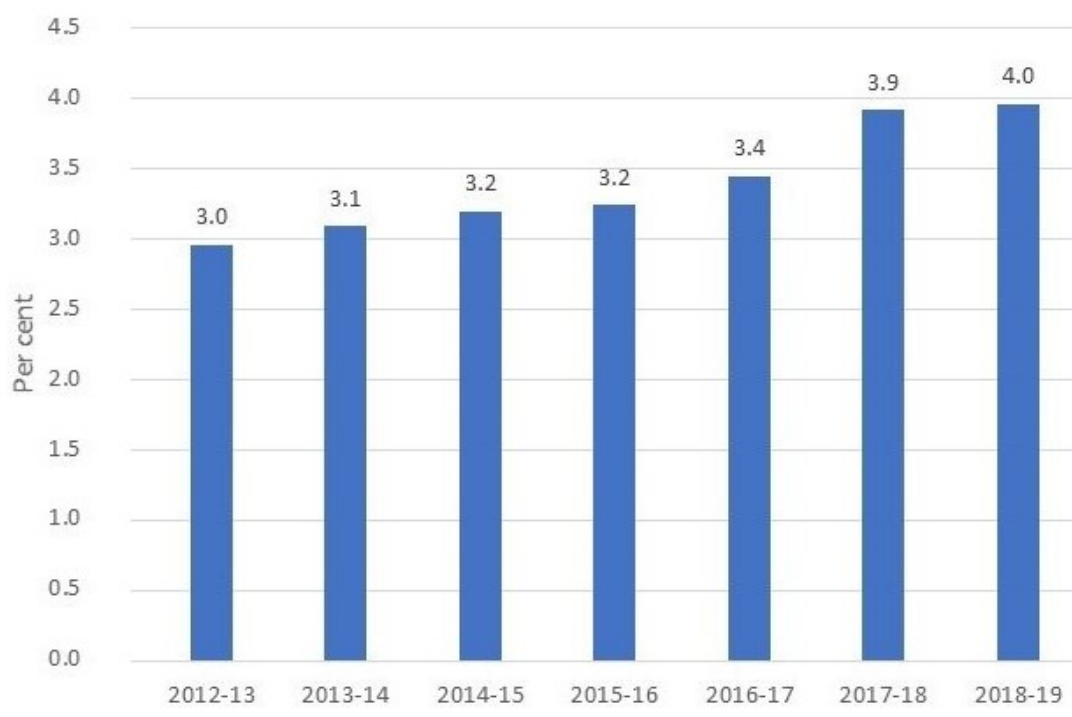
2.22 Figure 2.2, below, highlights that the share of total jobs in the economy generated by Labour Supply Services grew from 3 per cent to 4 per cent between 2012–13 and 2018–19.

²¹ Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch, Australian Bureau of Statistics, *Proof Committee Hansard*, 4 November 2021, p. 51.

²² Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch, Australian Bureau of Statistics, *Proof Committee Hansard*, 4 November 2021, p. 50.

²³ Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch, Australian Bureau of Statistics, *Proof Committee Hansard*, 4 November 2021, p. 50.

²⁴ Jobs in administrative and support services between 2011–12 and 2018–19, 'Jobs in Australia', data provided by the ABS.

Figure 2.2 Labour supply services share of total jobs in the economy

Source: ABS, *Labour Account*, Parliamentary Library calculations.

A brief history of labour hire in Australia

2.23 Labour hire has existed in Australia since the 1950s when it was predominantly utilised to provide temporary staffing options for businesses, with entities operating within the industry colloquially known as 'temping' agencies. From the late 1980s, and through the 1990s, there has been significant growth in what has been termed the 'pure' labour hire industry, which provides contract labour across a wide range of industries as a flexible alternative to the traditional direct ongoing employment model.²⁵

2.24 The Victorian Inquiry noted that the industry has become well established in Australia over the last twenty years.²⁶ It also highlighted the various types of labour hire arrangements operating within Australia in recent times. These services have evolved and now include a multitude of options, such as:

- the supply of short term placements;
- the outsourcing of specific functions, such as maintenance;
- the provision of substantial proportions of organisations' workforces for extended periods of time, such as call centres and retail organisations; and
- the provision of entire workforces for hosts.²⁷

²⁵ Victorian Government, *Victorian Inquiry*, p. 49.

²⁶ Victorian Government, *Victorian Inquiry*, p. 50.

²⁷ Victorian Government, *Victorian Inquiry*, p. 51.

- 2.25 The ACTU also observed that this form of employment has substantially increased, and now operates across a range of industries and occupations. It contrasted this with the historical approach whereby the use of triangular employment relationships were commonly confined to specific tasks considered outside a business' core activities and competencies, or to fill genuine short-term staffing shortages. It submitted that a key reason for this increase in recent times has been to 'reduce labour costs and transfer risk to workers'.²⁸
- 2.26 The 2016–17 Black Economy Taskforce highlighted the recent evolution of the labour hire industry, and indicated that some newer models may utilise the 'sharing or gig economy model'. Specifically, in its final report it said:
- Some newer models of what could be considered labour hire use the sharing or gig economy model. The labour hire firm operates as an online platform, workers and businesses seeking workers are matched through the platform. The labour hire platform may just match staff to jobs, with the business paying users directly, or may provide users with the business paying the platform. The same platform may operate both models, with it varying between what the business chooses, either generally, or for particular workers.²⁹

Industry-led certification

- 2.27 Partly in response to poor practices in some parts of the sector, the peak body for the recruitment and staffing industry in Australia and New Zealand, the RCSA, implemented a voluntary workforce services provider certification scheme known as StaffSure. As articulated on the scheme's website:
- StaffSure was developed because there were a number of service providers in the Australian and New Zealand market who were not meeting their legal obligations to workers and, following allegations of exploitation, there was a call from industry, unions and government for the development of a scheme that made it easy and simple to work out which providers had business integrity and which did not - who to use and who to avoid.³⁰
- 2.28 The purpose of certification is to provide a measure of assurance that, within an acceptable degree of residual risk, a certified workforce services provider is reputable, has established and operates reasonable controls in the key areas covered by the standard, and will seek to meet its compliance obligations in accordance with the standard.³¹

²⁸ ACTU, *Submission 98*, p. 18.

²⁹ Australian Government, *Black Economy Taskforce: Final Report*, October 2017, p. 137.

³⁰ StaffSure, [Frequently Asked Questions, https://www.staffsure.org/StaffSure/About_Staff_Sure/FAQs.aspx](https://www.staffsure.org/StaffSure/About_Staff_Sure/FAQs.aspx) (accessed 4 November 2021)

³¹ StaffSure, [Workforce Services Provider Certification Standard, https://www.rcsa.com.au/documents/products/RCSA_StaffSure.pdf](https://www.rcsa.com.au/documents/products/RCSA_StaffSure.pdf) (accessed 4 November 2021)

2.29 Although commending industry efforts to improve integrity, the Migrant Taskforce still had lingering concerns regarding its ability to change behaviour. In its final report it said:

... there are concerns that StaffSure will have limited impact in correcting poor behaviour in high-risk sectors. The many small labour hire operators that operate in these sectors would have little incentive or ability to invest in meeting the rigorous certification standard while the drivers for potential unscrupulous practice remain. As such, certification alone will be unlikely to capture unscrupulous labour hire operators, including those operating in the black market, in any meaningful way.³²

A national licensing scheme

2.30 A number of factors are commonly thought to provide the environment for 'unscrupulous' labour hire operators to exist within Australia, such as a lack of:

- barriers to entry to operate within the industry;
- visibility regarding the prior conduct and behaviour of labour hire operators; and
- supply chain accountability for unscrupulous practices by labour hire operators.³³

2.31 Recognising these problems and aiming to mitigate them, a number of states and the Australian Capital Territory developed and implemented labour hire licensing schemes in their respective jurisdictions.³⁴

2.32 Commenting on these existing state-based licensing schemes in 2019, the Migrant Workers' Taskforce argued that a national scheme would be preferable to regional schemes for a number of reasons. On this it said the following:

The separate state-based licensing schemes, while sharing some common elements, have key differences. Having multiple schemes in operation imposes a further regulatory and cost impost on the labour hire operators and host businesses that operate across state borders. The Taskforce is of the view that a single national regulatory scheme is preferable over different and overlapping state-based schemes.³⁵

2.33 Given this, the taskforce called for the government to establish a national labour hire registration scheme with the objectives of:

- gaining visibility and accountability of labour hire operators operating in high-risk sectors;

³² Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 104.

³³ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 105.

³⁴ See, for example, Queensland's labour hire licensing scheme: <https://www.labourhire.qld.gov.au/>; and Victoria's labour hire licensing scheme: <https://labourhireauthority.vic.gov.au/> (accessed 16 November 2021).

³⁵ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 105.

- extending accountability to hosts;
- providing a means for government to encourage compliance and behavioural change; and
- reducing exploitation of vulnerable workers by labour hire operators and in supply chains.³⁶

2.34 In its submission to the inquiry, the Queensland Government expressed its support for a national licensing scheme based on the successful model already operating within its state.³⁷ The ACTU also advocated for a national scheme, as long as it provides protections, and imposes obligations, which are 'at least equivalent' to those under the existing state-based schemes.³⁸

2.35 The Black Economy Taskforce, however, did not favour directly licensing labour hire firms at either the state/territory level or nationally. In its 2017 final report, it said the following regarding the proposal:

Any licensing scheme is creating further regulatory burdens. Government licencing, if not backed up by strong enforcement, can sometimes degenerate into a tick-the-box exercise. Licence fees are paid, but little action is taken. A further risk is that otherwise credible licencing regimes, over time, are diluted and compromised. As a result of lobbying, they come to define the lowest common denominator. A third licencing pitfall is that, being defined by government, they fail to keep pace with changes in technology, consumer preferences and commercial practices.³⁹

2.36 Notwithstanding these reservations, in response to the findings of the Migrant Workers' Taskforce the then Minister for Industrial Relations, the Hon Christian Porter MP, wrote to his state and territory counterparts in October 2019 seeking their input into the development of a national scheme. In his letter, he proposed a number of 'guiding principles' to underpin the development of the scheme:

- labour hire operators must be registered to operate, and unregistered entities would be subject to penalties;
- the scheme would operate nationally;
- the sectors covered by the scheme would be informed by stakeholder consultation, but would, at a minimum, cover 'high-risk' sectors;
- labour hire operators would be required to register and supply information about the owners of the business;
- registered operators would pay an annual fee;
- the Fair Work Ombudsman would administer the scheme, including registration and compliance;

³⁶ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, pp. 105–106.

³⁷ Queensland Government, *Submission 104*, p. 2.

³⁸ ACTU, *Submission 98*, p. 35.

³⁹ Australian Government, *Black Economy Taskforce: Final Report*, October 2017, p. 206.

- the government would maintain a public register of labour hire operators to allow hosts to easily find registered operators; and
- hosts are required to use registered operators, and those that use unregistered operators would face penalties.⁴⁰

2.37 The development of this national scheme has not yet been finalised by the Australian Government, and no draft legislation has been presented publicly for discussion.

The reasons why organisations use labour hire

2.38 Host organisations engage labour hire workers and contractors for a myriad of reasons, with the two key ones being increased flexibility and cost savings. The 2020–21 Queensland Coal Mining Board of Inquiry (the Mining Inquiry) submitted that the most significant advantage for host organisations in the mining industry is:

... the ability to increase their labour supply during periods of demand without having to increase their employee numbers, and reduce that supply when it is no longer required.⁴¹

2.39 The Mining Inquiry also noted that other advantages included:

- providing enhanced numerical flexibility to cope with peaks and troughs in demand, staff absences, or to manage specific work (e.g. programmed maintenance)
- simplifying recruitment and selection processes and meeting interim or immediate staff needs at short notice facilitating access to specialist skills from time to time as required
- reducing in-house staff and outsourcing non-core business areas, including the management of areas of expertise (e.g. human resources, occupational health and safety)
- reducing costs associated with staff overheads and entitlements, simplifying tax planning, and
- outsourcing risk management and administrative burdens associated with regulatory compliance, including unfair dismissal claims and workers' compensation.⁴²

2.40 The RCSA submitted that Australian small businesses are heavily reliant on on-hire staff, and that they use this form of labour to perform roles where they are not large enough to warrant engaging permanent or full-time employees. It

⁴⁰ See: https://www.aph.gov.au/-/media/Estimates/eet/supp1920/6_Correspondence_from_the_AG_to_states_and_territories.pdf?la=en&hash=8A8AAACD8DEDBF0F92ED0DBB324177BEE3C460A7 (accessed 5 November 2021)

⁴¹ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 374.

⁴² Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 374.

highlighted that the utilisation of labour hire workers is most important during a business' transition and growth phase:

As businesses take on new projects, new clients or attempt new lines of work, at the time the activity commences there is often uncertainty about the longevity of new operations, the stability of the opportunity or the commitment of the client. On-hire staffing allows small business to engage the labour it needs to trial or develop a line or service, and to grow it with less risk.⁴³

2.41 The RCSA also noted that labour hire has been utilised across Australia's health and care systems to provide surge staffing needs. It submitted that '[w]ithout accessible, qualified and 'work ready' teams of on-hire casual staff, Australia could not rely on its health and care structures in the way we have come to take for granted'.⁴⁴

2.42 The Australian Workers' Union (AWU) noted that, according to the Organisation for Economic Cooperation and Development (the OECD), Australia has one of the highest rates of 'non-standard employment' in the world. It submitted that this is often done ostensibly to increase organisational flexibility and to fill specific skill shortages; however, it argued that, in practice, the aim is actually to:

... prevent labour hire employees from having access to the same pay and conditions provided under existing enterprise agreements (EAs). This becomes increasingly transparent when employers fire their own employees and seek to rehire them under labour hire contracts.⁴⁵

2.43 In its submission to the inquiry, the ACTU contended that the use of labour-hire workers by corporations and government agencies is designed to 'facilitate the stripping of conditions and driving wages down below industry standards'.⁴⁶ Further articulating this point, the ACTU stated that the utilisation of these arrangements is a means of:

... putting wages into competition through outsourcing that puts the workforce beyond the reach of enterprise bargaining with the host business.⁴⁷

2.44 The Mining Inquiry also recognised this, noting that another key advantage seemed to be the 'marginalisation of the union', which served to reduce the

⁴³ RCSA, *Submission 73*, p. 5.

⁴⁴ RCSA, *Submission 73*, p. 5. Please note that a number of issues and concerns were raised regarding the use of labour hire firms and digital platforms to source workers in the health and care industries. These were discussed in detail in the committee's second interim report.

⁴⁵ Australian Workers' Union (AWU), *Submission 199*, [p. 5].

⁴⁶ ACTU, *Submission 98*, p. 18.

⁴⁷ ACTU, *Submission 98*, p. 18.

risk of increased industrial disputes, work stoppages, lower productivity, and higher labour costs.⁴⁸

The reasons why workers engage in labour hire work

2.45 A number of reasons were provided to the committee to explain the rationale for workers choosing to engage in labour hire work. For example, mirroring the flexibility benefits that host organisations receive, it was submitted that this form of work offers additional flexibility for workers as well. Specifically, it was contended that these arrangements make it possible to combine work with study, family, and travel; and can also accommodate partial retirement and facilitate the transition back to work from studying, parental leave, and unemployment.⁴⁹

2.46 It was also suggested that other advantages of this form of work include having agents who scout for placement opportunities on workers' behalf; tailored working conditions; an increase in the variety of work undertaken; and heightened independence to determine work options.⁵⁰

2.47 As referenced by the Mining Inquiry, a 2008 Australia Bureau of Statistics (ABS) survey identified numerous reasons why workers engage in labour hire work. These are listed below, along with the percent of respondents who selected each reason:

- ease of obtaining work (55.7 per cent);
- the fact that it is hassle-free (15.6 per cent);
- respondents like short-term work (2.8 per cent);
- they are unable to find work in their line of business (7.1 per cent);
- labour hire work is a condition of working in the job/industry (9.2 per cent);
- a lack of experience prevents them finding a permanent job (2.4 per cent);
- it allows them to gain more experience (2.8 per cent);
- it affords them flexibility (7.4 per cent); and
- other unspecified reasons (17.8 per cent).⁵¹

2.48 In its submission to the inquiry, the CFMMEU highlighted that the majority of labour hire employees are casual employees and, hence, are entitled to a higher hourly rate than equivalent full-time and part-time employees through a 'casual loading'. Although noting that it is commonly argued by labour hire

⁴⁸ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 374.

⁴⁹ RCSA, *Submission 73*, p. 5.

⁵⁰ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 375.

⁵¹ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 375.

advocates that workers are generally happy with these arrangements, as they allow higher wages through this casual loading, the CFMMEU concluded that:

... the argument is 'not backed up by the facts' as researchers have found that the casual loading does not fully compensate for all of the foregone benefits associated with stable, ongoing work.⁵²

2.49 The Mining Inquiry stated that there was evidence indicating that some workers utilise temporary forms of employment, such as labour hire, because of a 'lack of options'. It referenced a 2009 study of the European Union which found that over 50 per cent of the study's participants had 'involuntary motivations' for engaging in this form of work.⁵³

2.50 In alignment with the above finding, the Victorian Inquiry concluded that:

While there is evidence that some workers are attracted to the flexibility that labour hire offers and see it as a path to ongoing employment, many workers accept labour hire engagements as the only choice open to them and would prefer permanent positions. There is also considerable financial insecurity attached to many labour hire engagements.⁵⁴

2.51 Notwithstanding the above, the RCSA argued that the conversion rate of labour hire workers into full-time or part-time employment was 'extremely low', noting that it was less than 4 per cent. Given this, it concluded that '[t]he vast bulk of agency workers choose to work the way they do'.⁵⁵

2.52 This argument was rejected by numerous witnesses, who noted that the conversion to full-time employment with the labour hire company would still leave them on the inferior pay and conditions offered by the labour hire company, while also stripping away the 25 per cent loading. The base rates of pay on these labour hire agreements are in some cases so low, that the 25 per cent loading is essential. On the other hand, labour hire workers are desperate to convert to employment with the host, to access superior union-negotiated terms. Mrs Kelly Vea Vea, Deputy Mayor of the Isaac Regional Council said:

I would really like to make a statement regarding that claim that was made yesterday by labour hire companies that less than one per cent of labour hire workers have converted to permanent jobs because they prefer more money and flexibility. For us out here, that's as misleading as it is downright offensive. We have no doubt that less than one per cent have converted to permanent jobs, because there aren't permanent jobs to be had. For us, it's really frustrating because mining companies create new workforce structures that deprive workers of genuine choice, and then they say the workers actually didn't want to do that anyway. For us as

⁵² CFMMEU, *Submission 79*, p. 6.

⁵³ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 375.

⁵⁴ Victorian Government, *Victorian Inquiry*, p. 18.

⁵⁵ RCSA, *Submission 73*, p. 5.

communities that is as predictable as a metronome. I couldn't personally, on behalf of our communities, be more offended at those statements... The jobs that those people were offered would have been for less conditions, less value, less everything than everyone they work beside.⁵⁶

2.53 Australian Workers' Union National Secretary Daniel Walton echoed those sentiments:

I think it's hilarious. It's hilarious that some employers have come up and said, 'I've asked all of my employees who wants to become permanent,' somehow using that as their anecdotal evidence to support a claim that people don't want more permanency. Take a straw poll. Walk out into any areas with high casualisation and ask a group of workers: Do you want to stay as a casual worker and get paid less than the full-time workers that are here? Do you want to be a casual worker and struggle to get a loan to be able to buy a house or to build a house? Do you want to stay here as a casual worker, where you don't enjoy any annual leave to spend time with your kids during school holidays? Do you want to remain a casual worker where you've got fewer rights around unfair dismissal than any other category of worker? If you find that less than 90 per cent of that workforce put up their hand to say they want more permanency, I'd be shocked.⁵⁷

Key concerns raised with labour hire work

2.54 The previous two sections highlighted the reasons why host organisations and workers are believed to utilise labour hire arrangements over traditional direct employment. This section discusses the key issues and concerns raised during the inquiry, as well as drawing on the significant amount of research previously undertaken through other processes. These central concerns specifically relate to:

- the insecure and precarious nature of the work;
- the lack of workplace protections, and varying pay and conditions;
- increased criminal activity;
- lower levels of workplace safety;
- increased tax avoidance and wage theft; and
- the exploitation of vulnerable groups.

Insecure and precarious work

2.55 The insecure and precarious nature of labour hire work was raised as a key concern by a number of inquiry contributors. For example, the CFMMEU submitted that construction workers regularly suffer from 'chronic job insecurity' throughout their working lives, as they are usually engaged

⁵⁶ Mrs Kelly Vea Vea, Deputy Mayor, Isaac Regional Council, *Proof Committee Hansard*, 14 July 2021, p. 54.

⁵⁷ Mr Daniel Walton, National Secretary, Australian Workers' Union, *Proof Committee Hansard*, 14 July 2021, p. 23.

through casual labour hire arrangements or on a daily hire basis. It highlighted the following concerns with these arrangements:

Workers who face chronically precarious and unpredictable employment are frequently forced to undertake unpaid or underpaid work activities, or forego other legal entitlements such as the superannuation guarantee, in order to gain - or retain - employment. These workers are particularly vulnerable to exploitation as when they do speak out and demand their lawful entitlements, they are moved on.⁵⁸

- 2.56 The Australian Manufacturing Workers' Union (AMWU) also raised its concerns, arguing that there are hundreds of thousands of workers across Australia 'trapped in insecure jobs'. It noted that insecure work, such as labour hire and casual employment, not only negatively affects these workers, but also has 'devastating impacts' across the broader economy.⁵⁹ In its submission the AMWU argued that this form of work impacts at both the macro and micro levels:

At the macro level, casualization has depressed wages and improvements in workers' working conditions. Not only are casual workers less likely to push for these things in bargaining, but the ever-present threat of permanent jobs being replaced by casual ones serves as a brake on demands by permanent workers. The ability of companies to replace their directly employed workers with labour hire – a common experience in manufacturing – has hampered workers' ability to win improvements to wages and conditions.⁶⁰

At the micro level, the impacts of insecure work are well known. Workers unable to do simple things like make plans, support their communities or engage in volunteer work. More serious impacts like being unable to get loans, make financial commitments or undertake long-term planning; increased pressure on mental health; and family breakdown are also well documented.⁶¹

- 2.57 Evidence indicated that individuals may also be reluctant to speak up about issues because they are concerned that they are being tracked by enterprise software and may be 'blacklisted'. For example, an inquiry participant submitted the following:

We're talking about a system that has ERM and a SAP; they can track who you are. If you said a certain thing, you bet your techforce would get a pop-up saying that you were mentioned in this, and they'd say, 'We remember that incident, that guy.' So I'll probably still get pinged; they'll probably still blacklist me. But, potentially, if you put your name against the record, all of a sudden BHP can look you up, and Rio Tinto can look

⁵⁸ CFMMEU, *Submission 79*, p. 3.

⁵⁹ Australian Manufacturing Workers' Union (AMWU), *Submission 122*, [p. 4].

⁶⁰ AMWU, *Submission 122*, [p. 2].

⁶¹ AMWU, *Submission 122*, [p. 3].

you up and put you on their system as blacklisted, 'He's a troublemaker, he speaks out when things aren't right.'⁶²

2.58 Another witness noted that 'they say it's not a blacklist system', but contended that:

... [w]hen you apply for a job, it goes on ERMS. It then tracks your flights, where you are, what you do. We all know they're there. They know where we are. Then it makes a register of everything that's happened along there. On that, it also puts down if you've been fired. It keeps a log of what your last supervisor thought of you, and then that can judge you, which is a bit frightening. People say that it doesn't stop you from getting jobs, but I know people who've actually phoned up, applied for their ERM system, had it cleared-these are people who could not get jobs-and then reapplied. When you'd reapply, you'd say, 'I was on this job and on that job.' You can't say that anymore. They'd say: 'No, you can't have been on that job; it's not in the ERM system. You're lying to us that you were on that job.' You'd say, 'No, I cleared it.' They'd ask, 'Why did you clear it? You're a problem.' So it's an automatic blacklist that sits there. They say it doesn't do anything, but it does. If you don't tick the boxes all the time, you move down the list. It's only if there's a big job and they need a flood of people that they open up the doors a little bit more to let you in. I don't know why it only exists in WA as well.⁶³

2.59 In its response to a question taken on notice, BHP confirmed its use of ERMS. On this, it said the following:

BHP uses ERMS in Western Australia as a contractor mobilisation system that reviews medical compliance and verifies competencies and qualifications. ERMS is also utilised to facilitate access to online inductions and the relevant site access systems. ERMS is not used for the purposes of recording details of employees' conduct, union engagement or otherwise. BHP does not use ERMS to record feedback, comments or complaints from an employee, nor does it record details of a candidates' union engagement or otherwise.⁶⁴

Lack of workplace protections, and varying pay and conditions

2.60 In its submission to the inquiry, the WA Government noted that a prior report published by the Australian Human Rights Commission (AHRC) in 2020 had raised concerns regarding the lack of protections from sexual harassment, and the heightened barriers to reporting this type of abuse, when workers are engaged under non-standard employment arrangements, such as labour hire. The AHRC contended that:

... it might be challenging for a victim of sexual harassment working under such arrangements to identify an employer, a workplace or personnel who are responsible for safety. Such workers are also reluctant to complain to

⁶² *In camera* Hansard. This evidence has been published with the agreement of the witness.

⁶³ *In camera* Hansard. This evidence has been published with the agreement of the witness.

⁶⁴ BHP, answers to questions on notice, 11 October 2021 (received 20 October 2021).

avoid their contracts not being renewed or being assigned fewer hours of work. This may then place these workers at higher risk of experiencing sexual harassment.⁶⁵

- 2.61 The AWU contended that workers performing identical roles, and working side-by-side on the same site, can be on 'dramatically different terms' depending on how they have been engaged. It also submitted the following:

Many labour hire providers are smaller than the employers they provide workers for, and can even take an underhanded or outright ignorant approach to their legal obligations. If workers raise issues, shifts can be revoked by the labour hire firm.⁶⁶

Further, the 'true' employer is not responsible for ensuring that many obligations to employees are met: those are the responsibility of the intermediary labour hire firm, while the employer merely pays for the services provided. This allows employers to turn a blind eye to compliance issues.⁶⁷

- 2.62 In its final report, the Mining Inquiry highlighted concerns that labour hire workers were generally paid less than direct employees and that contracted labour had been used to 'undermine labour standards and weaken or remove union presence'.⁶⁸ Furthermore, it submitted the following:

Another concern associated with labour hire is that labour hire workers can be used to substitute an existing workforce with a cheaper equivalent which is more likely to be compliant because of the temporary nature of their engagement.⁶⁹

Increased criminal activity

- 2.63 It has been contended for a number of years that some parts of the labour hire industry may be involved in criminal activities. For example, in its 2017 final report, the Black Economy Taskforce suggested that parts of the labour hire industry had been 'infiltrated by unscrupulous firms and individuals that are operating in the black economy'.⁷⁰ It noted the following:

Some sectors are particularly vulnerable to such operators, including horticulture, security and perhaps even aged care. This can range from simple non-compliance with PAYG tax withholding and payment of cash wages well below award rates, to exploitation of vulnerable workers and even labour hire firms with links to crime, money laundering, immigration fraud and other abuses.⁷¹

⁶⁵ WA Government, *Submission 100*, p. 11.

⁶⁶ AWU, *Submission 199*, [p. 5].

⁶⁷ AWU, *Submission 199*, [p. 5].

⁶⁸ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 376.

⁶⁹ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 376.

⁷⁰ Australian Government, *Black Economy Taskforce: Final Report*, October 2017, p. 247.

⁷¹ Australian Government, *Black Economy Taskforce: Final Report*, October 2017, p. 247.

2.64 The Black Economy Taskforce also made the following specific observation on the use of labour hire within the horticulture industry:

Forty-thousand temporary positions need filling for fruit picking and other harvest activities seasonally. Historically this has been managed through the working holiday maker visa ('backpacker visa'). However, insufficient supply provides an opportunity of unscrupulous operators, frequently with connections to organised crime both locally and internationally, to set the terms both of the supply to the farmers and the payment and other terms to the workers.⁷²

2.65 This theme of illegal behaviour and exploitation by labour hire operators was also detailed in the 2019 final report of the Migrant Workers' Taskforce. This report said the following:

The Taskforce found that labour hire operators that exploit migrant workers often create complex operating environments that make it harder to ensure compliance with the law. This can include involvement in the black economy, the use of intermediaries (e.g. accommodation providers and migration agents) and potential acts of money laundering, human trafficking and modern slavery.⁷³

Lower levels of workplace safety

2.66 The Mining Inquiry highlighted that there is a considerable body of research into the safety and health implications of the utilisation of labour hire and other types of temporary and insecure arrangements. It noted the high degree of consistency in the findings of this research, which it contended were 'overwhelmingly negative'.⁷⁴ It articulated this further:

The research shows that, generally speaking, temporary and insecure work arrangements are associated with a higher incidence of injuries and fatalities, as well as poorer physical and mental health. Workers employed in such arrangements generally have a poorer knowledge of, and poorer access to, regulatory employment rights, and are less willing to raise occupational health and safety concerns.

In addition, the existence of labour hire arrangements at a workplace presents more complex inter-organisational chains of responsibility. It also increases demands on regulator resources.

Other safety impacts arise from the fact that labour hire workers are, generally speaking, significantly less likely to have access to complaint mechanisms, health services, statutory entitlements to protections and benefits, return to work pathways, and representation.⁷⁵

⁷² Australian Government, *Black Economy Taskforce: Final Report*, October 2017, p. 247.

⁷³ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 99.

⁷⁴ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 377.

⁷⁵ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 377.

2.67 Emeritus Professor Michael Quinlan highlighted a number of key negative health and safety outcomes associated with contracting and labour hire when compared to ongoing full-time employment. These included:

- higher incidence or frequency of injuries, including fatalities;
- poorer physical and mental health, including susceptibility to bullying and drug use; and
- poorer knowledge of, and access to, regulatory employment rights, and less willingness to raise occupational health and safety (OHS) concerns.⁷⁶

2.68 The WA Government noted that anecdotal evidence received by WorkSafe inspectors suggested that insecure workers may be less likely to raise health and safety concerns either within their own organisation, or through contacting a safety and health regulator, because of fears of reprisals such as being permanently dismissed.

2.69 The WA Government articulated this further:

Fear of losing income may also encourage labour hire and gig economy workers to work in unsafe ways, such as not complying with fatigue management requirements or operating machinery without adequate training. The combined factors of less injury data and fewer complaints mean that gig economy workers are, to some extent, out of 'sight' of regulators.⁷⁷

Box 2.1 Case study: Labour hire and Snowy Hydro 2.0

The AWU provided the inquiry with a case study concerning a labour hire worker at the Snowy Hydro 2.0 project who was involved in a 'horrific incident'.⁷⁸ The case study, described below, highlights a number of key health and safety issues which labour hire workers involved with the infrastructure project may be exposed to, such as poor fatigue management, unsafe practices, and the ability for blame to be avoided.

In this scenario, a crane supervisor on the infrastructure project was involved in a car accident while returning from remote offsite accommodation at night, and in the middle of a storm. The AWU contended that '[t]his worker should never have been put in this situation', and that Snowy Hydro and its joint venture partner should have halted work earlier in the day when the storm initially hit.⁷⁹

The AWU stated that the welfare of the worker was further compromised by the fact that, due to the poor weather conditions at the time, he was unable to be air lifted by helicopter and had to be transported by road to Canberra.

In addition to raising the incident itself, the AWU also noted their concern regarding the response by Snowy Hydro and its joint venture partner following

⁷⁶ Emeritus Professor Michael Quinlan, *Quinlan Report*, p. 28.

⁷⁷ WA Government, *Submission 100*, p. 11.

⁷⁸ AWU, *Submission 199*, [p. 5].

⁷⁹ AWU, *Submission 199*, [p. 5].

its occurrence:

The AWU sounded the alarm on this in late 2020. Snowy Hydro and their joint venture partner initially tried to pass the buck to their labour hire firm, NX Blue. NX Blue said it was the joint venture partner's fault. The joint venture partners only acted on [the AWU's] concerns at the end of May this year [2021], but the involvement of a labour hire operator allowed the blame to be avoided.⁸⁰

The AWU went further:

The use of labour hire seeks to erode pay, conditions and safety requirements that the AWU has fought hard to secure. Workers can be side-by-side on the same site, doing the same work, on dramatically different terms. Further, the 'true' employer is not responsible for ensuring that many obligations to employees are met: those are the responsibility of the intermediary labour hire firm, while the employer merely pays for the services provided. This allows employers to turn a blind eye to compliance issues.⁸¹

Increased tax avoidance and wage theft

2.70 In its submission to the inquiry, the WA Government stated that intelligence gathered by RevenueWA suggested that some labour hire firms 'intentionally structure their operations across a number of entities to avoid the threshold at which payroll tax becomes payable'. It also noted that many of these entities are administered by 'dummy directors', who are commonly located overseas.⁸²

2.71 The WA Government also referenced evidence submitted to another inquiry by RevenueWA's predecessor organisation, the Office of State Revenue, regarding the unscrupulous behaviour of various labour hire operators. In that submission, the then Office of State Revenue argued that:

.....these labour hire firms are intentionally avoiding their employment obligations. They are often set up with 'straw man' directors and false addresses, which impedes our investigations and makes collection of payroll tax difficult and/or unlikely. Often, when they become aware we are investigating them, they simply 'disappear' and stop providing services.⁸³

2.72 It was also noted that RevenueWA had identified an increase in the rate which labour hire operators were being 'phoenixed' and dissolved prior to instigative or enforcement action. To make the detection and recovery of unpaid taxes increasingly difficult for authorities, it was suggested that these firms were

⁸⁰ AWU, *Submission 199*, [pp. 5 and 6].

⁸¹ AWU, *Submission 199*, [p. 5].

⁸² WA Government, *Submission 100*, p. 13.

⁸³ WA Government, *Submission 100*, p. 13.

now changing their structures every three to six months, as opposed to every ten to twelve months.⁸⁴

2.73 The Migrant Workers' Taskforce submitted that the reasons for non-compliance can range from a lack of knowledge of obligations through to intentionally operating solely in the black market. It contended that evidence suggested the following common practices utilised by non-compliant operators:

- underpayment of wages and non-payment of the superannuation guarantee
- not remitting PAYG tax and paying workers' compensation premiums
- the use of vulnerable workers (including illegal and trafficked workers)
- poor record keeping
- sham contracting arrangements
- sub-contracting arrangements that add little value to the supply or service
- practice of liquidating businesses to avoid accrued employee obligations (known as 'illegal phoenixing')
- provision of over-priced, sub-standard accommodation
- involvement in criminal activity (e.g. money laundering, illegal tobacco).⁸⁵

2.74 Centre for International Corporate Tax Accountability and Research (CICTAR) Principal Analyst, Mr Jason Ward, said that labour hire multinationals aggressively avoid tax while undermining employment standards:

These multinationals have an oversized footprint in Australia and are now amongst the largest employers in the world... Dutch based Randstad is the world's largest labour hire multinational. Its Australian business is owned via Luxembourg and financed through Singapore... Other multinationals, like Glencore, with its own major tax-dodging concerns, also use labour hire to avoid obligations to workers and increase profits in the mining sector and across the broader economy.⁸⁶

2.75 Mr Ward added that Randstad and Adecco, in the most recent year ATO data is available, paid zero in taxes, while other major labour hire firms including PERSOL, which owns Programmed, and Recruit Holdings, which owns Chandler Macleod, reported 'very, very low' profit margins compared to the profit margins that they report globally.⁸⁷

⁸⁴ WA Government, *Submission 100*, p. 14.

⁸⁵ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 102.

⁸⁶ Mr Jason Ward, Principal Analyst, CICTAR, *Proof Committee Hansard*, 3 November 2021, p. 45.

⁸⁷ Mr Jason Ward, Principal Analyst, CICTAR, *Proof Committee Hansard*, 3 November 2021, p. 45.

Exploitation of vulnerable groups

2.76 In its submission to the inquiry, the ACCR noted that a number of recent media stories and government inquiries have shone a light on some of the exploitative behaviours within the labour hire industry. These included:

- the Australian Broadcasting Corporation's (ABC) 2015 Four Corners episode entitled 'Slaving Away', which exposed the 'extreme exploitation' by labour hire operators in fresh food supply chains; and
- the revelation that cleaners hired by contractor Spotless, and utilised by Myer in its department stores, were working under sham contracts 'hidden through multiple layers of subcontracting'.⁸⁸

2.77 The Queensland Government contended that 'vulnerability risk' increases with the use of labour hire; digital platforms; casual workers; and contractors, and that that these insecure arrangements can particularly affect vulnerable workers, such as those that come from non-English speaking backgrounds; have lower levels of education; are disabled; or are young. Its main concern with this increased risk was that:

... this vulnerable cohort of workers may be reluctant to report injuries due to fear of dismissal or other unwanted effects.⁸⁹

2.78 The Migrant Workers' Taskforce suggested that the main driver of unscrupulous behaviour was to gain a competitive advantage by lowering labour costs and associated charges.⁹⁰ It also noted the following factors which promote these forms of bad behaviour by industry participants:

- a desire to avoid the regulatory requirements associated with operating an employing business in Australia;
- believing that the monetary gains from non-compliance outweigh the risk of being caught and penalised;
- low or no barriers to entry to become a labour hire operator;
- high demand for labour to be available at short notice and a limited supply of labour in some locations, occupations, or industries;
- lack of visibility from host businesses regarding the behaviour of labour hire operators, especially when there is a stronger economic imperative to have the work done (for example, have the crop picked on time);
- the lack of accountability in a supply chain for unscrupulous practices at the bottom end;
- low profit margins in some labour-intensive industry sectors;
- the relative large supply of vulnerable workers; and

⁸⁸ ACCR, *Submission 46*, p. 2.

⁸⁹ Queensland Government, *Submission 104*, p. 20.

⁹⁰ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 101.

- in some industry sectors, unscrupulous labour hire operators are accepted as a standard part of the market.⁹¹

Proposals for reform and committee view

2.79 A number of suggestions were raised during the inquiry to address the key concerns discussed above. These supplemented, and in some cases reiterated, prior suggestions and recommendations made by previous inquiries and reviews. The following discussion highlights a number of these key proposals, and provides the committee's view and associated recommendations for reform.

Implement 'same job, same pay' principle

2.80 Evidence indicates that, in many cases, a host's enterprise agreement does not apply to their labour hire workers, resulting in differential treatment between these individuals and those directly employed by the host. Although commonly working side-by-side with each other, the committee is very concerned that labour hire workers frequently receive lower pay and conditions than their directly-employed counterparts.⁹²

2.81 In its final report, the Victorian Inquiry also highlighted this disparity between workers as a key issue, and made the following recommendation to address it:

Labour hire employees should have the opportunity to be covered by enterprise agreements applying at a host's workplace – whether this occurs de facto (arising from the voluntary decision of the labour hire employer to observe the site enterprise agreement); or because of the application of a parity clause in the host's enterprise agreement.⁹³

2.82 Similarly, the ACTU advocated for amendments to the *Fair Work Act 2009* (Fair Work Act) which, amongst other things, would require labour hire firms to provide wages and conditions of employment that are 'equal to or better than those that would have been received by those directly employed by the host employer had the work been performed by them'.⁹⁴

2.83 The Queensland Council of Unions (QCU) supported this proposal, stating that protections for labour hire employees should be introduced within the Fair Work Act through implementation of the 'same job, same pay' principle. In its submission to the inquiry, it argued for penalties to be introduced:

[T]o properly address insecure work in the labour hire sector, the Fair Work Act needs to be amended to provide regulation of, and civil penalties for, employers who use labour hire to reduce wages of its permanent

⁹¹ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, pp. 101–102.

⁹² For example, see: AWU, *Submission 199*, p. 7; and Victorian Government, *Victorian Inquiry*, p. 18.

⁹³ Victorian Government, *Victorian Inquiry*, p. 18.

⁹⁴ ACTU, *Submission 98*, p. 34.

workforce, such as is occurring in Queensland, particularly in the coal mining sector.⁹⁵

- 2.84 The committee strongly supports these suggestions, and recommends that the Australian Government immediately implement them in their entirety. The committee believes such reforms are vital to incentivising proper workforce arrangements, where employees are directly engaged by employers, and to reduce the exploitative nature of labour hire arrangements where they are utilised as a means to lower wages and provide inferior conditions for Australian workers.

Recommendation 1

- 2.85 The committee recommends that the Australian Government amends the *Fair Work Act 2009* to ensure that the wages and conditions of labour hire workers are at least equivalent to those that would apply had these workers been directly employed by their host entities.**

Introduce a national labour hire licensing scheme

- 2.86 As discussed previously in this chapter, there are a number of key factors which support unscrupulous labour hire operators within Australia, such as low barriers to entry; a lack of visibility of prior misconduct and poor behaviour; and a deficiency of supply chain accountability.
- 2.87 The committee commends those jurisdictions which have recognised this issue and implemented their own labour hire licensing schemes to mitigate the devastating impacts rogue operators can have on workers and the broader community. The committee notes that these schemes have been fundamental in reducing exploitation across the sector, and assisted in protecting vulnerable workers from harassment, wage theft, and serious workplace health and safety risks.
- 2.88 Notwithstanding the above, the committee recognises that separate state and territory-based licensing schemes may not be the most effective and efficient approach to regulating the industry. Regional variances across schemes can impose an additional unnecessary regulatory burden on those labour hire operators and hosts which operate across multiple jurisdictions.
- 2.89 The committee notes that the 2015–2016 Victorian inquiry into the labour hire industry and insecure work also recognised this issue and recommended the implementation of a national approach to regulation and licensing. The committee is concerned that, although the Australian Government subsequently accepted this recommendation and the then Minister for Industrial Relations wrote to his state and territory colleagues in 2019, there is still no national scheme in place over half a decade after it was suggested.

⁹⁵ Queensland Council of Unions (QCU), *Submission 117*, p. 6.

- 2.90 The committee is also concerned that the Government's proposed approach will only be 'light touch' and would likely only apply to a limited number of 'high-risk sectors', such as horticulture, meat processing, cleaning and security.
- 2.91 Given these concerns, the committee strongly advocates for the immediate development and implementation of a comprehensive national labour hire licensing scheme. It is envisaged that such a scheme would cover all labour hire operators within Australia and make registration mandatory. Further, an operator would only be eligible for registration if it is compliant with its tax, safety, workplace, migration, and other legal obligations; and has no criminal history or past involvement in corporate liquidations. To promote compliance, such a scheme would also impose significant penalties on those unregistered providers which continue to operate and host entities which engage the services of their workers.

Recommendation 2

- 2.92 The committee recommends that the Australian Government immediately introduces a comprehensive national labour hire licensing scheme covering all business sectors, and requiring mandatory registration and continuous compliance with all legal obligations. It is recommended that significant penalties apply for those entities which continue to operate without being registered, and for those organisations which engage the workers of such unregistered operators.**

Enhance data collection on the prevalence of labour hire in Australia

- 2.93 The committee is concerned that existing datasets may significantly under-report the size and scope of the labour hire workforce in Australia. Evidence provided to the committee indicates that this may occur for a variety of reasons, such as workers' confusion regarding their particular arrangements and whether they are being paid by a labour hire firm or the host they work at.
- 2.94 Further, during the inquiry it also became apparent that very few companies report any information on their use of labour hire or contract workers, despite the fact that these workers may make up a substantial proportion of their workforce.
- 2.95 Notwithstanding the above deficiencies, it is clear to the committee that there has been substantial growth in the labour hire industry in recent years, with ABS data suggesting that it grew by 36.5 per cent between 2011–12 and 2018–19, and that the sector employed approximately 800 000 people across Australia in 2018–19.
- 2.96 Given the size of the sector, its expected continued growth, and its ability to impact the day-to-day lives of large numbers of Australians and the communities in which they live and work, the committee is very concerned

about this lack of accurate datasets and the reduced transparency this problem creates. The Victorian Inquiry also noted this as a key problem:

There are deficiencies in and inconsistencies between the available data relating to the prevalence of labour hire employment arrangements in Victoria and Australia, both in respect of the proportion of labour hire workers and the proportion of workplaces which use labour hire.⁹⁶

2.97 Hence, the committee recommends that the Australian Government improves its data collection techniques to better determine the prevalence of labour hire arrangements in Australia.

Recommendation 3

2.98 The committee recommends that the Australian Bureau of Statistics enhances its labour hire data collection techniques for labour hire operators, labour hire workers, and host entities which engage their services, with the aim of better determining the prevalence, and scope, of this form of workforce arrangement in Australia.

Enforce existing laws

2.99 The committee is concerned that existing laws are not being adequately enforced, resulting in increased illegal behaviour, lower levels of workplace safety, and increased tax avoidance and exploitation of vulnerable workers. This position is based on evidence indicating that, although many laws apply to labour hire operators, the lack of effective enforcement by government regulators has resulted in poor compliance and created an environment which inadequately deters poor, and sometimes illegal, practices.

2.100 The Migrant Workers' Taskforce also commented on this issue. In its final report, the Taskforce noted that operators are required to comply with the 'wide range of laws that apply to any employing business', but submitted that enforcement is a 'challenge' when these entities are hard to identify, numerous, and able to illegally phoenix.⁹⁷

2.101 Given this, the committee recommends that the Australian Government immediately enhances its monitoring and compliance activities regarding labour hire operators with the aim to meet the identified challenges and to ensure that these organisations are in continuous compliance with their legal obligations.

⁹⁶ Victorian Government, *Victorian Inquiry*, p. 17.

⁹⁷ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 104.

Recommendation 4

2.102 The committee recommends that the Australian Government enhances its monitoring and compliance activities of labour hire operators to ensure that they are compliant with all their legal obligations. It is envisaged that such an approach would promote collaboration with unions, data-sharing amongst government entities, and utilise joint investigations, as required.

Enhance workplace health and safety

2.103 The committee notes that a significant body of research has shown that insecure work arrangements result in greater risks to worker health and safety than would otherwise be the case. It was contended that these arrangements result in higher frequencies of injuries; poor physical and mental health; poorer knowledge of, and access to regulatory employment rights; and a reduced willingness to raise health and safety concerns.

2.104 This understandable reluctance for workers to raise health and safety issues with their agencies and hosts, due to potential reprisals, is a key concern for the committee. In its submission to the inquiry, the Isaac Regional Council also noted this issue and recommended that it be further investigated and, if found to be true, then:

... mechanisms must be implemented to allow all employees to report safety concerns without fearing they will lose their job or be penalised in some other way.⁹⁸

2.105 The committee is also aware of concerns regarding agencies and hosts failing to meet basic obligations to their workers. For example, research suggested that requirements around health, safety and welfare were not being met by these entities, and that the triangular labour-hire relationship, and temporary nature of most placements, posed serious issues for government agencies in their enforcement of health and safety standards.⁹⁹ Given this, two researchers proposed that:

... there is a compelling case for further regulation ensuring that minimum employment standards are observed safeguarding temporary workers' capacity to raise OHS complaints with both the host organisation and the agency.¹⁰⁰

2.106 Based on this evidence, the committee suggests that the Australian Government thoroughly investigates the extent to which labour hire workers are more reluctant to raise safety concerns due to fears of reprisal, with the aim of implementing effective safeguards for these workers to ensure that they feel secure in their ability to promptly raise these issues, either to their labour hire operator or host entity.

⁹⁸ Isaac Regional Council, *Submission 184*, [p. 3].

⁹⁹ Victorian Government, *Victorian Inquiry*, p. 124.

¹⁰⁰ Victorian Government, *Victorian Inquiry*, p. 124.

Recommendation 5

2.107 The committee recommends that the Australian Government investigates whether labour hire workers are more reluctant to raise safety concerns due to fears of reprisal from their employer and/or host and, if this is found to be the case:

- **develop effective methods for the Fair Work Ombudsman to safeguard these workers from such reprisals, and to promote their capacity to promptly raise workplace health and safety concerns with both their host organisations and their labour hire operators; and**
- **improve the general protections provisions of the *Fair Work Act 2009* to ensure labour hire workers are effectively protected when speaking out.**

Chapter 3

Workforce arrangements in the mining sector

Background

- 3.1 Mining is Australia's largest industry and currently accounts for 10.4 per cent of Gross Domestic Product (GDP). The industry directly employs approximately 256 000 people in highly skills jobs, mostly in regional and remote Australia, and employment in the sector has trebled over the past two decades, up from only 79 000 workers in 2001.¹
- 3.2 Research suggests that, taken as a whole, the mining industry and its associated supply chains support approximately one in ten Australian jobs, and that the industry's ongoing expansion has made Australian households approximately \$14 800 better off financially in 2020 than they otherwise would have been.² The industry also promotes professional learning and development, with figures showing that the industry added an additional 1 000 apprentices and trainees during 2020, and that it provided commitments to do more in future years.³
- 3.3 Jobs within the mining sector commonly pay higher than the average across the economy, and deliver significant economic benefits for the communities in which workers reside. The mining industry has traditionally provided substantial employment opportunities for Australians living in regional and remote areas; however, increasingly the sector is relying on fly-in-fly-out (FIFO) and drive-in-drive-out (DIDO) workforces and the engagement of contractual and labour hire staff to administer their facilities.⁴
- 3.4 Inquiry participants raised a number of issues with this trend, highlighting some of the negative impacts on the workers themselves as well as the regional communities in which they work and operate. This trend and the resulting impacts are discussed in further detail in this chapter. The chapter concludes with proposals for reform which aim to address, or at least mitigate, these issues.

¹ Minerals Council of Australia (MCA), *Proof Committee Hansard*, 14 July 2021, p. 1.

² MCA, *Proof Committee Hansard*, 14 July 2021, pp. 1–2.

³ MCA, *Proof Committee Hansard*, 14 July 2021, p. 1.

⁴ The McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 8.

The trend towards labour hire and casualisation in the mining industry

- 3.5 It was argued during the inquiry that there has been a marked increase in the utilisation of labour hire contractors and casualisation in the mining industry over the last twenty years. This is supported by the findings of the Queensland Coal Mining Board of Inquiry, which said in its final report:

Research from 2007 into the rise of temporary employment arrangements in Queensland coal mines revealed that, in 1996, direct employment accounted for 94.1% of the overall workforce at open cut mines in the central and northern coalfields in Queensland... Data from the Commissioner for Mine Safety and Health revealed that, by 2017, there were more contractors than direct employees in Queensland coal mines.⁵

- 3.6 Isaac Regional Council Mayor Anne Baker said she believes the scale of labour hire in the Isaac Region may be even higher:

The feeling on the ground is that it's almost an 80-to-20 rule. I was around in 1996 and I have no doubt that 94 per cent of the workforce had permanent positions with permanent shirts and they worked beside people on equal pay. Today I have absolutely no doubt in my mind that it is far, far less. The majority of the workforce are on casual employment, less pay and, absolutely, less conditions. The safety on our mine sites—around accidents, deaths, explosions, fires—is on a downward spiral.⁶

- 3.7 Mr Wayne Goulevitch, a mining equipment operator working within Central Queensland for a multinational corporation, provided his personal experience over the last decade:

I started out like everyone did back in my day, as a labour hire employee. I worked for nine months as a casual before getting a full-time gig. Back then, pre-strip crews were made up of 40 full-time employees and about five labour hire workers. Labour hire workers at the time were being used [as] supplemental labour to backfill full-time employees away on holidays, off sick or maternity leave. This is, I believe, justifiable and acceptable use of casual labour. But somewhere along the way a decision—or lack of decision—meant that, within 10 years, labour hire had ballooned to about 120 workers while full-time employees remained around 40. Clearly, when casuals outnumber full-time employees two to one, 'supplemental' can no longer be used to describe labour hire. My crew has not had a full-time employee join our team in over seven years.⁷

- 3.8 Prior research also suggests that a systemic transition to less secure working arrangements is occurring. For example, a 2020 report published by the McKell Institute (McKell Report) submitted that, based on the ABS Characteristics of

⁵ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, pp. 373–374.

⁶ Mrs Anne Baker, Mayor, Isaac Regional Council, *Proof Committee Hansard*, 14 July 2021, p. 55.

⁷ Mr Wayne Goulevitch, Member, Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), *Proof Committee Hansard*, 13 July 2021, p. 8.

Employment Survey, growth in the casualisation in the mining industry between 2014 and 2018 exceeded that for all other industries, and was over 59 per cent.⁸ The report argued that, although these workers sometimes perform specialist roles, they generally do the 'same work on the same rosters as permanent employees but with lower wages and on a casual basis with no paid leave or job security'.⁹ It articulated this further:

Instead of earning more to make up for the lack of entitlements, casual mineworkers usually earn at least a third less than permanents, even with their casual 'loading'. This is because labour hire companies – at the direction of mine owners – set pay rates at just above the Black Coal Industry Award minimum, whilst the rates under enterprise agreements that apply to permanent employees are reflective of multiple rounds of collective bargaining as well as the tough working conditions in coal mining.¹⁰

3.9 The Australasian Centre for Corporate Responsibility (ACCR) stated that labour hire workers constituted a 'staggering proportion' of workers in some industries, and quoted evidence indicating that, since 2012, many domestic mining operators have moved to a predominantly labour hire workforce with the aim to reduce overheads and increase flexibility. In support of this, it submitted that in 2017 Rio Tinto announced that it would only use labour hire workers in its iron ore operations, and that research undertaken by Deloitte indicated that, in the two years to 2019, 88 per cent of new hires at BHP were labour hire and 50 per cent of new workers at Fortescue Metals Group were indirect hires.¹¹

3.10 The Minerals Council of Australia (MCA), however, put forward a different viewpoint. In its submission to the inquiry, the MCA stated the following:

The Australian mining industry has a high share of permanent and full-time employees. 84 per cent of mining workers are permanent employees, compared to 78 per cent for all industries. 96 per cent of mining workers are employed full-time, compared to 68 per cent for all industries.¹²

⁸ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 13.

⁹ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 6.

¹⁰ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 6.

¹¹ Australasian Centre for Corporate Responsibility (ACCR), *Submission 46*, pp. 2–3.

¹² MCA, *Submission 60*, [p. 2].

3.11 The MCA contended that different companies employ different combinations of 'employment types', and that:

... [t]he small percentage of casuals or labour hire (who may be employed on a permanent or casual basis by a labour hire agency) ultimately serve to manage the cyclical, geological or maintenance waves and ensure the ongoing viability of operations.

Some companies will use labour hire, others will create specialised teams of permanent employees that target specific safety and productivity projects.¹³

3.12 The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) noted that the rate of casualisation in the mining industry is currently disputed, and highlighted the significant discrepancies between the figures quoted by the MCA and the 'lived experience' of its members:

While the Minerals Council cites ABS data that has it at 16%, it is the lived experience of members of this union that casual labour hire is easily around 30% of all coal mining jobs in New South Wales and is routinely over 50% in Queensland. The reason for this discrepancy between the official data and lived experience is not known. One possible reason is that casual labour hire in mining may not be classified by the labour hire providers as work in the mining industry.¹⁴

3.13 Based on what he sees happening on the ground each and every day, the District President of the Mining and Energy Division of the CFMMEU (Queensland District), Mr Stephen Smyth, supported the assertion that at least 50 per cent of Queensland coalminers were engaged on a casual basis. In his evidence to the committee he noted the following:

We're aware of some mines that have total labour hire employment of over 450 employees at a mine, and the only permanent people there are people in senior management. From our perspective, we rely on what we see on the ground, and the evidence and the stories coming from our members and non-members, and workers in general. I'm unsure as to where the Minerals Council got their numbers from, but on the ground the percentage is increasing. In my 33 years, I've seen it move from where labour hire was used in peaks and troughs and specialist work, to now where it is the employment of choice for a lot of the employers.¹⁵

3.14 There was also some concern amongst inquiry participants that measures undertaken by mining operators may hide the real extent of labour-hire, or labour-hire equivalent, arrangements within the industry. This development is discussed in further detail in the following case study.

¹³ MCA, *Proof Committee Hansard*, 14 July 2021, p. 2.

¹⁴ CFMMEU, *Submission 113*, p. 2.

¹⁵ Mr Stephen Smyth, District President, Mining and Energy Division, Queensland District, CFMMEU, *Proof Committee Hansard*, 13 July 2021, p. 9.

Box 3.1 Case Study: BHP Operations Services – Equivalent to labour hire?

In 2018, BHP created two Operations Services entities within the BHP Group to employ workers directly. BHP submitted that these entities 'were created as a way to provide increased permanent employment within the BHP Group, with a strong employee value proposition'.¹⁶ In his evidence to the committee, the Vice President of Operations Services at BHP, Mr Matthew Furrer, articulated BHP's approach as follows:

Our strategy has been a little bit different. We have gone out of our way to grow an internal production and maintenance services capability quite deliberately, and we've now brought on 4,000 permanent employees through the growth of that. That has been a very deliberate activity that has been run on a national agenda to build up that skill set. Those people have come from the marketplace, so people have been free to apply to come and join us in operation services. We have been thrilled to see just how many people have chosen to do that. We have had 95,000 applications through that channel, coming from all sorts of places.¹⁷

BHP told the committee that, subsequent to the creation of its internal labour hire company Operations Services, just 48.16 per cent of its Australian minerals workforce is directly employed by BHP. Across its national coal operations, that drops to just 29.11 per cent.¹⁸

In stark contrast to BHP's description, however, the McKell Report took a different perspective, characterising the development at BHP as follows:

In a new twist on this [labour hire] model, BHP has set up a fully-owned subsidiary with a view to bringing its outsourced labour hire workforce in-house. While the jobs are promoted as 'BHP' jobs, they are paid at rates in line with labour hire contractors, not direct employees. While these lower wages clearly have a direct impact on the workers whose remuneration is reduced, and their families, the widespread use of lower-paid labour hire workers has spill-over effects that are felt more widely in the local community.¹⁹

The McKell Report went further:

These entities submitted two proposed non-union enterprise agreements to the Fair Work Commission, with pay rates of

¹⁶ BHP response to adverse reflection made in submission 122 (AMWU), p. 3.

¹⁷ Mr Matthew Furrer, Vice President, Operations Services, BHP, *Proof Committee Hansard*, 14 July 2021, p. 16.

¹⁸ BHP, answers to written questions on notice, 11 October 2021, (received 20 October 2021).

¹⁹ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 7.

\$30,000 to \$50,000 a year less than current site agreements, and no pay rise over their four-year term among a host of inferior conditions.

Operations Services marketing has focused on the jobs being permanent, not casual like most contract labour hire, and therefore attracting annual leave.

Nevertheless, the jobs attract substantially worse conditions in a number of other areas including no accident pay, incentive bonuses that are prohibitively difficult to attain and no payment for transport including FIFO flights[.]²⁰

Notwithstanding the above, Mr Furrer argued that pay rates at Operations Services were 'very healthy' and that permanent employees were getting paid in excess of \$100 000 per year.²¹ He contended that there was no simple comparison between pay rates as follows:

In no way is the pay that we give to an individual a simple comparison. There are so many variables that go into what people get paid working for the company. We've got such a range of environments where people are working under all sorts of different arrangements and agreements. I think we've got 23 enterprise agreements on foot today working in all sorts of different locations and different environments. It's not a simple thing in any way, shape or form to have a single comparison of what one gets paid to what another gets paid. There are a lot of variables in there.²²

The National Secretary of the Australian Workers' Union (AWU), Mr Daniel Walton, also commented on the broader trend to, what he described as, 'in-house labour hire firms'. On this he said the following:

We often see employers going to the length of establishing in-house labour hire firms to put their own workers at arm's length, and we've seen many, many cases of misuse of labour hire where workers who are working side by side with existing workers on those sites unfortunately don't share the same level of job security or benefits that are in place.²³

²⁰ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, pp. 16.

²¹ Mr Matthew Furrer, Vice President, Operations Services, BHP, *Proof Committee Hansard*, 14 July 2021, p. 8.

²² Mr Matthew Furrer, Vice President, Operations Services, BHP, *Proof Committee Hansard*, 14 July 2021, p. 8.

²³ Mr Daniel Walton, National Secretary, Australian Workers' Union (AWU), *Proof Committee Hansard*, 14 July 2021, p. 19.

Key concerns raised with labour hire and casualisation

Lower pay and conditions than directly employed workforces

3.15 Employers and unions agreed during the inquiry that labour hire workers receive lower pay and conditions than those employees who are directly employed. For example, the Queensland Council of Unions (QCU) submitted the following:

Labour hire is also a form of insecure work, given that often workers engaged as labour hire are not paid at the same rate as the permanent workers whom they work alongside of, and who often work on a casual basis with limited recourse compared to permanent employees if their employment comes to an end. The use of labour hire in Queensland to drive down wages and conditions is a workplace trend that has an associated impact on employment arrangements such as in the mining sector of the Queensland economy.²⁴

3.16 In her evidence to a prior inquiry undertaken by the Senate Education and Employment Legislation Committee, the Chief Executive Officer of the Minerals Council of Australia, Ms Tania Constable, acknowledged that there was, overall, a 'premium for permanent employees of about 24 per cent in some companies', in comparison with labour hire workers.²⁵

3.17 Notwithstanding the above, the Minerals Council of Australia did not see this as a major issue. In its evidence to the current inquiry, it argued that workers are highly paid and the 'vast majority' of them are permanently and full-time employed.

3.18 When asked how the average pay of a casual labour hire employee compares to a permanent worker, the District President of the Mining and Energy Division of the CFMMEU (Queensland District), Mr Stephen Smyth, said the following:

It can vary but it can be anywhere up to \$10,000, \$20,000, \$30,000. It depends on the labour hire company. It depends on who is their client, whether it is a major multinational like BHP, Glencore or Anglo, or a second-tier company, which may not pay the same conditions and entitlements as the bigger miners. It does vary across the board in Queensland, which has over 60 coalmines. That is the monetary aspect, but there are also the health and safety implications and the other conditions and entitlements that go with it.²⁶

²⁴ Queensland Council of Unions (QCU), *Submission 117*, p. 4.

²⁵ Ms Tania Constable, Chief Executive Officer, MCA, Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions], *Official Committee Hansard*, 8 February 2021, p. 59.

²⁶ Mr Stephen Smyth, District President, Mining and Energy Division, Queensland District, CFMMEU, *Proof Committee Hansard*, 13 July 2021, p. 9.

3.19 The Head of Human Resources at Anglo American Australia, Mr Warwick Jones, also provided evidence on the variability of pay rates between directly-employed permanent employees and labour hire workers:

All I can say is that the variability of pay rates between our permanent employees and those employed in labour hire vary from plus five per cent to minus 22 per cent. That's the range, if you like, if I plotted all of the different occupations and salaries that apply. We have some that are paid slightly more and we have some that are paid up to 22 per cent less; that is the range in our business. I'm not sure what exists elsewhere, but that's what I can say for Anglo American.²⁷

3.20 Despite the Minerals Council of Australia and Anglo American Australia both being able to provide estimates of the pay gap between direct employees and labour hire workers, BHP declined to provide an estimate or any data on three separate occasions in response to this question. The committee found this particularly surprising given that the labour hire entity in question, Operations Services, is a wholly-owned subsidiary of BHP. While BHP was not willing to divulge this information, it has been previously reported:

In 2018, BHP created two \$1 shelf companies to act as employing entities, including Operations Services (OS). These entities submitted two proposed non-union enterprise agreements to the Fair Work Commission, with pay rates of \$30,000 to \$50,000 a year less than current site agreements, and no pay rise over their four-year term among a host of inferior conditions... At Mount Arthur, Operations Services workers are being paid \$106,000, compared to the rate in the union agreement of \$159,200. This pay discrepancy is similar at other mines where OS has been deployed.²⁸

3.21 When asked whether directly-hired workers at mine sites were paid higher than those engaged indirectly through his firm, the Managing Director of One Key Resources, Mr Lewis, said the following

It is a difficult question in the sense that we obviously do not have transparency or visibility over what our clients pay their permanent workers. Given that we operate on over 60 different sites across Australia, one size does not fit all in terms of an answer on that. What I can say is that our rates of pay within our business—and I have done a quick analysis prior to appearing here today—the average of the One Key annual earnings, which includes casual, permanent, fixed term, and every other engagement style, is over \$120,000 per year. If we [weren't] paying appropriate wages we would not be able to attract and retain our workforce and would obviously experience significant churn having to rehire all the time and things like that.²⁹

²⁷ Mr Warwick Jones, Head, Human Resources, Anglo American Australia, *Proof Committee Hansard*, 14 July 2021, p. 8.

²⁸ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, pp. 16.

²⁹ Mr Ben Lewis, Managing Director, One Key Resources, *Proof Committee Hansard*, 13 July 2021, p. 26.

3.22 In addition to potential wage differences, it was argued that labour hire workers are also employed under inferior workplace conditions. For example, the McKell Report contended that labour hire workers were missing out on basic workplace entitlements, such as sick leave and family leave.³⁰

3.23 Noting the significance of coalmining to his local region, Mr Arthur Rorris from the South Coast Labour Council said the following regarding the continued trend towards the engagement of labour hire firms and the impacts it is having on wages and conditions:

There is no excuse for big multinational companies to be rolling over workers on questionable pay rates, through body hire firms, year in, year out, and then undercutting them each time they do that effort. You've got a series of body hire firms now that essentially trade on being able to constantly undercut wage rates. We have workers who are sacked one day and rehired at the next, doing exactly the same job, with less money and worse conditions. It's bad at the best of times, but, when you're looking at an industry that is actually capitalised to the extent that it is, labour costs are really a fairly insignificant part of that cost structure, and there is no need or justification for that action. We came to the conclusion that it's actually about control and it's blind ideology, with a lot of these fads. The HR people, particularly in the multinationals, think it's a good idea that you keep that insecurity going. Trading on insecurity is a feature, unfortunately, of some of these firms within the coal and other industries. That has got to stop.³¹

3.24 Councillor May highlighted that insecure work can have detrimental impacts on a person's ability to plan for their long-term future:

Having a casual or a contract position within the resources sector, or any sector for that matter, makes it just that little bit harder for people to be securing home loans, personal loans and those types of things. It's a ripple effect as to what the impacts are in our community.³²

3.25 The General Secretary of the QCU, Mr Michael Clifford, discussed the short-term impacts of insecure work, noting that these arrangements can even negatively impact a person's ability to plan a simple weekend away:

We heard, again, from [labour hire] workers who talked about the difficulties in planning their lives, not just planning their lives for the long-term but even planning a weekend away with their family, because they have no certainty around the hours that they work.³³

³⁰ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 8.

³¹ Mr Arthur Rorris, Secretary, South Coast Labour Council, *Official Committee Hansard*, 14 April 2021, p. 11.

³² Councillor Karen May, Deputy Mayor, Mackay Regional Council, *Proof Committee Hansard*, 13 July 2021, p. 42.

³³ Mr Michael Clifford, General Secretary, Queensland Council of Unions, *Proof Committee Hansard*, 13 July 2021, p. 14.

- 3.26 A number of current and former miners provided their perspectives on the changes occurring within the industry. For example, Mr Rob Foot, a retired miner who previously worked in Central Queensland, provided his perspective:

I'm retired but I was working in Central Queensland mines under permanent working conditions. I was working for United Group Resources. I worked for the firm for 14 years, and one day the mines came along and said every contractor onsite had to work for WorkPac. These people wanted to reduce my wages by half, and on a casual basis. You had to pay for your own inductions, you had to pay for your own medicals, you had to pay for accommodation, and you had to pay for training courses, safety and trade certificates, riggers-dogmen courses, crane tickets, high-risk tickets, heights training certificates, forklift truck, confined space et cetera, whereas in the past that was all supplied by the employer. As a consequence, they wanted everyone to be casual with a flat rate of pay—no holiday pay, no sick pay, no overtime, no travel pay.³⁴

- 3.27 Mr Stokes, a pump crew operator working within the coalmining industry for the last ten years, said the following about the differences in working conditions:

I have worked in the coalmining industry for 10 years as a pump crew operator. For the last seven years I have been a casual labour hire worker. I live in Rockhampton with my wife and children and work at a Central Queensland coalmine operated by a multinational company. I have been in labour hire all these years, for seven years, and there are just no permanent jobs being offered anymore. I work the same roster and shift as the permanent workers on my crew, but I have no job security. I get paid less, and it is really hard to take time off. I want to see the same pay implemented for labour hire workers. Most importantly, I think the mine operators should directly employ more workers. When you are in labour hire, you are treated like a second-class citizen, you are given the worst jobs and you can be let go at any time. At my coalmine, more than half the workers are employed through labour hire rather than being directly employed. Mining companies keep changing labour hire companies so that workers do not have an opportunity to organise and improve their position.³⁵

- 3.28 Commenting on the rationale mining operators submit for utilising labour hire, Mr Walton from the AWU said the following:

Employers usually say that labour hire needs to be used because it's flexible and it allows them to fill specific skills shortages, but that's not necessarily the practical reality of what's playing out on the ground. More often than not, we see labour hire used as a way of preventing workers from having access to the same pay and conditions that other workers on the site have under existing enterprise bargaining agreements.³⁶

³⁴ Mr Rob Foot, *Proof Committee Hansard*, 13 July 2021, p. 13.

³⁵ Mr Chad Stokes, Member, CFMMEU, *Proof Committee Hansard*, 13 July 2021, p. 10.

³⁶ Mr Daniel Walton, National Secretary, AWU, *Proof Committee Hansard*, 14 July 2021, p. 19.

Negative economic impacts for regional and remote communities

3.29 Largescale mining operations have the capacity to deliver huge economic dividends to local communities, especially in regional and remote Australia. These benefits have traditionally been realised through each of the development, construction and production phases; however, with the increased rate of casualisation and the engagement of FIFO and DIDO workforces, some of these benefits for local communities have been negated. Dr Stephen Whelan, a labour market economist at the University of Sydney and the author of the McKell Report, stated that:

An increasing reliance on casual workers and labour-hire has created a situation where many workers in Australia's mining sector are missing out on basic workplace entitlements, such as sick or family leave. Because of these labour-cost reduction strategies, job insecurity has risen in the mining sector, undermining the sector's value to individual workers, as well as the regional economies dependent on mining activity.³⁷

3.30 The McKell Report estimated that across just three major coalmining regions³⁸, the losses resulting from these arrangements could range from \$485 million to \$851 million per year, and that, if similar arrangements were in place across other mining regions, such as the Illawarra and Central West, the losses could approach \$1 billion per year.³⁹ The report provided a further breakdown by region:

For the local economy, the consequences are likely to be substantial. The first case study, The Hunter Valley excluding Newcastle, identifies an impact of between \$158 million and \$283 million as a result of labour cost reductions in the mining industry. In the Bowen Basin region of Mackay-Isaac-Whitsunday, a loss of between \$169 million and \$297 million is identified. In the SA4⁴⁰ Central Queensland region, this report identifies an economic cost of between \$140 million and \$245 million as a result of labour cost reductions in the mining sector.⁴¹

³⁷ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 8.

³⁸ These three regions include the Hunter Valley (excluding Newcastle), Mackay-Isaac-Whitsunday, and Central Queensland.

³⁹ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, pp. 7 and 26.

⁴⁰ Statistical Areas Level 4 are the largest sub-state regions in the ABS geographical areas classification and are designed to reflect the nature of labour markets within each state.

⁴¹ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, p. 25.

3.31 Mrs Cherie Miller, Chairperson of the Moranbah Community Health Partnership, also described the impact growing labour hire and job insecurity has had on the mining town of Moranbah, including increasing rates of domestic violence and drug abuse:

When I'm out delivering courses and speaking to people for four hours, it certainly is around topics that are very sensitive around that concern of job security and their husbands or partners security and their position. It's around the social determinants of health. If they lose their job, will they become homeless? Do they have a home within their job? It is a very complex issue, but it certainly all comes back to the fact that there is job insecurity in our community, the wider region and across Australia.⁴²

3.32 Mrs Anne Baker, Mayor of the Isaac Regional Council, added that there is a 'casualisation pandemic' in the Isaac region:

We're very, very aware of the mining operations' increasing preference to favour the labour hire model to meet their requirements over moving back to the more permanent model which we saw some time ago. It is our view— and it is certainly my view, as the mayor of this region, in my fourth term—that this is nothing short of a pandemic. We talk about a COVID pandemic. We are actually living a casualisation pandemic ... There can be absolutely no mistake that this completely undermines the socioeconomic health of our regional and remote communities and is an offensive insult that continues to be allowed to happen.⁴³

Increased fly-in-fly-out and drive-in-drive-out workforces

3.33 Where mining operations do not rely on FIFO and DIDO arrangements, they can contribute materially, both directly and indirectly, to their local economies and to the Australian economy more broadly. These contributions can come in multiple forms, such as:

- providing employment to people living in regional and remote Australia;
- bringing in workers who spend money within the local community;
- purchasing goods and services from local suppliers;
- making voluntary social investments, such as infrastructure projects and scholarship programs; and
- paying taxes and royalties to various levels of government.⁴⁴

3.34 The boom within the mining industry over the last two decades has made it necessary for organisations to recruit workers from outside the regions in which they will be employed. This is especially true for operations located in

⁴² Mrs Cherie Miller, Chairperson, Moranbah Community Health Partnership, *Proof Committee Hansard*, 14 July 2021, p. 49.

⁴³ Mrs Anne Baker, Mayor, Isaac Regional Council, *Proof Committee Hansard*, 14 July 2021, p. 52.

⁴⁴ House of Representatives Standing Committee on Industry, Innovation, Science and Resources, *Keep it in the regions: Mining and resource industry support for businesses in regional economies*, November 2018, p. 6.

remote locations, or on oil rigs, which cannot be practically serviced without 'temporary periods of isolated on-site work'.⁴⁵

3.35 In its submission to the inquiry, the AWU submitted that:

Even where it is not strictly necessary, many mining operations have a workforce composed entirely of workers from outside of the local region. Typically, rosters for these sites have workers on site for weeks at a time, then off work entirely for a period.⁴⁶

3.36 Notwithstanding the above assertion, the Managing Director of One Key Resources, Mr Ben Lewis, contended that his organisation's preference was to 'employ locally first'. On this point he said the following:

Our preference when employing a workforce is always to employ locally first. Obviously that has economic and community benefits in the local area, but it also demonstrates that we are committed to working within the communities where we have sites and employees. Of interest, and I'm not sure if it's a differentiator or not but, given that focus on local employment, over 82 per cent of our workforce is employed from the local regions around the mine sites where we work, and that includes our employees in Western Australia, which, obviously, is a far more FIFO heavy marketplace given the remoteness of the mines. That's a whole-of-business stat and is something that we're quite proud of and work with the communities on.⁴⁷

3.37 The foreword to the 2013 report prepared by the House of Representatives' Standing Committee on Regional Australia, entitled *Cancer of the bush or salvation for our cities?*, noted that the then Mayor of Kalgoorlie, Councillor Ron Yuryevich, referred to FIFO/DIDO as the 'cancer of the bush'. The report submitted that he had claimed, and many others had agreed, that it was eroding the way of life in traditional mining communities, such as Kalgoorlie, Karratha, Mount Isa, Broken Hill and Moranbah.⁴⁸

3.38 The 2013 report also contended that:

FIFO/DIDO should not be utilised as the primary work practice where it undermines the liveability of regional Australia. In some areas liveability is becoming so eroded that the choice to 'live-in' rather than FIFO/DIDO is simply not available. Concerns were expressed throughout the inquiry that FIFO/DIDO would become such a norm that future generations would not realise that the option of living in regional Australia is available to them.⁴⁹

⁴⁵ AWU, *Submission 199*, [p. 7].

⁴⁶ AWU, *Submission 199*, [p. 7].

⁴⁷ Mr Ben Lewis, Managing Director, One Key Resources, *Proof Committee Hansard*, 13 July 2021, p. 23.

⁴⁸ House of Representatives Standing Committee on Regional Australia, *Cancer of the bush or salvation for our cities? Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia*, February 2013, [p. vii].

⁴⁹ House of Representatives Standing Committee on Regional Australia, *Cancer of the bush or salvation for our cities? Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia*, February 2013, pp. 2–3.

- 3.39 Although noting that many workers appreciate the career opportunities made possible through this work, the AWU highlighted that these arrangements create a number of significant problems for both the workers themselves and the local regions in which they operate:

[T]he significant time away from family and friends can create significant strain on these relationships and on the mental health of workers. Countless stories have emerged of drug use and family breakdown that have resulted from employers failing to look after their workers.⁵⁰

Further, reliance on FIFO work can foment opposition to resources projects in nearby regional towns. Many of these towns see hundreds or thousands of workers ferried in and out of worksites, without seeing any economic benefit. Indeed, in some cases, workers in towns near projects need to travel to capital cities to take up work. Given the precarious economic conditions in many regional centres, exacerbated by declines in tourism from the COVID-19 pandemic, this is likely to have significant knock-on effects. A workforce entirely composed of non-residents is also less likely to be aware of local issues, potentially exacerbating the risk of failing to understand local concerns.⁵¹

- 3.40 Other witnesses also highlighted some of their major concerns they have with this approach. For example, in his evidence to the committee, Dr Stephen Whelan put the problem in simple terms:

The easiest way to think about it would be that those fly-in fly-out workers would take the income that they earn to other parts of the country, to other regions. It wouldn't be spent in the community where the mine is actually located. So if anything that would mean that the impact was even larger in terms of the direct and indirect effect of any employment arrangement, I suppose, because that income would be spent outside of the region where the mine is.⁵²

- 3.41 The Deputy Mayor of the Mackay Regional Council, Councillor Karen May, discussed the significant change in approach since the 1990s, and outlined the issues this has caused for her local region and the pressure it has put on the council:

I think there is also the cost of that casual workforce to community, particularly if they're a fly-in fly-out workforce. Our communities and our neighbours in the Isaac area are providing and supporting those costs through infrastructure, but there's no return on investment through rates to be able to pay for that. So it's almost like a cost-shifting exercise to the local council because we've got these workers who are not permanently employed and just fly in and fly out or drive in and drive out. There is a bit of a disparity, really, in that very complex issue around who should pay for what. I think the job security part—and I remember only too clearly what it was like in the 1990s in the resource towns. They were booming,

⁵⁰ AWU, *Submission 199*, [p. 8].

⁵¹ AWU, *Submission 199*, [p. 9].

⁵² Dr Stephen Whelan, *Proof Committee Hansard*, 13 July 2021, p. 6.

thriving, great family towns, and if for any reason we can push back towards that rather than casualising more, I think you will see a lot better outcomes for communities, families, small business and a whole range of flow on effects: education facilities, health facilities. It is around really making sure of the cost and encouragement to business, or to industry, to really think about employing people on a permanent basis rather than shipping them in and shipping them out.⁵³

Reduced occupational health and safety

3.42 In its final report, the 2015–16 Victorian inquiry into the labour hire industry and insecure work (Victorian Inquiry) noted there is a significant body of literature indicating that labour hire workers are subject to greater risks to health and safety than directly employed workers.⁵⁴

3.43 In another report, prepared by Emeritus Professor Michael Quinlan for the recently concluded Queensland Coal Mining Board of Inquiry, a summation of the key negative health and safety outcomes associated with contracting; labour hire; and other contingent work arrangements, when compared to full-time permanent positions, was provided. The report noted that research had identified that these insecure arrangements resulted in:

- higher frequencies of injuries, including fatalities;
- poorer physical and mental health;
- poorer knowledge of, and access to, regulatory employment rights; and
- less willingness for workers to raise occupational health and safety concerns.⁵⁵

3.44 In his report, Professor Quinlan went further:

Importantly, the use of contract labour/subcontracting has also been linked to workplace disasters in a number of industries by official investigations, or detailed research. The use of contractors and especially multi-tiered subcontracting has been associated with fractured OSH [occupational safety and health] management and corner cutting on safety that was a causal factor in catastrophic incidents.⁵⁶

⁵³ Councillor Karen May, Deputy Mayor, Mackay Regional Council, *Proof Committee Hansard*, 13 July 2021, p. 46.

⁵⁴ Victorian Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Victorian Inquiry), 31 August 2016, p. 124.

⁵⁵ Emeritus Professor Michael Quinlan, *Report on a number of matters with regard to the Board of Inquiry Investigation into the methane incident at the Anglo American Grosvenor Mine at Moranbah on 6 May 2020 and related matters* (Quinlan Report), p. 28. Accessible at: <https://coalminesinquiry.qld.gov.au/wp-content/uploads/2021/07/BOI.001.004.0001-Report-on-matters-regarding-BOI-investigation-into-methane-incident-Grosvenor-mine-and-related-matters-by-Emeritus-Professor-Michael-Quinlan.pdf>.

⁵⁶ Emeritus Professor Michael Quinlan, *Quinlan Report*, p. 28.

- 3.45 One such incident involving labour hire contactors occurred at the Grosvenor coal mine in Queensland on 6 May 2020 where five workers were seriously burned. This catastrophic event is discussed in further detail in the case study below.

Box 3.2 Case study: Grosvenor mine incident and subsequent inquiry

On 6 May 2020 there was a catastrophic incident at the Grosvenor coal mine at Moranbah in central Queensland's Bowen Basin. This incident involved two forceful pressure waves and an underground methane explosion.⁵⁷

At the time of the incident there were five coal mine workers at the tailgate end of the longwall, with three of the workers as far away as 260 metres from the maingate. They were 390 metres underground. All five workers suffered serious injuries, such as burns to their upper bodies and airways.⁵⁸

Although operated by Anglo American, at the time of the incident One Key Resources, a labour hire firm, supplied 'almost the entirety' of the production workforce.⁵⁹

In the aftermath of the incident, the Queensland Coal Mining Board of Inquiry was established by the Queensland Government to undertake a thorough investigation. The foreword to the final report of this inquiry described the incident as follows:

Unquestionably, the event was terrifying. There were two forceful pressure waves 15 seconds apart, sufficient to knock a person over. Without identifying the exact order of things, in the course of the tumult, the power dropped and there was a brief but intense methane explosion at the tailgate end of the longwall.

Each of the five workers was seriously burned. The only lighting then available came from the workers' cap lamps.

Notwithstanding their condition, they made their way, helping each other where they could, towards the maingate. Their courage and resilience is inspiring.

Workers at and near the maingate experienced the force of the two pressure waves involved in the event. They had not previously

⁵⁷ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, [p. 6].

⁵⁸ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, [p. 6]; and 'Moranbah mine explosion leaves five people in serious condition', ABC News, 6 May 2020, <https://www.abc.net.au/news/2020-05-06/moranbah-mine-explosion-five-people-injured/12220924> (accessed 4 November 2021)

⁵⁹ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 385.

experienced pressure waves of this magnitude.

There was soon the call for help from the injured.

These workers were left in no doubt that a serious incident had occurred, and a potentially very dangerous situation still existed.

They immediately headed towards the area of danger, not away from it. Some went onto the longwall face and assisted the injured back to the maingate. Others were at the maingate providing first aid and comfort to the injured before their evacuation. Still others assisted with their evacuation. Each was exposed to potential danger.⁶⁰

Mr Wayne Sellars, one of the five workers injured during the incident, likened the explosion which engulfed him to 'standing in a blowtorch'.⁶¹

It was also revealed during the subsequent inquiry that there were 14 reported 'near misses' at the Grosvenor mine in the eight weeks leading up to the explosion.⁶² The Board found that there was a perception amongst labour hire workers and contractors that raising safety concerns may endanger their ongoing employment. In its final report, it said the following:

The Board's conclusion is that there is a perception among coal mine workers that a labour hire worker or contractor who raises safety concerns at a mine might jeopardise their ongoing employment at the mine. It has not been possible to assess how widespread that perception might be. However, the existence of a perception, no matter how widespread, creates a risk that safety concerns will not always be raised.⁶³

Responding to questions by the committee regarding the steps taken by One Key Resources to ensure that another incident like this never occurs again, the firm's Managing Director, Mr Ben Lewis, said the following:

In terms of that incident, it's a complex situation, as I'm sure you're aware. Certainly we have an obligation to protect the safety of our employees and we discharge that to the fullest extent

⁶⁰ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, [p. 6].

⁶¹ Toby Loftus, 'Grosvenor Coal Mine worker says underground explosion was 'like standing in a blowtorch'', ABC News, 7 April 2020, <https://www.abc.net.au/news/2021-04-07/grosvenor-mine-inquiry-told-of-workers-ordeal/100052722> (accessed 4 November 2021)

⁶² Toby Loftus, 'Explosive levels of methane recorded at Grosvenor Mine in lead up to incident that seriously injured five', ABC News, 10 March 2021, <https://www.abc.net.au/news/rural/2021-03-10/near-misses-reported-at-grosvenor-mine-board-of-inquiry-hears/13233844> (accessed 4 November 2021)

⁶³ Queensland Coal Mining Board of Inquiry, *Queensland Coal Mining Board of Inquiry: Report Part II*, May 2021, p. 14.

through every possible means. Obviously there are certain mandated areas of responsibility, by virtue of the Coal Mining Safety and Health Act [*Coal Mining Safety and Health Act 1999 (Qld)*], which ultimately places the systems of work and the safety standards applying to those systems of work with our end client. However, we work in very close partnership with them, and, as a result of that incredibly unfortunate event, we have improved a number of communication lines and made a number of improvements around fully informing ourselves through risk assessment and more deep-dive periodical reviews to ensure that we're more across some of the technical aspects of the mining process.⁶⁴

- 3.46 Anecdotal evidence on occupational health and safety issues was also provided during the inquiry. For example, Mr Chad Stokes, a member of the CFMMEU, stated that he had witnessed numerous occasions where people had been adversely affected after raising safety issues over the seven years he had been working at his current mine site:

The labour hire workers stood their ground, saying it's totally unsafe, whatever it might be—the equipment or something where you're doing your work—and I've seen them moved to other crews or they've been laid off. Being in a smaller group, we hear all that. They've been moved because of, basically, standing for a safety issue. It's appalling—especially when you see it's [a] genuine safety issue, not a personal vendetta—and it's happening quite regularly now. I don't know if that's because of—the employment in the mining industry is just labour hire, so it's very sad.⁶⁵

- 3.47 Mr Ben Lewis, however, rejected suggestions that labour hire employees are less likely to voice safety concerns at their place of work:

From my experience, which is quite extensive in the labour hire space—and it's also a hands-on experience, because I do get out to site a fair bit—that is certainly not the experience that I've seen. In fact, the One Key workforce I would classify as quite vocal in terms of airing concerns, if there were any. Similarly, I've heard from all our client-facing and workforce-facing staff members that there is certainly not a hesitation to bring forward any safety concerns. That is very much welcomed by our business. Obviously, safety is of paramount importance, and any concerns that are raised are investigated, addressed and dealt with in an appropriate manner. There is never any retribution or threat of retribution or even a hint of it. In fact, we often conduct reward and recognition-type exercises for people proactively bringing forward any concerns they may have.⁶⁶

⁶⁴ Mr Ben Lewis, Managing Director, One Key Resources, *Proof Committee Hansard*, 13 July 2021, p. 24.

⁶⁵ Mr Chad Stokes, Member, CFMMEU, *Proof Committee Hansard*, 13 July 2021, p. 12.

⁶⁶ Mr Ben Lewis, Managing Director, One Key Resources, *Proof Committee Hansard*, 13 July 2021, p. 23.

- 3.48 The Chief Executive Officer of Chandler Macleod Group, Mr Peter Acheson, provided an insight into the 'shared responsibility' model between his firm and his clients, and outlined the safety induction process which his firm requires all employees working at mine sites to undertake:

The first thing that we do, which is very important, is undertake detailed safety induction for any employee starting work at any of our mine sites. We don't allow them to start until they have completed that safety induction. They're also required obviously to get the coal board medical et cetera if they're working on a coal site. Invariably there will be client site role specific inductions as well. If they're using a piece of equipment or operating a piece of machinery, part of that induction will involve how to use that machinery and making sure that they are using that machinery effectively. There is also a work area familiarisation and skills check on their first day on-site. And then, very importantly—this is a very important part of our role—we also make sure that the client undertakes the safety induction as well of this candidate. That's what I'm talking about when I talk about the shared responsibility. It is very clear in most work safe legislation around the country that there is a very clear shared responsibility between us and our clients.⁶⁷

- 3.49 Notwithstanding the above, the Australian Council of Trade Unions (ACTU) argued more broadly that there is significant evidence showing that 'insecure work is not safe work'. It contended that:

Workers in insecure work are more likely to be injured at work for a range of reasons, including inadequate training and induction, fear of reprisals for speaking out about safety concerns, lack of access to participation and consultation processes, lack of regulatory oversight, poor supervision, inadequate access to effective safety systems, and exposure to frequent restructuring and downsizing.⁶⁸

Proposals for reform and committee view

- 3.50 The committee believes there is something seriously and systemically wrong when more than half of BHP's national mine site workforce is hired through labour hire and other external contractors, rising to more than 70 per cent at BHP's Australian coal operations.
- 3.51 When even the Minerals Council of Australia admits that the pay gap for labour hire casuals to direct host employees is 24 per cent, and the CFMMEU says it is as high as 40 per cent, it is clear the plague of labour hire is not just about flexibility, but is about driving down pay and conditions for mineworkers.

⁶⁷ Mr Peter Acheson, Chief Executive Officer, Chandler Macleod Group, *Proof Committee Hansard*, 13 July 2021, p. 30.

⁶⁸ Australian Council of Trade Unions (ACTU), *Submission 98*, p. 42.

3.52 A number of proposals have been suggested to address the key concerns noted above. These are discussed in further detail below, along with the committee's view and associated recommendations for reform.

Address issues with fly-in-fly-out and drive-in-drive-out workforces

3.53 The committee recognises the importance of mining developments in promoting the economic prosperity and workforce participation of local communities in regional and remote Australia. It is concerned, however, that as workforces become increasingly casualised and transitory through unnecessary FIFO and DIDO arrangements, many of these communities are no longer the main beneficiaries of these operations.

3.54 Although acknowledging that the boom in the Australian mining industry over the preceding twenty years has required mining operators to source workers from outside the regions in which they operate, the committee notes that evidence presented during the inquiry suggests that this commonly occurs even when local labour forces are available and could be engaged.⁶⁹ The committee believes more should be done to ensure that this does not occur, and that local workers are utilised in the first instance when they are available and willing to work.

3.55 Numerous proposals and initiatives have been suggested and implemented to better understand, and mitigate against, the core problems created by these transitory work arrangements. For example, in 2013 the House of Representatives' Standing Committee on Regional Australia undertook a comprehensive inquiry into the subject and, in its final report, made 23 recommendations. Of these recommendations, the committee notes that only four were agreed to, either in-principle or in-full, by the Government. The balance were either noted or disagreed to.⁷⁰

3.56 Further, in response to a 2015 Western Australian Legislative Assembly report, in 2019 the Western Australian Department of Mines introduced the FIFO Code of Practice to address major mental health concerns which were becoming increasingly commonplace amongst these workforces.⁷¹ The committee wholly supports such initiatives designed with the aim of improving mental health.

⁶⁹ See, for example: AWU, *Submission 199*, [p. 7].

⁷⁰ See: Australian Government, *Australian Government response to the House of Representatives Standing Committee on Regional Australia report: Cancer of the bush or salvation for our cities? Fly-in, fly-out and drive-in, drive-out workforce practices in Regional Australia*, June 2015.

⁷¹ AWU, *Submission 199*, [p. 8].

Recommendation 6

3.57 The committee recommends that the Australian Government requires mining operators to conduct local labour market testing prior to engaging fly-in-fly-out and drive-in-drive out workforces.

Recommendation 7

3.58 The committee recommends that the Australian Government requires mining operators to meet best-practice in managing the physical and mental health and safety of their fly-in-fly-out and drive-in-drive-out workforces.

Recommendation 8

3.59 The committee recommends that the Australian Government commissions comprehensive contemporary research into the economic and health impacts resulting from mining operators utilising fly-in-fly-out and drive-in-drive-out workforces. Amongst other things, such research would assess the impacts on:

- **demand for services delivered by local governments;**
- **the ability of local governments to raise revenues through taxation;**
- **small and medium businesses located in towns located close to mine sites;**
and
- **the physical and mental health of workers and their families.**

Improve occupational health and safety at mine sites

3.60 As discussed earlier in this chapter, it has been contended that labour hire and subcontracting has been linked to serious workplace disasters, such as the methane explosion at the Grosvenor coal mine in central Queensland in May 2020 where five labour hire workers were horrifically injured. The committee is very concerned that these arrangements result in 'fractured' occupational safety and health management and 'corner cutting' on safety, both of which are considered causal factors of catastrophic incidents.

3.61 Based on this evidence, the committee recommends that the Australian Government thoroughly investigates the extent to which labour hire workers operating within the mining sector are more reluctant to raise safety concerns due to fears of reprisal, with the aim of implementing effective safeguards for these workers to ensure that they feel secure in their ability to promptly raise these issues, either to their labour hire operator or host entity. This issue is discussed in a broader context in Chapter 2, with that chapter also incorporating the committee's associated recommendation.

Implement 'same job, same pay' principle across the mining industry

3.62 As already noted in Chapter 2, the committee is very concerned by the overwhelming evidence indicating that labour-hire workers commonly receive lower pay and conditions than those workers who are directly employed. Further, it appears that contracted labour is being utilised in the mining industry:

- to undermine labour standards;
- weaken, or entirely remove, the presence of union on worksites; and
- as a substitute workforce that is seen as more compliant due to its temporary nature.

3.63 The committee believes labour hire has, and continues to, drive down wages and conditions across Australian mining operations. The committee notes that even the Chief Executive Officer of the MCA previously conceded that there is a premium of approximately 24 per cent for permanent employees in some companies.⁷²

3.64 The committee highlights research indicating that the estimated cost of contracting out, labour hire, and casualisation across just three Australian coalmining regions ranges from \$485 million to \$851 million per year, and may even approach \$1 billion per year if similar workforces are utilised across additional mining areas.⁷³

3.65 To address this issue, the General Secretary of the QCU, Mr Michael Clifford, proposed the following:

I think there are a range of things that can be done. One is, particularly in labour hire, to ensure that we remove the incentive for employers to outsource their work to labour hire firms. Not only do these firms have over 90 per cent insecure work—over 90 per cent of people in casual labour—but also ... often it's coupled with a significant reduction in wages. So policies like 'if you have the same job, you should get the same pay' are very important in that respect. If you're a casual worker working alongside a permanent worker then you should be getting the same pay for doing that job—that's one important policy.⁷⁴

3.66 Mr Smyth from the CFMMEU concurred with this proposal, stating to the committee in his evidence that the 'same work, same pay' principle should be

⁷² Ms Tania Constable, Chief Executive Officer, MCA, Senate Education and Employment Legislation Committee, Inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions], *Official Committee Hansard*, 8 February 2021, p. 59.

⁷³ McKell Institute, *Wage-cutting Strategies in the Mining Industry: The cost to workers and communities*, March 2020, pp. 7 and 26.

⁷⁴ Mr Michael Clifford, National Secretary, QCU, *Proof Committee Hansard*, 13 July 2021, p. 16.

the 'minimum' that workers in the coal industry have, along with their health and safety protections.⁷⁵

- 3.67 The committee would also like to draw special attention to the poor approach taken by BHP to internalise its labour-hire workers. The committee is astonished and disappointed that this large, and highly-profitable, multinational operator continues to argue the merits of its Operations Services entities, and refuses to acknowledge that its establishment was a thinly veiled attempt at the wholesale reduction of wages and conditions across its workforce.
- 3.68 If you exclude workers engaged by Operations Services, which the committee believes is a labour-hire like arrangement, evidence provided by BHP highlights that only 48.16 per cent of its Australian minerals workforce are direct employees. Astonishingly, this figure is even less, at only 29.11 per cent, across its national coal operations.⁷⁶ The committee believes this is an unacceptable state of affairs, and calls on BHP, as well as any other operator considering embarking on a similar misadventure, to reassess their workforce approach.
- 3.69 The committee notes that the Isaac Regional Council suggested that the impact of non-fulltime employment on workers in mining-related industries be 'thoroughly investigated', with a focus on determining its effects on the ability of these workers to obtain home loans; their making of common family decisions, such as place of residence, schooling, and major purchases; and their mental health.⁷⁷ The committee is very supportive of this proposal, and suggests that it be expanded to include all insecure and precarious arrangements.
- 3.70 This topic is discussed in further detail in Chapter 2. That chapter provides three key recommendations which the committee believes will promote parity between labour-hire workers and directly-employed workers, and reduce the weaponisation of this form of insecure work as a means to reduce wages and conditions for Australian workers, including those hardworking individuals within the mining sector.

⁷⁵ Mr Stephen Smyth, District President, Mining and Energy Division, Queensland District, CFMMEU, *Proof Committee Hansard*, 13 July 2021, p. 16.

⁷⁶ BHP, answers to written questions on notice, 11 October 2021, (received 20 October 2021).

⁷⁷ Isaac Regional Council, *Submission 184*, [p. 3].

Recommendation 9

3.71 The committee recommends that the Australian Government commissions comprehensive research to determine the specific impacts of insecure employment on workers in the mining industry, with a focus on determining its effects on their ability to secure home loans; and on decisions such as place of residence, schooling, and major purchases; and their mental health.

Chapter 4

Workforce arrangements in the agriculture sector

- 4.1 Agriculture is one of the most significant sectors in the Australian economy. According to the Australian Bureau of Statistics (ABS), in the financial year ending 30 June 2020, the overall value of Australian agricultural commodities produced was valued at approximately \$61 billion.¹
- 4.2 Evidence heard by the committee suggests that employment in some parts of the agriculture sector has become exceedingly precarious—this has been, in part, due to the prevalence of labour sourcing arrangements, such as labour hire and subcontracting. The bulk of the seasonal agricultural workforce in Australia is drawn from different types of temporary visa holders, and their treatment under such employment arrangements is of particular concern. While the committee acknowledges that there are significant issues for all workers across the entire agricultural sector, this chapter is focussed on workforce arrangements in the horticulture and the meat processing industries.

Horticulture

- 4.3 Horticulture is the second largest industry in the agricultural sector and involves the cultivation of fruit, vegetables, nuts, flowers, turf and nursery products. According to the Australian Bureau of Statistics, in 2019–2020 the horticulture sector overall exceeded \$15 billion in production value and employed over 60 000 people.²
- 4.4 The majority of jobs in horticulture are labour intensive, with the most common being pickers, packers and graders.³ Every crop has a distinct season where it is at its optimal ripeness or size for harvesting.⁴ Evidence from Australian Fresh Produce Alliance (AFPA) outlined that there were between 50 000 and 71 000 short-term roles in fresh produce throughout 2020.⁵ Labour

¹ Australian Bureau of Statistics (ABS), *Value of Agricultural Commodities Produced, Australia*, 14 May 2021, www.abs.gov.au/statistics/industry/agriculture/value-agricultural-commodities-produced-australia/2019-20, (accessed 22 October 2021).

² Department of Agriculture, Water and the Environment, *Horticulture fact sheet*, 10 August 2021, www.awe.gov.au/agriculture-land/farm-food-drought/hort-policy/horticulture_fact_sheet (accessed 3 November 2021).

³ The University of Adelaide, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, January 2019, p. 4.

⁴ Australian Fresh Produce Alliance (AFPA), *Submission 207*, p. 3.

⁵ AFPA, *Submission 207*, p. 5.

is the biggest cost in horticulture, accounting for up to 70 per cent of total production costs.⁶

Meat processing

- 4.5 The Australian meat industry is recognised worldwide for its high-quality products and is an important contributor to the Australian economy— adding a total of \$17.6 billion to Australia's Gross Domestic Product (GDP) in 2018–19.⁷ Meat processing is a significant manufacturing and value-adding process within the industry, and includes work such as slaughtering, boning, freezing, preserving or packing of meat, and manufacturing from abattoir by-products.
- 4.6 Meat processing work is similarly contingent on seasonality—for example, average cattle slaughterings in Victoria and Queensland peak in the dry months and reach a trough in the wet months.⁸ Australasian Meat Industry Employees Union Acting Federal Secretary, Mr Matt Journeaux, described the industry as being 'reliant on a commodity that is grown in a paddock that is open to all weather conditions and the difficulties that those present'.⁹

Labour market trends

- 4.7 Given the seasonal variability of processing and harvesting, some flexibility in employment numbers is expected. According to ABARES, in 2018–19 Australian farms employed on average 326 000 workers. Employment varied throughout the year, with a reported high of 356 000 workers in February compared to a low of 311 000 in June.¹⁰
- 4.8 Across both horticulture and meat processing, seasonality creates short-term employment, which has implications on the nature and type of employment that can be offered. Three notable trends in the horticulture and meat processing industries are ongoing labour shortages, the prevalence of labour hire and contracting arrangements, and the use of migrant labour—all of which are discussed next.

⁶ National Farmers Federation (NFF), *Submission 83*, p. 7.

⁷ Meat & Livestock Australia, *State of the Industry Report*, 2 September 2020, p. 10, www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/soti-report/mla-state-of-industry-report-2020.pdf (accessed 3 November 2021).

⁸ Productivity Commission, *Work arrangements in the Australian Meat Processing Industry*, Labour Market Research, 1998, p. 17, <https://www.pc.gov.au/research/supporting/meat/meat.pdf> (accessed 3 November 2021).

⁹ Mr Matt Journeaux, Australasian Meat Industry Employees Union (AMIEU), *Proof Committee Hansard*, 11 October 2021, p. 33.

¹⁰ ABARES, *Labour use in Australian agriculture*, 13 January 2021, www.awe.gov.au/abares/research-topics/labour, (accessed 3 November 2021).

Labour shortages

4.9 Historically, agricultural industries have experienced difficulty in attracting and retaining a local workforce. The National Farmers' Federation (NFF) submitted that a number of factors contribute to the lack of availability, quality, and retention of a highly-productive workforce, such as:

- The conventional wisdom is that agriculture is “old fashioned”, isolated, physically demanding and unrewarding, with limited career paths, and little social status.
- Low levels of industry involvement in education and training, poor promotion of agricultural career pathways, and the limited capacity of the VET system to deliver innovative training solutions reinforce these negative perceptions.
- [T]he size of the industry’s workforce is seen to be shrinking, with consolidation and corporatisation of farms and increasing adoption of labour-saving automation and digital technology.¹¹

4.10 However, the NFF do not identify wages as a deterrent, as the above factors pose 'much greater implications for the interests of Australians who work in the sector'.¹²

4.11 Australasian Meat Industry Employees Union Acting Federal Secretary Matt Journeaux on the other hand said labour shortages have been created by an overreliance on temporary migrant labour in recent years:

Australians will do the job. I do hear this time and time again. As I explained before, if an entry level labourer is receiving less than someone working for Coles or Woolworths, the meat industry can be quite a confronting industry. If you're a 16-year-old kid and you walk onto a slaughter floor for the first time, it's quite confronting. So, to do that job, there have to be the incentives and the support there from the employer for you to do that role. If the incentives aren't there, you're much better off putting on a shirt and tie and filling shelves in Woolworths and receiving more money for doing it. Again, we can't have 15 or 20 years of an industry in crisis where they're filling the labouring positions with 417s and the skilled roles with 457s, creating their own skills shortage, and then expecting Australians to be lining up at the gates to do those jobs. We need to incentivise young people and get people back into the industry.¹³

¹¹ NFF, *Submission 83*, p. 8.

¹² Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs, NFF, *Proof Committee Hansard*, 11 October 2021 p. 1.

¹³ Mr Matthew Journeaux, Queensland Branch Secretary and Acting Federal Secretary, Australasian Meat Industry Employees Union, *Proof Committee Hansard*, 11 October 2021 pp. 37–38.

4.12 This position was supported by Emeritus Professor Michael Quinlan for the horticulture sector at-large, adding that low pay and poor working conditions have created the labour shortage:

You create a self-fulfilling prophecy, because you bring in workers who are paid very low rates, and it makes the industry extremely unattractive. But we've been running high immigration levels and high levels of temporary visas, which is new to Australia, and it has created a whole new business model in a number of industries which have become highly dependent on these sorts of arrangements. But it's really not sustainable. We need to provide the job opportunities for younger people, because there's a huge level of underemployment in Australia, not just people who are holding insecure work or who can't get into the labour market.¹⁴

4.13 A 2019 report titled '*Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*' published by the University of Adelaide investigated the extent of labour shortages in the horticulture industry. It found that 40 per cent of respondents said there had been 'occasions in the past five years when they were unable to get as many pickers, packers and graders as they needed'. Notwithstanding this, the report did not reveal an aggregate labour shortage in the horticulture labour market in Australia.¹⁵

Labour hire and subcontracting

4.14 The shift towards, and reliance upon, labour hire and contracting arrangements in agricultural industries is a feature of the 21st century, and has been comprehensively reported on in prior research and inquiries. For example, the 2015–2016 Victorian Inquiry into the labour hire industry and insecure work (the Victorian Inquiry) found that, in both meat processing and horticulture, labour hire has been used extensively.¹⁶

4.15 In 2019, up to 56 per cent of farm labour was carried out by contractors or 'other business operators', in comparison to the national average of 17 per cent—a statistic that has remained consistent over the past decade.¹⁷ Ozgroup, a large berry farming co-operative, provided evidence that 'most of [their] growers would use contracted labour'.¹⁸

¹⁴ Emeritus Professor Michael Quinlan, *Proof Committee Hansard*, 13 October 2021, p. 6.

¹⁵ Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek & Chris F Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, The University of Adelaide, January 2019, p. 48.

¹⁶ Victorian Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report* (Victorian Inquiry), 31 August 2016, pp. 153 and 160.

¹⁷ NFF, *Submission 83*, p. 9.

¹⁸ Mrs Kylie Hoschke, Seasonal Worker Project Manager, OzGroup, *Proof Committee Hansard*, 4 November, p. 48.

- 4.16 Some participants suggested that, due to seasonality, the high reliance on labour hire and contract workers is an inescapable feature of the sector. According to the NFF:

The principle reason is that the small/family enterprises which make up the vast majority of farms, do not and cannot offer constant employment week on- week, let alone over 12 months. They have labour needs which are subject to intense fluctuation. Indeed, berry growers may employ 2 people one week and 150 people the next.¹⁹

- 4.17 The Chief Executive Officer of OzGroup, Mr James Kellaway, echoed this sentiment saying that the 'engagement of casual labour is an intrinsic part of our business':

We cannot continually offer week-on-week constant employment over the course of a full year. We have labour needs that are subject to intense fluctuation and we find that demand usually outstrips supply at certain times of the year. Despite these challenges, unskilled and semiskilled labour at certain times of the year is essential and the need for it cannot be underestimated.²⁰

- 4.18 Mr Journeaux argued a similar point in relation to the meat processing industry, stating that aspects of job insecurity can be derived from the nature of the industry. But some, he said, were the result of labour hire practices:

However, some of the insecurity is a result of the deliberate choice made by employers in the industry to put downward pressure on wages and inhibit collective workplace organisation. Some of that inhibition of workplace organisation is due to the use of temporary migrant labour, particularly through third-party labour hire companies and, in particular, the use of the 417 or backpacker visa.²¹

- 4.19 Other participants were more pessimistic on the advent of labour hire and contracting in the sector. For example, the United Workers' Union (UWU) contended that, in horticulture, the prevalence of these types of engagements is having negative effects upon job security and employment conditions:

Grower's over-reliance on contractors has entrenched casual and insecure employment arrangements even when the work is consistent and predictable. The outsourced employment relationship enables unlawful work practices to develop in the shadows.²²

- 4.20 In giving evidence to the committee, the Secretary of Unions NSW, Mr Mark Morey, said that labour hire in horticulture is 'a real problem' and encourages exploitation of workers. Mr Morey also alluded to the fact that labour hire

¹⁹ NFF, *Submission 83*, p. 10.

²⁰ Mr James Kellaway, Chief Executive Officer, OzGroup, *Proof Committee Hansard*, 4 November 2021, p. 44.

²¹ Mr Journeaux, AMIEU, *Proof Committee Hansard*, p. 33.

²² United Workers' Union (UWU), *Submission 54*, pp. 12–13.

companies are also detrimental to farmers who access their services. He explained:

Many farmers will pay a hefty price to labour hire organisations for workers to pick their crops, and then you get a situation like the orchard where Kate works, where I'm sure the farmer wasn't expecting his workers to be ripped off and where, in fact, labour hire took a huge clip on the way through.²³

Migrant labour

4.21 Migrants play an important role in Australia's economic growth and development, as they meet local labour market needs, transfer knowledge, foster innovation, and support regional communities. According to statistics from the Migrant Workers' Taskforce report, published in 2019, nationally the amount of temporary visa holders with work rights has grown by 54 per cent in the 10 years from 2008 to 2018.²⁴

4.22 A range of existing temporary visa types are used to engage migrant workers, including the:

- temporary skilled migration programme;
- Working Holiday Maker (WHM) program; and
- Pacific mobility schemes, including the Seasonal Worker Program (SWP) and Pacific Labour Scheme (PLS).²⁵

Agricultural worker visa

4.23 A new seasonal agricultural worker visa was announced on 16 June 2021 by the Minister for Agriculture, Drought and Emergency Management, the Hon David Littleproud MP. The visa is in response to 'workforce shortages in the agriculture and primary industry sectors' and recent changes to the WHM program under the UK-Australia Free Trade Agreement.²⁶

4.24 Inquiry participants gave mixed evidence on the likely ramifications of the visa's introduction. Some participants expressed concern that the visa will undermine key elements of existing foreign labour schemes including the SWP and the PLS.

4.25 Dr Joanna Howe, a senior lecturer at the University of Adelaide whose work has predominantly covered the effect of migration on labour markets in

²³ Mr Mark Morey, Secretary, Unions NSW, *Proof Committee Hansard*, 11 October 2021, pp. 9–10.

²⁴ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 21.

²⁵ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, pp. 26–31.

²⁶ The Hon David Littleproud MP, Minister for Agriculture, Drought and Emergency Management, 'Agriculture visa to secure labour force for farmers', Media release, 16 June 2021, <https://minister.awe.gov.au/littleproud/media-releases/australian-agriculture-visa> (accessed 3 November 2021); Under this agreement British backpackers are no longer required to work on Australian farms for 88 days to secure visa extension.

Australia, pointed to the fact that the SWP is a very effective program due to its mandatory worker induction. In her view, it is essential that the agriculture visa contains similar requirements:

The ability of workers to stay on a farm in the SWP is critical, and it has meant that the unions have been able to organise members and hear problems from their members, and then report these to media, agencies and the relevant department. That's been absolutely critical for why the Seasonal Worker Program has tended to be a better program than the backpacker program. It's essential that it's there for the agriculture visa.²⁷

4.26 The General Manager of Industry and Corporate Affairs at Teys Australia, Dr John Langbridge, also gave his support for the existing schemes. He said that the PLS had been 'useful' and that the proposed agriculture visa should be an 'extension of that scheme, rather than a dilution of that scheme'.²⁸

4.27 When asked whether the agricultural worker visa should contain some of the same safeguards and conventions that apply to those workers engaged under the PLS, the Chief Executive Officer of the NFF, Mr Tony Mahar, said that the NFF's position was that the measures put in place should be 'reasonable'.²⁹

4.28 Departmental officials who appeared before the committee were unable to provide much information on the visa, stating that it was 'still in design'. However, the First Assistant Secretary of the Labour and Connectivity Division within the Office of the Pacific of the Department of Foreign Affairs and Trade, Ms Danielle Heinecke, assured the committee that:

[W]e're looking at ensuring that there's a minimum standard attached to protecting workers under this scheme. We're looking at the lessons of the Pacific schemes to ensure that they are built across into this.³⁰

4.29 Lacking such protections, Mr Journeaux said the introduction of the agricultural visa would be 'catastrophic' for the meat processing industry. He further elaborated:

My understanding of the ASEAN visa—I think it's being called something different now—is that there won't be a skills requirement. I think there will be some market testing but, again, how that market testing will be conducted will be difficult to monitor. I believe that labourers as well as skilled workers can be brought in under it. There is no minimum salary level, there are no minimum conditions, and those people also have a pathway to permanent residency. A visa where you don't have those

²⁷ Dr Joanna Howe, *Proof Committee Hansard*, 11 October 2021, p. 28.

²⁸ Dr John Langbridge, General Manager, Industry and Corporate Affairs, Teys Australia, *Proof Committee Hansard*, 11 October 2021, p. 44.

²⁹ Mr Tony Mahar, Chief Executive Officer, NFF, *Proof Committee Hansard*, 11 October 2021, pp. 4–5.

³⁰ Ms Danielle Heinecke, First Assistant Secretary, Labour and Connectivity Division, Office of the Pacific, of the Department of Foreign Affairs and Trade, *Proof Committee Hansard*, 11 October 2021, p. 58.

protections, with a pathway to permanent residency, will just open the door for exploitation. It will be, again, catastrophic for our industry.³¹

- 4.30 The Australian Workers' Union (AWU) argued that the new visa will 'only serve to vindicate growers' reliance on workers who lack adequate pay, conditions or job security'.³²

Modern Award provisions

The Horticulture Award 2020—piece rates

- 4.31 Employees in the horticulture industry are predominantly covered by the *Horticulture Award 2020* (the Horticulture Award), which sets out the minimum terms and conditions of employment.

- 4.32 A piece rate is where an employee gets paid by the piece—in horticulture, this means the employee gets paid for the amount picked, packed, pruned or made.³³ The provisions allowing for piece rates are specified in the Horticulture Award, and do not specify a minimum hourly payment. Clause 15.2 of the Horticulture Award states:

The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.³⁴

- 4.33 The General Manager of Workplace Relations and Legal Affairs at the NFF, Mr Ben Rogers, described piece rates as a 'productivity based scheme':

The more productive a worker is, the more they earn. The reality is that the good workers, the productive workers—and there are many of them out there; there are many examples of them out there on the Seasonal Worker Program, as well local Aussies—can earn up to \$30 or \$40 an hour.³⁵

- 4.34 OzGroup told the committee that most of their growers will pay their labourers on piece rates. SWP Manager, Mrs Kylie Hoschke, said that the co-operative worked 'quite closely' with the Fair Work Ombudsman (FWO), and their 140 growers, to ensure that the piece rates paid are 'fair and equitable'.³⁶

³¹ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 37.

³² AWU, *Submission 199*, p. 11.

³³ Fair Work Ombudsman (FWO), *Piece rates & commission payments*, www.fairwork.gov.au/pay-and-wages/minimum-wages/piece-rates-and-commission-payments (accessed 3 November 2021).

³⁴ FWO, *Horticulture Award 2020*, Clause 15.2.

³⁵ Mr Rogers, NFF, *Proof Committee Hansard*, 11 October 2021, p. 4.

³⁶ Mrs Hoschke, OzGroup, *Proof Committee Hansard*, 4 November, p. 44.

- 4.35 Evidence presented by the AWU suggested that multiple inquiries have found that 'almost all growers who use piece rates to pay below the national minimum wage of \$20.33, and substantially below the minimum casual hourly rate specified in the Award of \$25.41'.³⁷
- 4.36 Ms Kate Hsu, a fruit picker who gave verbal evidence at a public hearing, told the committee that as a fruit picker she had experienced being paid \$50 for 10 hours work.³⁸
- 4.37 According to Unions NSW, the relative lack of regulation around the piece rate scheme 'underpin[s] the ability of people to exploit workers' who are engaged under it:

What's happened is that piece rates have become a negotiating point, where the employer, the labour hire or the agricultural company employing these workers, isn't clear on what the employment contract is, isn't clear on what you will get for the amount that you pick. Then, in a situation like Kate's, where you're told you'll get paid \$25 a bucket and then, once you get on the farm and you're working there, you're told the bucket's 800 kilograms, there's no room for negotiation and you don't know what contract you're entering into.³⁹

- 4.38 Dr Joanna Howe agreed that piece rates are often set at amounts which make earning above the national minimum wage impossible for many workers:

Workers themselves are confused about how to apply that piece rate, but it's not just about confusion; it's about the fact that employers set the average competent worker at too high a wage rate. Our research showed that, when farmers set the average competency, it was at a rate that was too high and out of reach, particularly for backpackers who are only working 88 days on a farm but also for other group of workers. We were told story after story about how that piece rate was used to underpay workers and very few workers were able to earn above it.⁴⁰

- 4.39 Dr Elsa Underhill added that she has come across piece rates of pay as low as \$3 per hour:

What we found, repeatedly—from studies starting around 2013 up until 2018—is an extremely high level of exploitation. Very few were paid the minimum wage, whether they were paid by the hour or were paid piece rates. The piece rate workers were particularly low paid. I think the lowest rate we came across was about \$3 an hour, but, repeatedly, they were paid on average maybe \$3 to \$4 less an hour than the hourly rate workers, and the hourly rate workers were not paid the minimum wage, so piece rate workers were paid well below the minimum wage.⁴¹

³⁷ AWU, *Submission 199*, p. 9.

³⁸ Ms Kate Hsu, Private capacity, *Proof Committee Hansard*, 11 October 2021, p. 7.

³⁹ Mr Morey, Unions NSW, *Proof Committee Hansard*, 11 October 2021, p. 10.

⁴⁰ Dr Joanna Howe, *Proof Committee Hansard*, 11 October 2021, pp. 28–29.

⁴¹ Dr Elsa Underhill, *Proof Committee Hansard*, 13 October 2021, p. 5.

Fair Work Commission ruling 2021

4.40 In December 2020, the AWU lodged an application with the Fair Work Commission (FWC) to modify the Horticulture Award to include a guarantee that an 'employee on a piecework rate will earn at least the minimum ordinary time weekly rate or hourly rate in the Award'. On 3 November 2021, the FWC delivered a draft ruling in response to the application, which contained the following key finding:

The Full Bench expressed the view that the existing pieceworker provisions in the Horticulture Award are not fit for purpose; they do not provide a fair and relevant minimum safety net as required by s.134 of the Act. The Full Bench was satisfied that the insertion of a minimum wage floor with consequential time recording provisions in the piecework clause is necessary to ensure that the Horticulture Award achieves the modern awards objective.⁴²

4.41 The Australian Council of Trade Unions' (ACTU) president, Ms Michele O'Neil, described the ruling as 'a very important win that the AWU has had for workers in the horticulture sector to increase both the rates of pay and the security of employment for workers in horticulture'.⁴³

4.42 Mr James Kellaway said that the ruling must be 'balanced against the needs and the demands of growers'. He expanded:

It needs to also benefit job stability and employment ... Our concern, though, is to make sure that the understandable needs of the worker are balanced with the needs and demands, and risks posed by the grower. We will look at the decision in that context.⁴⁴

Meat Industry Award 2020—daily hire

4.43 Meat processing employees are covered by the *Meat Industry Award 2020* (the Meat Industry Award). The Meat Industry Award contains a daily hire provision. Daily hire employees work on a day-to-day basis, where the minimum period of notice of termination is one full working day. To compensate for the shorter notice period, individuals employed under the daily hire provision are paid a 10 per cent loading on top of their wage. Daily hire employees also receive statutory entitlements such as long service leave, sick leave and annual leave.

4.44 Historically, daily hire is a product of the seasonal nature of meat processing and the high variability in daily throughput. In these conditions, daily hire allows employers to adjust the number of workers required each day. It

⁴² Fair Work Commission, Summary of Decision, Application to vary the Horticulture Award 2021 AM 2020/204, 3 November 2021, p. 4.

⁴³ Ms Michele O'Neil, Australian Council of Trade Unions (ACTU), *Proof Committee Hansard*, 4 November 2021, p. 13.

⁴⁴ Mr Kellaway, OzGroup, *Proof Committee Hansard*, 4 November 2021, p. 45.

remains commonly used throughout the meat processing industry, including by almost all the major processors.⁴⁵

4.45 The daily hire feature has been labelled by some as a facilitator of job insecurity, not by virtue of the provision itself, but by the way it has come to be managed. Additional information from the AMIEU argued:

Nowadays it has become common for employers not to reduce gang sizes. Instead, the full workforce is retained, but they are effectively converted into part-time workers, with daily hire systems allowing the employer to regularly shut down their plant until they have sourced enough cattle for optimum levels of processing. So, instead of a slightly smaller, but relatively secure workforce, you end up with a larger workforce where everyone's employment has become unpredictable and precarious from one day to the next.⁴⁶

Key workforce concerns

4.46 The industry characteristics discussed above in horticulture and meat processing have significant implications on the wages and conditions of the workforce. The committee heard evidence concerning the following points:

- the exploitation of migrants;
- the creation of a two-tier workforce; and
- the facilitation of wage inadequacy.

Exploitation of migrants

4.47 The issue of migrant exploitation has been well-established.⁴⁷ Migrants are considered vulnerable workers by the FWO due to factors such as cultural and language barriers, low awareness of workplace rights, limited options for recourse, and visa conditions.⁴⁸ Other problems migrants may face include 'issues of sexual harassment, of discrimination and of profiling'.⁴⁹

4.48 The Migrant Workers Centre (MWC) provided evidence that visa conditions facilitate a structural dependency between holders and employers. Migrants are prevented from, or not given preference to secure work due to 'restrictive visa conditions', and are therefore resigned to insecure work. For example, Condition 8547 of the Working Holiday visa prohibits holders from working for an employer for longer than six months.⁵⁰

⁴⁵ AMIEU Queensland Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021), p. 1.

⁴⁶ AMIEU Queensland Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021), [p. 1].

⁴⁷ Attorney-General's Department, *Report of the Migrant Workers' Taskforce*, March 2019, pp. 35–36.

⁴⁸ FWO, *Harvest Trail Inquiry*, 2018, p. 17.

⁴⁹ Dr Howe, *Proof Committee Hansard*, 11 October 2021, p. 31.

⁵⁰ Migrants Workers' Centre (MWC), *Submission 26*, p. 14.

4.49 The Assistant Secretary of Unions NSW, Mr Thomas Costa, described such visa requirements as a 'structural disadvantage' and an innate problem with the mechanism by which the immigration system interacts with employment. He elaborated:

For example, working holiday-makers are required to work three months in a regional area if they wish to extend their visa. That creates a structural dependency between the worker and their employer and puts them in a position of disadvantage, and ultimately vulnerability, where they're prone to exploitation. We can look at things around how much they're paid on piece rates—there's a problem with that—and we can look at how their accommodation is, and there's a problem with that too, but all of these things stem from the fact that the immigration system actually funnels these workers into a relationship of dependency.⁵¹

4.50 Dr Kate Hepworth told the committee that it was often migrants working with 'some conditions on their ability to work' that are at the highest risk of exploitation.⁵²

4.51 Dr Howe highlighted the fact migrants and backpackers are 'extremely vulnerable' to exploitation due to not being able to 'access the rights that we have under Australian law':

Government will often say, 'All workers are entitled to the rights that they have under the Fair Work Act,' but, as my own research has shown, a right to unfair dismissal is basically meaningless for a temporary migrant worker. Similarly, other rights to minimum standards of pay or around working hours are very difficult to enforce when this group is so segmented and is desperate to access work in order to achieve a migration outcome.⁵³

4.52 Another avenue leaving migrant workers particularly vulnerable to exploitation is their general lack of knowledge of lawful Australian workplace rights and obligations. Evidence from the Migrant Workers' Taskforce found that knowledge of workplace rights was low, and that family and friends in Australia were the main source of information for migrant workers.⁵⁴

4.53 Furthermore, the committee heard that many migrants hold the perception that speaking up on their negative working experiences may jeopardise their employment or ability to renew their visa. Speaking of her own experiences, fruit picker Ms Kate Hsu told the committee:

⁵¹ Mr Thomas Costa, Assistant Secretary, Unions NSW, *Proof Committee Hansard*, 11 October 2021, p. 11.

⁵² Dr Kate Hepworth, Private capacity, *Proof Committee Hansard*, 11 October 2021, p. 15.

⁵³ Dr Howe, *Proof Committee Hansard* 11 October 2021, p. 26.

⁵⁴ Attorney-General's Department, *Report of the Migrant Workers' Taskforce*, March 2019, pp. 56–58.

I was very afraid of getting issues when I needed to renew my visa. I was afraid that reporting my condition and making a complaint to the government would risk my new visa application.⁵⁵

- 4.54 Even when temporary visa holders do speak up about their unfair working arrangements, they often encounter further barriers. Mr Morey explained:

There's no point ringing up the Fair Work Ombudsman if no-one speaks Taiwanese or Chinese. It's just pointless. They get frustrated as complainants and exit the system very quickly and feel unsupported.⁵⁶

- 4.55 When asked if the FWO should have more boots on the ground and be working with community groups in industries with high levels of exploitation, Mr Morey said that the FWO had demonstrated that it was not well-placed to respond to migrant issues:

They aren't connected with communities. They aren't connected on the ground with people and as a result things aren't resolved quickly or efficiently. The other thing that we've raised a number of times, particularly with migrants, is that many of them try to make a complaint, or make complaints, and often they are then reported by their employers to immigration around a perceived breach of a visa and may well be sent back home. So any time a complaint is made it's often the case that by the time the complaint is being actioned that worker is no longer in the country.⁵⁷

Two-tier labour market

- 4.56 A common effect of labour hire is the creation of a two-tier workforce—when one group of workers receives lower wages or fewer benefits than others doing the same job. In meat processing, workers could work side by side, performing the same tasks, and receive '20 per cent to 30 per cent less than what the local worker would be receiving'. In some instances, labour hire companies are 'not even paying the award' rate.⁵⁸ **Box 4.1** outlines an example of a common occurrence of this in the meat processing industry.

⁵⁵ Ms Hsu, *Proof Committee Hansard*, 11 October 2021, p. 7.

⁵⁶ Mr Morey, Unions NSW, *Proof Committee Hansard*, 11 October 2021, p. 10.

⁵⁷ Mr Morey, Unions NSW, *Proof Committee Hansard*, 11 October 2021, p. 8.

⁵⁸ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 35.

Box 4.1 Case Study: Same job, same pay in meat processing

Additional information submitted by the Australasian Meat Industry Employees Union (AMIEU) provided evidence on the difference in pay rates for labour hire verses direct employees:

- Worker A is employed directly by a meat processing company, and is covered by the enterprise agreement negotiated by that employer. Worker A's gross wage for the week was \$1750.62.
- Worker B employed by the labour hire company, is not covered by the enterprise agreement. Worker B's gross earnings for the week were \$1229.45
- Both individuals perform the same work as a 'boner', over the same number of hours, in the same boning room.⁵⁹

Given that it is common for labour hire to be used to supply the majority of unskilled positions in meat processing, it is not often that the discrepancy between labour hire and direct employees' pay can be exposed as evidently as the above.⁶⁰

According to Mr Journeaux, addressing this type of wage inconsistency 'would have a very positive effect on our industry. Same job, same pay would, in essence ... wipe labour hire out of our industry'.⁶¹

4.57 The effects of a two-tier workforce are two-fold. Stifling of career progression and employment opportunities due to 'downward pressure on wages and conditions' can *actually affect* local labour markets. Logically, if an employer has access to a labour market with lower wage costs, that will have negatively affect the likelihood of that employer engaging those workers who they have to pay greater wages to.

4.58 On the absence of local skilled workers, Mr Journeaux said that the introduction of WHM visa holders (417s) for unskilled roles and Temporary Work visa holders (457s) for skilled roles in the meat processing industry 'created a block':

... typically people are trained from a pool of labourers into those higher skilled positions. So boners, slicers and slaughtermen generally come from an unskilled pool or kids that have come into the industry and show a bit of promise, and they have been trained up to those higher skilled

⁵⁹ AMIEU Queensland Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021), [pp. 5–9].

⁶⁰ AMIEU Queensland Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021), [p. 5].

⁶¹ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 37.

positions. Unfortunately, when the industry filled the labouring pool with 417s and the skilled roles with 457s, it cut off that career progression, and so the industry has left itself in a position where it hasn't got skilled people in it anymore, because the labourers were cut off 10 or 15 years ago.⁶²

4.59 Asked if he thought improved wages and conditions, the stopping of undercutting local labour, and ensuring that all workers received the same pay for the same job was a legitimate argument, Dr Langbridge said that 'the reality for these businesses is that the owners need to get a return on investment'. He stressed that, although global meat competitiveness had shifted in the past 30 years, Teys Australia was focused on being able to 'provide employment to Australians and income to Australian farmers for the next 75 years'.⁶³

4.60 As Australian workers do not have the same incentive as migrant workers to remain in unfavourable working conditions, Dr Howe said that a 'structural adjustment' has to be made in order to 'future-proof the industry':

Australians aren't going to want to join an industry where they're working side-by-side with temporary migrants who are being exploited and who have put downward pressure on wages and conditions, because those temporary migrants have an incentive to accept that exploitation. The local worker doesn't have that incentive. They can go on Centrelink. They can find another job. So they'll just leave that farm.⁶⁴

Underpayment and wage inadequacy

4.61 As previously discussed in this chapter, workers in horticulture have been affected by underpayment and low wages linked to remuneration by piece rates. **Box 4.2** outlines the key findings from a 2018 report by the FWO on the Harvest Trail regarding wide-spread non-compliance in horticulture.

⁶² Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, pp. 34–35.

⁶³ Dr Langbridge, Teys Australia, *Proof Committee Hansard*, 11 October 2021, p. 44.

⁶⁴ Dr Howe, *Proof Committee Hansard*, 11 October 2021, p. 33.

Box 4.2 Harvest Trail Inquiry: Widespread non-compliance levels

In August 2013, the FWO commenced an inquiry into workplace arrangements on the Harvest Trail, in response concerns about non-compliance.⁶⁵ As part of the inquiry, the FWO investigated 638 employers, including 444 growers and 194 labour hire contractors.

The report, released in December 2018, found widespread non-compliance amongst investigated employers. In 55.6 per cent of cases, the FWO determined that there had been a failure to comply with Australian workplace laws. Of those:

- 44 per cent regarded underpayment or non-payment of wages; and
- 41 per cent regarded failure to meet pay slip and record-keeping obligations.⁶⁶

Concerning piece rates, the FWO found that more than a third of employers were paying piece rates or a combination of piece and hourly rates. Of those:

- over 100 of those employers were not engaging pieceworkers correctly by having no written piecework agreement or having an invalid piecework agreement; and
- some growers and labour hire contractors applying group rates for pieceworker employees.⁶⁷

Employers found in breach of workplace laws were required to payback a total of \$1 022 698 to 2503 employees. The FWO noted that it was 'unable to access and determine the full extent of underpayments in many cases due to issues such as poor record-keeping, cash payments and a transient workforce' and estimated the full extent of underpayments to be greater than that reported.⁶⁸

4.62 Despite there being widespread instances of underpayment in the sector, as evidenced above, when employers do get caught underpaying workers 'there is no punishment'. Mr Journeaux explained:

Those people get caught. They get told to back pay, so they pay those workers the money that they were owed anyway, with a very, very limited number of prosecutions, if any, that come out of that process.⁶⁹

4.63 In response to this issue, Mr Journeaux suggested that greater transparency around wage records may assist in exposing instances of underpayments.

⁶⁵ The Harvest Trail is a pathway in regional Australia that follows the seasonal harvesting of fresh fruit, vegetables and wine grapes.

⁶⁶ FWO, *Harvest Trail Inquiry*, 2018, p. 26.

⁶⁷ FWO, *Harvest Trail Inquiry*, 2018, p. 29.

⁶⁸ FWO, *Harvest Trail Inquiry*, 2018, p. 4.

⁶⁹ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 36.

4.64 Furthermore, underpayment and wage inadequacy can have implications for workers more broadly; in particular, it can affect worker arrangements common to labour hire. Labour hire arrangements will often involve the engaging company arranging for accommodation and transport for workers inclusive of their employment. In some cases, workers are charged 'exorbitant rents' for 'substandard accommodation'.⁷⁰ Mr Journeaux gave evidence of this in meat processing:

I had four members of mine in front of the ACTU congress three years ago that were renting a premises from a plant manager. They were charged \$110 if they wanted a bedroom and if they were prepared to sleep in the lounge room and kitchen they only had to pay \$90 a week. They were also paying rent for all of the equipment within the house, which included toasters and lounges and all of those sorts of things, and that amount of money was garnished from their wages weekly.⁷¹

4.65 Mr Morey argued that this form of 'wage theft' has been 'structured into ways of taking money off [workers] before they even get their pay packet'.

Some workers who don't have accommodation provided for them and have accommodation in town are then charged to be picked up from town and driven out and back. We've heard of rates as high as \$25 a day to be picked up, taken out and then taken back. That's a form of wage theft that has been institutionalised in a transport paradigm or an accommodation paradigm. Basically, in these substandard conditions in which people are working, many of them are not making enough money to even cover the rent that they're paying their employer for less than appropriate accommodation. Wage theft is not just underpaying people.⁷²

4.66 Once a worker has their accommodation and other expenses removed from their pay packet, workers are often 'working for nothing'.⁷³ When asked what lengths she went to survive on being paid such low wages, Ms Hsu said:

It's very hard to survive through being paid \$50 a day. Thinking I could save money, I did dumpster diving with my friends, who also worked on farms, so we could get free food—leftovers from supermarkets. That's how we survived.⁷⁴

4.67 Australian Workers' Union National Organiser, Shane Roulstone, explained that the industry-led Fair Farms initiative had failed to address these issues.

It's deficient in a series of ways. The Australian auditing association has explained clearly to Fair Farms that it doesn't believe their auditing process meets Australian standards and has indicated clearly that it is going to walk away from the program. The Fair Farms program is currently used

⁷⁰ UWU, *Submission 54*, p. 13.

⁷¹ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 36

⁷² Mr Morey, UWU, *Proof Committee Hansard*, 11 October 2021, p. 10.

⁷³ Mr Morey, UWU, *Proof Committee Hansard*, 11 October 2021, p. 9.

⁷⁴ Ms Hsu, UWU, *Proof Committee Hansard*, 11 October 2021, p. 11.

by Woolworths and Coles, both of which are reviewing the program's suitability to be an auditing process to ensure compliance on farms. Without going into all the details, the Fair Farms auditing process right now considers an 18-hour day to be an acceptable work practice. It doesn't require the payment of minimum hourly rates. It accepts that employees can be paid as little as \$3 an hour, provided the piece rate sets it at that. We're trying to work constructively with Fair Farms to bring it to a standard where it will do what it's meant to do and ensure that workers on farms are treated fairly and are paid according to legal obligations. But I'd have to say that we're a fair way off that right now.⁷⁵

Proposals for reform and committee view

4.68 This section details the committee's views and associated recommendations for the horticultural and meat-processing industries.

Regulatory design of temporary migrant visas

4.69 Temporary visa holders make a significant contribution to regional and rural Australian communities, particularly in light of the well documented difficulties these communities have in attracting and retaining local workers. It is incumbent upon the Australian Government to consider the long-term interests, not only of these workers, but of local workers and the Australian economy by addressing the visa system that engages them.

4.70 With regard to the new agricultural visa, the committee points to research by Dr Joanna Howe and her colleagues in which they concluded that 'there is a need for a better targeted, more reliable and sustainable labour migration program'.⁷⁶ The committee also notes the evidence from inquiry participants on the stronger protections afforded by the existing SWP and PLS relative to Working Holiday Makers, international students and undocumented workers.

4.71 It is clear to the committee that maintaining the integrity and job security of Australia's agricultural workforce requires that any new visas introduced offer at least the core protections for PLS and SWP workers.

Recommendation 10

4.72 The committee recommends that the Australian Government works with unions and experts to build upon the minor improvements to worker protections introduced through the Pacific Labour Scheme and Seasonal Worker Program, to introduce superior protections for these workers, and for workers arriving through the Australian Agricultural Visa.

⁷⁵ Mr Shane Roulstone, National Organiser, Australian Workers' Union, *Proof Committee Hansard*, 13 October 2021, p. 9.

⁷⁶ Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek & Chris F Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, The University of Adelaide, January 2019, p. 5.

Improve right of entry for trade unions

- 4.73 The prevalence of migrant exploitation in the horticulture and meat processing industries is alarming. More disturbing however, is the evidence suggesting that, due to the relative lack of transparency of workforce arrangements and the reluctance of migrant workers to engage with the FWO, it is likely that many instances of underpayment and exploitation are not being properly investigated and rectified.
- 4.74 To address this issue, the Acting Federal Secretary of the AMIEU, Mr Journeaux, suggested that 'unions need to have the right to be able to inspect time and wage records and prosecute employers who aren't doing the right thing'.⁷⁷
- 4.75 The committee believes that current right of entry provisions have become too restrictive over the last 20 years. The committee is of the view that expanded right of entry provisions that allow for unions to investigate suspected workplace contraventions will deliver positive benefits, such as improved workplace conditions; fewer instances of wage underpayments; and better dissemination of information about employee rights particularly amongst migrant workers.

Recommendation 11

- 4.76 The committee recommends that the Australian Government consults with unions to identify how right of entry laws can be improved to deliver better protections for workers, particularly in industries identified as high-risk for exploitation and wage theft by the Fair Work Ombudsman, such as in horticulture, higher education, and meat processing.**

Addressing wage concerns

- 4.77 The committee is convinced by the ongoing research and evidence suggesting that piece-rates are exploitative and not fit for purpose in the horticulture industry. The committee supports the recent FWC draft ruling on 3 November 2021 that mandated a minimum wage be paid to all workers engaged under the Horticulture Award 2020.
- 4.78 While the FWC ruling is an important step forward, the committee notes that even prior to that decision, piece rates in the sector were supposed to ensure that the average competent worker earn at least 15 per cent more than the minimum rate prescribed in the Award. Given the widespread non-compliance and lack of enforcement of this provision, the committee believes it is critical the new minimum wage floor is adequately enforced, with the support of relevant unions.

⁷⁷ Mr Journeaux, AMIEU, *Proof Committee Hansard*, 11 October 2021, p. 38.

- 4.79 The committee also remains concerned about the extent of underpayment and wage theft not linked to piece rates—particularly, the evidence indicating that labour-hire workers are commonly offered lower pay and poorer conditions than their counterparts who are directly employed. Irrespective of who their employer is, if people are expected to do the same job, they should be paid the same rates of pay.
- 4.80 The committee also acknowledges concerns raised by numerous witnesses that the current penalties for wage theft are not adequate disincentives, and regrets the Australian Government’s decision to abandon legislation to make wage theft a criminal offence.
- 4.81 This topic is discussed in further detail in Chapter 2. That chapter puts forward three key recommendations which the committee anticipates will promote wage equality between labour-hire workers and directly-employed workers.

Recommendation 12

- 4.82 **The committee recommends that the Australian Government works closely with, and provides additional funding for, the Fair Work Ombudsman to:**
- **enhance the provision of translating and interpreting services for migrant workers seeking information or lodging a complaint;**
 - **expedite the investigation of complaints and enforcement of industry awards in the horticultural and meat processing industries; and**
 - **work collaboratively with unions to ensure migrant workers are made aware of their legal entitlements, and have access to a union. Relevant unions should also be provided with a greater proactive auditing role.**

Recommendation 13

- 4.83 **The committee recommends that the Australian Government implements protections which ensure that migrant workers’ personal information is not disclosed by the Fair Work Ombudsman to immigration authorities (including the Department of Home Affairs).**

Recommendation 14

- 4.84 **The committee recommends that the Australian Government imposes significant penalties for employers who demonstrate a pattern of non-compliance with their statutory employment obligations, including criminalising wage theft.**

Recommendation 15

4.85 The committee recommends that the Australian Government implements an efficient, accessible, and inexpensive mechanism for workers to promptly recover all unpaid wages and superannuation to which they are entitled.

Chapter 5

Workforce arrangements in the transport and distribution sector

- 5.1 A medium-sized employment sector, the transport sector has traditionally employed mainly men in long-term, relatively stable, mostly full-time jobs. The largest occupation group in the sector is truck drivers, though it also includes posties and couriers, taxi and bus drivers, forklift drivers, train drivers, logistics managers, storepersons, and airline workers, among others.
- 5.2 The committee heard evidence that job security in a number of significant parts of the transport and distribution sector has come under increasing threat from 'a rise in outsourcing' over recent years.¹ Companies' reasons for increasing their use of outsourcing and labour hire workers vary, but all are related to cost-cutting.
- 5.3 This chapter looks at Amazon—a relatively new entrant to the transport and distribution sector in Australia—and considers the ways in which its influence on the market is disrupting relationships between employers and workers in the sector.
- 5.4 It charts the recent struggles of workers and their representatives to maintain secure jobs in trucking, distribution, and the aviation sector, including at some of Australia's biggest transport employers—FedEx Express Australia Pty Limited (FedEx), StarTrack Express Pty Limited (StarTrack), Toll Group (Toll), and Qantas Airways Limited (Qantas).
- 5.5 Looking at the so called 'Amazon effect'—downward economic pressure exerted on traditional transport companies by 'gig' businesses—on trucking and delivery services, and the decision of Qantas to outsource ground handling operations in 2020, this chapter then considers recent industrial action and its outcomes.
- 5.6 The chapter concludes with the committee's views, and outlines recommendations aimed at reversing the trend towards insecure work in the transport sector.

Size and characteristics of the workforce

- 5.7 The transport and distribution industry encompasses transport, distribution, logistics, postal and warehousing, freight, rail and air transport, and courier services. The top occupations are: truck drivers; couriers and postal deliverers; storepersons; bus, forklift and other types of drivers; transport and despatch

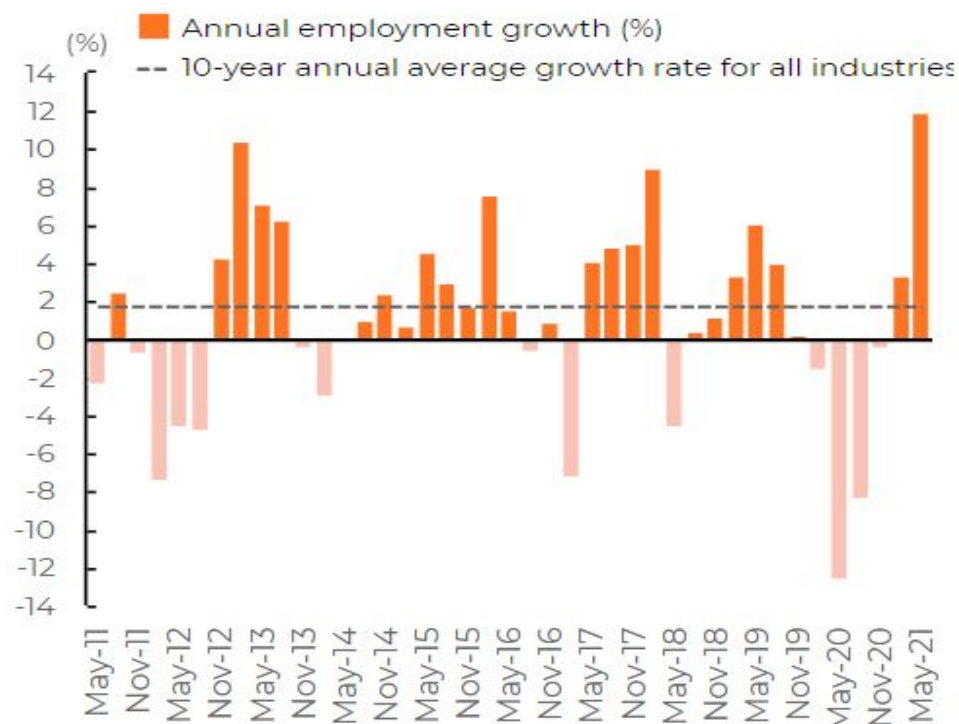
¹ Transport Workers' Union of Australia (TWU), *Submission 39.2*, p. 2.

clerks; supply, distribution and procurement managers; logistics clerks; air transport professionals; furniture removalists; and travel attendants. Most transport workers are categorised under the Australian Bureau of Statistics (ABS) workforce category 'Transport, Postal and Warehousing'.²

Size

5.8 In August 2021, the Transport, Postal and Warehousing industry employed approximately 632 700 persons (seasonally adjusted), which accounted for 4.8 per cent of the total Australian workforce. Employment in the industry increased by 3.9 per cent over the past five years.³ **Figure 5.1** below shows a significant loss of jobs in the sector in February and August 2020, due to the impacts of COVID-19, followed by a sizable rebound in May 2021:

Figure 5.1 Employment growth in Transport, Postal and Warehousing, August 2010 to May 2021



Source: Australian Government National Skills Commission, *Transport, Postal and Warehousing*, www.nationalskillscommission.gov.au/transport-postal-and-warehousing (accessed 2 November 2021).

² Australian Government National Skills Commission, *Transport, Postal and Warehousing*, www.nationalskillscommission.gov.au/transport-postal-and-warehousing-0 (accessed 2 November 2021).

³ Australian Government, 'Transport, Postal and Warehousing', *Labour Market Information Portal*, August 2021, <https://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/TransportPostalandWarehousing> (accessed 2 November 2021).

5.9 Truck drivers are by far the largest occupation in the industry, numbering around 114 300 in August 2021, followed by automobile drivers at 44 100, and posties and couriers at 37 000.⁴

Demographics

5.10 Transport, Postal and Warehousing is traditionally a male-dominated industry where formal 'qualifications are generally not required' for many roles and 'almost half of the workers do not have post-school qualifications'. However, certain licences and industry 'tickets' are needed for many roles—such as a truck or forklift licence, construction white card, or 'working at heights ticket'.⁵

5.11 In 2019, the median age for workers in the industry was 44 years and, in August 2020, median weekly earnings in the sector were around \$1200 per week⁶—although median weekly earnings for truck drivers were much higher at \$1509.⁷

5.12 Close to 80 per cent of jobs were filled by men (August 2021 data), and almost 77 per cent of roles were full-time⁸—a high percentage compared with many industries, including Australia's biggest employing industry, Healthcare and Social Assistance. By way of comparison, the Healthcare and Social Assistance workforce consists of almost 1.4 million people, is over 77 per cent female, and has less than 56 per cent full-time roles.⁹

5.13 Around 21 per cent of the workforce is self-employed¹⁰—a relatively high percentage compared with most other industries, but not as high as some. For instance, while just 11 per cent of workers in Retail Trade are self-employed,¹¹ the figure is 35 per cent in Construction.¹²

⁴ Australian Government National Skills Commission, *Transport, Postal and Warehousing*.

⁵ Australian Government National Skills Commission, *Transport, Postal and Warehousing*.

⁶ Australian Government, 'Transport, Postal and Warehousing', *Labour Market Information Portal*, August 2021.

⁷ Earnings are median for full-time non-managerial employees paid at the adult rate, before tax, including amounts salary sacrificed. Australian Government Job Outlook, *Occupations: Truck Drivers*, Data from: ABS Survey of Employee Earnings and Hours (cat. no. 6306.0), Customised Report, <https://joboutlook.gov.au/occupations/occupation?occupationCode=7331> (accessed 9 November 2021).

⁸ Australian Government, 'Transport, Postal and Warehousing', *Labour Market Information Portal*, August 2021. In August 2021, 78.3% of workers were male and 21.7% female; 76.9% were full-time.

⁹ Australian Government, 'Healthcare and Social Assistance', *Labour Market Information Portal*, August 2021, <https://lmip.gov.au/default.aspx?LMIP/GainInsights/IndustryInformation/HealthCareandSocialAssistance> (accessed 2 November 2021).

¹⁰ Australian Government National Skills Commission, *Transport, Postal and Warehousing*.

¹¹ Australian Government National Skills Commission, *Retail Trade*, www.nationalskillscommission.gov.au/retail-trade-0 (accessed 2 November 2021).

5.14 Most workers in the sector were classed as 'essential workers' during the COVID-19 lockdowns. The National Secretary of the Transport Workers Union (TWU), Mr Michael Kaine, described the 'men and women' of the transport industry as a 'lifeline for us all', saying:

During COVID they proved this amply by delivering to us, running the gauntlet with the virus, keeping the supply chains open, and delivering parcels and food to our homes when we were in lockdown.¹³

Work status and the impacts of COVID-19

5.15 Compared with jobs in Accommodation and Food Services, Arts and Recreation Services, Agriculture, Forestry and Fishing, and Retail Trade—Australia's four most highly-casualised industries—jobs in the transport sector have traditionally been *more* secure.

5.16 In 2019, before the impacts of COVID-19, the casual share of total employees in Transport, Postal and Warehousing was 22.9 per cent, compared with:

- 62.6 per cent for Accommodation and Food Services;
- 40.1 per cent for Arts and Recreation Services;
- 39.6 per cent for Agriculture, Forestry and Fishing; and
- 37.5 per cent for Retail Trade.¹⁴

5.17 This puts the proportion of casual jobs in the sector around the same as for the workforce as a whole, or slightly lower. However, the percentage of self-employed workers—such as owner-drivers and those engaged by gig platforms as independent contractors—adds at least another 21 per cent to the proportion of workers in non-standard employment in the sector.¹⁵

Trucking and distribution

5.18 While there are a significant number of owner-drivers in the road transport sector, these workers have traditionally had pay and conditions *above* Award rates, set out in enterprise agreements achieved through enterprise bargaining. The TWU submitted that, while many of these enterprise agreements came up for negotiation 'early in the pandemic', transport workers 'agreed to defer negotiations to support their employers during uncertain times'.¹⁶

¹² Australian Government National Skills Commission, *Construction* www.nationalskillscommission.gov.au/construction-0 (accessed 2 November 2021).

¹³ Mr Michael Kaine, National Secretary, Transport Workers Union of Australia (TWU), *Proof Committee Hansard*, 13 October 2021, p. 14.

¹⁴ Source: ABS, Characteristics of Employment August 2019, using TableBuilder. Parliamentary Library calculations.

¹⁵ As previously mentioned, ABS statistics report that 21% are self-employed. Australian Government National Skills Commission, *Transport, Postal and Warehousing*.

¹⁶ TWU, *Submission 39.2*, p. 1.

5.19 However, COVID lockdowns actually saw the demand for trucking and distribution services 'boom', and 'revenues hit record highs for transport operators and the wealthy retailers whose goods they transport'.¹⁷

5.20 Despite the uptick in demand for road transport and distribution, postal and courier services during the pandemic, the TWU submitted that road transport workers faced 'attacks on their job security' when enterprise bargaining resumed. These 'attacks' came as a result of unprecedented economic pressures on the industry. Mr Kaine explained:

The transport industry is being torn apart by a race to the bottom in terms of standards—driven, quite frankly, by supply chain greed, by buyers at the top of supply chains and, more recently, by the emergence of gig-economy platforms like Uber and Amazon that pose an existential threat to good, safe jobs, because they pose a threat to transport operators.¹⁸

5.21 According to the TWU, these pressures—detailed under 'the Amazon effect', below—are impacting the job security and physical safety of truck drivers and delivery personnel around Australia. Mr Kaine reported on a recent TWU survey of 1100 truck drivers, which found:

... over a third have been injured at work; one in four know someone who has died in a truck crash; 50 per cent have witnessed a truck crash; a fifth have felt pressured to speed; one in eight know of employers offering a list of drugs to keep drivers awake on the road; one in two have experienced wage theft of over \$5,000; and three-quarters of owner-drivers have in the past two months had to complete runs for no profit at all.¹⁹

Aviation

5.22 The impacts of COVID-19 lockdowns and border closures have been dramatic in the air transport sector. Mr Andrew Finch, General Counsel and Group Executive at Qantas, described the pandemic as 'the biggest crisis to hit the aviation industry in history'. Mr Finch explained that, in March 2020, '90 per cent or more' of Qantas' revenue 'disappeared almost overnight', causing 'an existential crisis' for the company. With only 'six to eight weeks' worth of cash' left at one point, Mr Finch said Qantas was 'fighting for its financial viability'.²⁰

5.23 Facing such a massive fall in revenue, Qantas took 'action that was unprecedented in [its] history and in aviation history'. According to Mr Finch, Qantas raised \$1.4 billion in equity, 'mortgaged every asset [the company]

¹⁷ TWU, *Submission 39.2*, p. 1.

¹⁸ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 14.

¹⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 14.

²⁰ Mr Andrew Finch, General Counsel and Group Executive, Office of the Chief Executive Officer, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 24.

could find', and 'started to sell land'. However, the biggest impacts have been on workers: Qantas stood down more than 90 per cent of its workforce, renegotiated contracts with all of its suppliers, and announced 'mass redundancies'—6000 initially, increasing to over 9000—including one third of the executive staff.²¹

- 5.24 However, it was Qantas' decision to outsource around 2000 ground handling employees, announced on 30 November 2020, which led the TWU to commence proceedings against Qantas in the Federal Court of Australia. On 25 August 2021, Justice Michael Lee 'declared the decision to be unlawful'.²² Qantas' decision and its impacts on workers are discussed below.

Outsourcing in transport and distribution

- 5.25 According to the TWU, outsourcing and the erosion of job security have been a problem in the transport sector for decades and a key focus for the union. Outsourcing and an increase in the use of labour hire have occurred as a result of a 'race to the bottom' on contract pricing, caused by 'competing market driven factors' that put downward pressure on transport companies. In order to win contracts, companies look for ways to provide services at 'significantly lower rates' than their competitors—one way to do this is to bypass directly hired workers on enterprise agreements, and engage cheap temporary labour.²³
- 5.26 The TWU submitted that outsourcing to labour hire workers and contractors 'has accelerated at an alarming rate within the road transport industry', often leading to 'a compromise on safety, fairness, and ongoing sustainability in the industry'.²⁴

Trucking and delivery—the 'Amazon effect'

- 5.27 The 'Amazon effect' is the name given to the influence that 'new wave' or new technology companies are having on the traditional transport and distribution sector. According to Mr Kaine, the choice of platform companies to avoid using traditional employment models to engage workers means these companies are 'outside the system', and pose a threat to it:

The gig economy doesn't contemplate employers at all; it deliberately bypasses them. Employers have traditionally been a moderating effect within our system. We'll have our arguments, yes, but they're inside the

²¹ Mr Andrew Finch, General Counsel and Group Executive, Office of the Chief Executive Officer, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 24.

²² TWU, *Submission 39.3*, p. 1. See also Justice Michael Lee, *Transport Workers' Union of Australia v Qantas Airways Limited (No 2) [2021] FCA 1012*, www.judgments.fedcourt.gov.au/judgments/judgments/fca/single/2021/2021fca1012 (accessed 12 November 2021).

²³ TWU, *Submission 39.2*, p. 2.

²⁴ TWU, *Submission 39.2*, p. 2.

system. Gig companies are outside the system, and this has led to them dragging down standards and leading otherwise good transport operators into reflex panic reactions, pushing down standards in an effort to compete with those that don't even have to obey the rules. This is what we call the Amazon effect.²⁵

5.28 With these additional pressures, the TWU said traditionally 'good companies' are now being 'forced' to 'attack their workers' rights' to compete.²⁶ Another aspect of the Amazon effect is that it breaks the traditional 'chain of responsibility', Mr Kaine said. In the past, the big supermarkets and 'other consumers of transport services' have been held responsible 'for the work that's performed to move their goods', providing an initial layer of 'accountability'. In contrast, the current system is:

... permitting, and being allowed to permit through inaction, companies like Amazon and Uber to create transport operations that deliberately fall entirely outside our existing system of protections ... and that means that not only are workers affected, by not having secure jobs and appropriate rates of pay that reach the minimum—deadly, in road transport, as we all know—but also there's a deeper systemic problem.²⁷

5.29 Asked if they believed these new market entrants were a threat to their business, representatives from Toll said they didn't see it impacting them specifically, because their business is heavily-focussed on moving large loads, business-to-business.²⁸ However, representatives from FedEx were more concerned, saying:

... as people's buying behaviours change and we see less of the consumer going to the traditional bricks-and-mortar shopfront to purchase their goods and more going into this gig economy B-to-C environment, then we will see more of the traditional work that would be transported by FedEx moving into this space. So it is a threat in that sense that there is a change about the way people are now going about purchasing their goods and the way in which those goods are being delivered. We do have to monitor and watch closely over the next short period of time in terms of how that happens.²⁹

5.30 The TWU warned of an impending crisis in the road transport sector if companies like Uber and Amazon are allowed to set up unregulated freight delivery programs, where on-demand platform workers are engaged as independent contractors with inferior training, pay, protections and conditions.³⁰

²⁵ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 14.

²⁶ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 14.

²⁷ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 16.

²⁸ Mr Peter Stokes, President, Global Logistics, Toll Group (Toll), *Proof Committee Hansard*, 13 October 2021, p. 42.

²⁹ Mr Peter Gutsche, Managing Director, Operations, FedEx Express Australia Pty Ltd (FedEx), *Proof Committee Hansard*, 13 October 2021, p. 58.

³⁰ TWU, *Submission 39*, p. 29.

- 5.31 Mr Kaine said that Uber, and Amazon, with its 'last mile' or Amazon Flex offering, 'are literally exploiting workers, paying them half of the minimum wage and putting them in precarious situations, which has actually seen them die'.³¹
- 5.32 The TWU submitted that 'Uber Freight' and 'Amazon Freight Partners', which have 'expanded rapidly in the US and other foreign markets', will attempt to set up in Australia in coming years if governments do not regulate to stop them—with 'catastrophic' impacts on working conditions and safety.³²
- 5.33 With 'heavy vehicle fatalities' accounting for 56 per cent of 'all fatalities as a result of a vehicle collision' in 2019, the TWU said road transport workers are already 'the most likely to be killed at work, with a fatality rate 9.4 times higher than the average across all industries'. According to the union, over the past 10 years, 1896 transport workers and members of the general public 'have been killed as a result of collisions with heavy vehicles alone'.³³
- 5.34 The TWU argued that, in practice, the Amazon effect could mean 'this dangerous model of work will soon become the only competitive one', unless governments intervene to regulate against unsustainable and unfair models.³⁴

Workforce arrangements at Amazon

- 5.35 Amazon Australia (Amazon) launched the Amazon.com.au online store in December 2017. Amazon has four fulfilment centres in Australia: Dandenong South, in Melbourne; Moorebank, in Sydney; Lytton, in Brisbane; and Perth Airport. At the time of writing, Amazon was fitting out the new Amazon Robotics Fulfilment Centre in Western Sydney, to be operational in early 2022.³⁵
- 5.36 Amazon directly employs over 3500 people across its business in Australia, and announced in 2020 that it intends to employ another 2000 people—1500 of whom will work at the new fulfilment centre in Western Sydney. Amazon submitted that its employees—including 'software developers, engineers, corporate teams and operational and customer fulfilment roles'—receive 'competitive pay', 'comprehensive benefits', 'subsidised private health care', and 'up to 20-weeks of paid parental leave'.³⁶
- 5.37 Amazon also uses a significant number of labour hire workers, particularly in its fulfilment centres. It has 600 directly-employed workers in its fulfilment

³¹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 19.

³² TWU, *Submission 39*, p. 29.

³³ TWU, *Submission 39*, p. 29.

³⁴ TWU, *Submission 39*, p. 29.

³⁵ Amazon Australia, *Submission 114*, [p. 1].

³⁶ Amazon Australia, *Submission 114*, [p. 1].

centres and uses a labour hire firm—Adecco—to provide '840 casual workers ... in a non-peak period'. The number of casual labour hire workers used is higher in peak periods. Amazon reported that it is aiming to have two-thirds of its off-peak fulfilment centre staff being *directly employed* by Amazon 'by the end of 2022'.³⁷

5.38 Mr Bernie Smith, Branch Secretary-Treasurer of the Shop, Distributive and Allied Employees Association, NSW Branch, told the committee about several matters the union has had to address on behalf of Amazon workers, including:

- an Adecco associate working at Amazon was reportedly fired after asking to join a union, then asking for additional hours of work—the issue was resolved between the union and Adecco;
- an Amazon worker who complained of being racially-vilified at work was not supported by Amazon, even despite there being witnesses to the treatment—this matter has been taken to the Fair Work Commission; and
- an Adecco casual who, while in the process of being transferred to a permanent position at Amazon, informed the company she was pregnant—'all of a sudden the job offer disappeared and the company claimed there were issues around her pick rates and her attendance at work which had never been raised previously'.

The third matter is before the Federal Court, where the union alleges 'pregnancy discrimination [and] the silencing of a worker in their workplace'.³⁸

5.39 Amazon was asked to respond to reports about the labour hire firm, Adecco's employment practices (low pay, poor conditions, etc), and its representatives denied the claims, saying:

... when Amazon uses a labour hire company, the labour hire company is required to comply with all Australian laws, including in relation to rates and awards, and I'm pleased to confirm that Adecco does that in Australia. So, there is no concern here that the people we are engaging through this agency are not being paid in accordance with Australian law.³⁹

5.40 However, Amazon acknowledged that while directly employed fulfilment centre workers commence on a rate of \$28 an hour, casual workers employed through Adecco earn around \$27 an hour even after receiving the 25 per cent casual loading, for the same work, and do not receive the additional benefits, such as subsidised health care and paid parental leave.⁴⁰

³⁷ Mr Michael Cooley, Director, Public Policy Australia and New Zealand, Amazon Commercial Services Pty Ltd (Amazon Australia), *Proof Committee Hansard*, 10 June 2021, pp. 18–19.

³⁸ Mr Bernard (Bernie) Smith, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees Association, NSW Branch, *Proof Committee Hansard*, 10 June 2021, p. 32.

³⁹ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 19.

⁴⁰ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 27.

- 5.41 Amazon was asked to comment on the suggestion that, according to law, casuals should receive a 25 per cent loading on top of the full-time rate—which would be a rate of \$35 an hour. Director of Public Policy, Australia and New Zealand, Mr Michael Cooley said: 'I'm not particularly familiar with the references you're making'.⁴¹ Later, on notice, Amazon submitted that the Adecco casual associates are paid 'in line with the *Storage Services & Wholesale Award*, including a casual loading of 25%'.⁴² It is clear Adecco casuals receive a 25 per cent loading on the Award rate, rather than a 25 per cent loading on the rate earned by permanent Amazon employees.
- 5.42 The committee notes that Amazon chose not to—or was unable to—provide information about the average tenure of either directly employed Amazon associates, or Adecco associates working at Amazon.⁴³ Other companies participating in the inquiry have generally been able to provide this information.
- 5.43 Amazon's disappointing engagement with certain aspects of the inquiry—including its failure to provide fulsome, detailed answers to a number of questions—will be further explored in the committee's final report.

Amazon Flex

- 5.44 A major concern with the way in which Amazon has chosen to distribute its goods, is the introduction of Amazon Flex. While Amazon submitted that it partners 'with trucking companies and carriers of all sizes to move Amazon packages' around Australia (from 'family-owned businesses' to 'some of the largest carriers in Australia'), the company also defended its use of platform workers to take packages 'the last mile'.⁴⁴
- 5.45 The committee has previously written about Amazon's last mile parcel delivery service, Amazon Flex, in its first interim report. The committee discussed evidence relating to low rates of pay, the use of unsuitable vehicles, inadequate training and unsafe loading practices, as well problems with right-of-entry for union officials seeking legitimate access to Amazon work sites.⁴⁵

⁴¹ Mr Cooley, Amazon Australia, *Proof Committee Hansard*, 10 June 2021, p. 27.

⁴² Amazon Australia, Answers to written questions from Senator Sheldon and Senator Faruqi, 10 June 2021, and answers to questions taken on notice, public hearing, Canberra, 10 June 2021 (received 9 July 2021), p. 2.

⁴³ Amazon Australia, Answers to written questions and questions taken on notice, received 9 July 2021, p. 2.

⁴⁴ Amazon Australia, *Submission 114*, [p. 2].

⁴⁵ Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, pp. 43–47.

5.46 A major concern was that the introduction of Amazon Flex in Australia is not creating *new* jobs, but 'cannibalising' existing, more secure jobs. The TWU submitted that Amazon Flex will simply replace existing transport sector jobs with 'low-paid and unsafe counterfeits':

Prior to the introduction of Amazon Flex in Australia, Amazon outsourced the majority of its last-mile delivery work to established transport operators like Australia Post, CEVA, Toll & Fastway. The expansion of Amazon Flex has only replaced the outsourced component with internal Amazon Flex work. This trend is also consistent with those in the US where the growth of Amazon Flex has seen work increasingly taken away from major transport operators like the United Postal Service and FedEx.⁴⁶

5.47 Amazon insists that its Amazon Flex drivers are paid in accordance with owner driver rates in States including Victoria. However the TWU submitted to the inquiry that the \$27 per hour paid by Amazon to its Flex drivers does not comply with the Victorian guidance rates, which for owner drivers of vehicles up to 1 tonne is \$40.71 per hour.⁴⁷

5.48 The committee invited Amazon to re-appear to address the contradictory claims and provided Amazon with a copy of the Victorian schedule of owner driver rates in advance. Amazon nevertheless continued to insist that its \$27 hourly rate is compliant with \$40.71 hourly owner driver rates in Victoria. When asked about the contradictory figures in front of him, Mr Cooley repeatedly declined to answer the committee's questions.

5.49 The committee continues to gather evidence on Amazon Flex, and intends to discuss this new evidence in its final report, where the issue of on-demand platform work in Australia, and the recommendations of the committee's first interim report, will be revisited.

Outsourcing at StarTrack

5.50 According to the TWU, the Amazon effect has accelerated a trend towards outsourcing. The union said it has noticed a 'significant increase' at StarTrack and FedEx in 'work being contracted out' instead of given to direct hire employees on enterprise agreements.⁴⁸

5.51 At StarTrack, the TWU noted 'an increase' in the use of 'agency workers/outside hire/labour hire workers' for warehousing and freight tasks, with workers in South Australia (SA) estimating around 70 per cent of work in some locations is now done by labour hire. In Western Australian (WA) air freight, the TWU submitted that 'only one in nine workers is a direct employee

⁴⁶ TWU, *Submission 39*, pp. 28–29.

⁴⁷ TWU, *Submission 39.1*, [p. 2].

⁴⁸ TWU, *Submission 39.2*, p. 2.

of StarTrack'. The TWU said StarTrack is also engaging more 'small fleet owners':

The total value in the 2019–2020 of labour hire and related agencies was more than \$100 million. We also know by the Company's own admission that approximately 37% of all labour engaged by StarTrack and Australia Post are contractors.⁴⁹

5.52 Conversely, StarTrack told the committee that it is 'acutely aware of the central importance of job security' and that labour hire and casual contractors account for just 19 per cent its workforce. General Manager of Corporate Affairs, Ms Michelle Skehan said:

- StarTrack employs 3545 people;
- the average length of service is 7.3 years;
- StarTrack uses labour hire and contractors 'to address short-term and temporary fluctuations in resourcing needs';
- StarTrack is 'the only major transport company' that provides 'full site rates to labour hire and outside hire workers nationally'; and
- StarTrack does 'not engage as part of the gig economy'.⁵⁰

5.53 Ms Skehan responded to the claim that 70 per cent of the SA workforce was labour hire by saying that, while there had been an increase in the use of labour hire to cover shortages during the pandemic in SA, labour hire currently sits at 23 per cent in that state.⁵¹

5.54 Ms Skehan also highlighted the dramatic impacts of COVID-19 on the workforce, saying:

As at 1 October, just a couple of weeks ago, we've so far provided 6,400 employees paid benefits under the pandemic leave policy. That's at a cost of around \$5.1 million to the business. As Wayne mentioned before, in recent months, on some days we've had up to 200 employees of StarTrack in isolation, and those mandatory isolation requirements have certainly impacted our business. During the pandemic, to date, we've had 8,887 employees who have been required to isolate, with 7½ thousand of those returning to work and about 600 in isolation as at today.⁵²

5.55 Mr Kaine said the TWU represents tens of thousands of small business owner-drivers who 'have chosen' to be independent contractors, which the TWU supports. However, these owner-drivers need to be 'properly supported' and 'get appropriate cost recovery for their effort and for their entrepreneurial risk' — something Mr Kaine argued is not currently occurring at StarTrack.⁵³

⁴⁹ TWU, *Submission 39.2*, pp. 2–3.

⁵⁰ Ms Michelle Skehan, General Manager of Corporate Affairs, StarTrack, *Proof Committee Hansard*, 13 October 2021, p. 31.

⁵¹ Ms Skehan, StarTrack, *Proof Committee Hansard*, 13 October 2021, p. 32.

⁵² Ms Skehan, StarTrack, *Proof Committee Hansard*, 13 October 2021, p. 34.

⁵³ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 19.

5.56 The TWU submitted the 'underpayment' of labour hire and outside hire workers who are 'engaged side by side' with workers on enterprise agreements puts all workers at risk, because:

- (a) it threatens the job security of workers who are engaged on better agreements; and
- (b) 'When outside labour is regularly engaged by any transport company the result is generally poorer safety outcomes and increased inefficiencies due to the financial pressure to rush or take risks, and because skilled labour with intimate knowledge of the businesses operations is not properly valued and retained'.⁵⁴

Box 5.1 StarTrack—use of labour hire

Mr Matthew Spring's evidence⁵⁵

Mr Spring is an employee of StarTrack with seven years' experience at the company. Mr Spring told the committee that, when he first started at StarTrack, most of the workers were employees, with labour hire only used to cover surge demand.

Since the pandemic started, Mr Spring said, he now sees around '20 regular outside hire people who come in every day', and 'are guaranteed work'. These workers arrive in Budget branded trucks, pick up deliveries and deliver them.

According to Mr Spring, these workers are like 'regular employees', but when asked they say they are being paid as independent contractors—'on \$25 an hour on a flat rate on an ABN'. When Mr Spring raised this issue with StarTrack, he said the company told him the workers were in fact 'permanent part time', on an hourly rate of \$26.62 per hour.

In another example, Mr Spring said that StarTrack outsources freight handling to a company called 'SOS', which employs its workers as casuals. These workers may be offered a full position at StarTrack, but not until after 12 months because—according to Mr Spring—'it's too expensive for [StarTrack] to employ them because we have to pay the finder's fee'. In order for StarTrack to avoid paying a 'finder's fee' to the recruitment company, these workers have no job security. Mr Spring said this is common in the industry.

⁵⁴ TWU, *Submission 39.2*, p. 3.

⁵⁵ Mr Spring, *Proof Committee Hansard*, 13 October 2021, pp.19-20. All content in the text box is covered by this footnote reference.

5.57 Inquiry participants, including Mr Spring, suggested that workers for labour hire company, Xpress may be vulnerable to exploitation due to questionable visa status or language barriers. Mr Spring said:

When we suggest that [StarTrack] go and employ some of the people, because they say, 'We can't find employees,' the response is 'There are visa issues.' So in my opinion they know but they choose not to. If they know they can't employ them because of visa issues, they must know what's going on. If they can't employ them because of visa issues, how can Xpress employ them? ... [StarTrack] refuse to accept that Xpress is not paying them correctly, but they accept that they can't employ them, because there are visa issues and they can't employ them for the hours they work—and they know exactly how long they work.⁵⁶

5.58 StarTrack responded to the allegations raised in relation to Xpress, which operates in WA and SA. General Manager of StarTrack Operations, Mr Wayne Josh, said StarTrack had investigated the allegations and found no visa issues, and also that:

The individual was paid the EBA rate, which was a labour component, and the on-costs of the vehicle were supplied by that company. We were satisfied at that point, given all the information that we'd seen and sited, that there was no wrongdoing in any of the payments to that individual.⁵⁷

5.59 On notice StarTrack provided further details about the matter, saying it had requested Xpress to provide 'proof of payments made to workers'. Xpress had provided redacted payment summaries demonstrating that the workers were paid \$27.70 per hour: 'an amount above the relevant minimums in the StarTrack National Enterprise Agreement for the work performed at StarTrack's Wingfield depot, and which also identified superannuation deductions'.⁵⁸

5.60 StarTrack 'determined the matter closed', and said 'no further concerns' had been raised. StarTrack submitted that it sought and received 'confirmation from Xpress that it maintains workers compensation insurance that covers workers performing services for StarTrack', and StarTrack reported that it has sighted the Certificate of Currency for the insurance policy in South Australia. However, StarTrack also stated that it 'will be conducting further investigations', including into the 'allegations referred to by the Chair' during the committee's hearing.⁵⁹

⁵⁶ Mr Matthew Spring, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 20.

⁵⁷ Mr Wayne Josh, General Manager of StarTrack Operations, *Proof Committee Hansard*, 13 October 2021, p. 33.

⁵⁸ StarTrack, Answers to questions taken on notice at the public hearing on 13 October 2021 (received 15 November 2021), p. 1.

⁵⁹ StarTrack, Answers to questions taken on notice at the public hearing on 13 October 2021, p. 1.

Box 5.2 StarTrack—erosion of pay and conditions

Kim White's story⁶⁰

Ms Kim White was a supplementary/labour hire worker with StarTrack, employed by APS (Industrial) Pty Limited (APS).

In August 2021, Ms White noticed 'a drop in her pay' and asked APS to 'clarify her rate of remuneration'. She received an email saying:

StarTrack notified APS this year that they wanted us to revert back to Award conditions for all sites rather than their EBA [Enterprise Agreement].

Having worked for over a year at StarTrack, on 'regular hours plus overtime', Ms White's last shift at Star Track was on 20 August 2021. According to the TWU, this was 'the same day [APS's] email was used as evidence by the TWU of the job security threat to employees'.

Ms White 'did not receive her next roster'. Her husband—a direct employee at StarTrack—contacted his manager to ask why Kim was not rostered. According to the TWU, Kim's husband was told that 'Kim would "no longer be required"'.

The matter is now the subject of 'a general protections dispute' that has been lodged before the Fair Work Commission in Brisbane.

5.61 Representatives of StarTrack were asked to comment on Ms White's case during a public hearing. StarTrack's General Counsel and Corporate Secretary, Mr Nick Macdonald, said the case is 'an issue between her and her employer, rather than between her and StarTrack'.⁶¹ On notice, StarTrack confirmed that it is, in fact, a party to the case in the Fair Work Commission. However:

StarTrack maintains the view that it is not a party to the dispute—which is a matter for Ms White and her employer.

Ms White raised a claim with the Fair Work Commission against the labour hire agency that employed Ms White, and against StarTrack. As part of her claim, Ms White states that she was dismissed from her employment. StarTrack did not employ Ms White and does not consider that it has breached any provisions of the Fair Work Act 2009 (Cth) in relation to Ms White. Notwithstanding, StarTrack attended a conciliation conference regarding the claim on 19 October 2021, as part of the Commission's ordinary processes. StarTrack will take account of any findings reached in relation to this matter that relate to StarTrack.⁶²

⁶⁰ 'Kim White v APS Group/StarTrack' in TWU, *Submission 39.2*, p. 4. All content in the text box is covered by this footnote reference.

⁶¹ Mr Nick Macdonald, General Counsel and Corporate Secretary, StarTrack, *Proof Committee Hansard*, 13 October 2021, p. 36.

⁶² StarTrack, Answers to questions taken on notice at the public hearing on 13 October 2021, p. 1.

Job security at FedEx

5.62 Similar trends towards outsourcing and greater use of labour hire have been observed at FedEx, with the TWU reporting that directly engaged owner drivers on enterprise agreements 'are being phased out and replaced by owner drivers on inferior pay tied to the Award':

These owner drivers have fewer rights, such as guaranteed hours, superannuation and redundancy provisions. These lower paid drivers now make up two thirds of all owner drivers engaged by FedEx, demonstrating a trend towards slashing pay and conditions.⁶³

5.63 Conversely, FedEx representatives talked about how much the company prides itself on its commitment to job security, and said that, 'wherever possible, the company will utilise full-time transport workers in preference to casual or part-time transport workers, labour hire and outside hire'.⁶⁴

5.64 Managing Director of Operations at FedEx, Mr Peter Gutsche, said the company has 'robust processes in place' to assess its outside hire and labour hire suppliers to ensure that they 'are fully compliant with applicable laws, including in respect to work health and safety and chain of responsibility'. FedEx's current enterprise agreement with the TWU also 'requires' FedEx to 'ensure outside hire and labour hire suppliers pay their staff at rates above the applicable minimums'.⁶⁵

5.65 Asked about the TWU's claims that FedEx was 'phasing out' owner drivers on enterprise agreements in favour of drivers on Award rates, Mr Gutsche said he believed this allegation was 'in reference to some legacy owner-drivers', on 'very aged contracts, going back to the very early TNT days'. These are contract arrangements the company is 'not looking to take forward at this point in time'. Mr Gutsche clarified that owner drivers on those terms now are secure in their employment, but if they choose to retire or leave, they will be replaced with 'directly employed company employees', rather than similar contractors.⁶⁶

5.66 FedEx was asked if it recognised 'the link between unsustainable rates of pay and unsafe driving practices'. Mr Gutsche replied:

Yes, we do. We need to ensure that we pay our contractors the appropriate rate of pay to ensure that they're maintaining their vehicles in the correct way. So, in addition to having in place the processes which we do today, that enables us to audit and review the arrangements that they have for maintaining vehicles. They need the capacity to do that, and part of that is

⁶³ TWU, *Submission 39.2*, p. 3.

⁶⁴ Mr Gutsche, FedEx, *Proof Committee Hansard*, 13 October 2021, p. 57.

⁶⁵ Mr Gutsche, FedEx, *Proof Committee Hansard*, 13 October 2021, p. 57.

⁶⁶ Mr Gutsche, FedEx, *Proof Committee Hansard*, 13 October 2021, pp. 59–60.

about the rate of pay in order to ensure that that can be done. So I would say we do recognise that link.⁶⁷

Toll – a 'good track record' in the industry

5.67 Representatives from Toll emphasised the company's strong focus on safety and job security. President of Global Logistics at Toll, Mr Peter Stokes, said that Toll 'prides itself on being an employer of choice in the Australian transport and logistics industry'. According to Mr Stokes, Toll:

- provides 'some of the best pay, conditions and job security in the industry';
- treats its workers 'very well' in order to 'differentiate' itself from its competitors;
- is 'committed to a greater proportion of permanent employees across [the] Australian business';
- has been *reducing* its use of 'casuals and fleet operators' (owners of trucks who employ drivers), despite the challenges posted by the pandemic.⁶⁸

5.68 Mr Stokes acknowledged that the transport and logistics industry is currently 'witnessing significant disruption', with new technologies, and new market entrants 'influencing how goods make their way to the end customer'. However, Toll has chosen to maintain its focus on a 'permanent workforce', while also acknowledging the 'critical role' of casuals and fleet operators in helping to manage 'peak demand' periods, like Christmas.⁶⁹

5.69 Mr Stokes said Toll also 'looks after' its casual workforce:

Our casual employees are paid on an hourly basis, which is at or above award rates, in alignment with our agreements. Casuals at Toll are not paid on a per-unit or per-delivery basis...⁷⁰

5.70 The TWU acknowledged that Toll is 'known and recognised' as a 'safe, fair, and sustainable' employer. It has 'a good track record' in terms of its 'attitude' and dealings with employees. However, even Toll has not been immune from the pressures of the Amazon effect. The TWU said: 'It is important that operators like Toll, are not pressured to compromise on safety or the job security of their employees to maintain a competitive edge'.⁷¹

5.71 A number of companies have been asked during the inquiry if they monitor the pay, conditions and performance of their contractors in relation to their treatment of workers, workers safety and incidents, etc. Some companies have indicated they do not—for instance, see the evidence from Qantas in the next section.

⁶⁷ Mr Gutsche, FedEx, *Proof Committee Hansard*, 13 October 2021, p. 60.

⁶⁸ Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, p. 38.

⁶⁹ Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, p. 38.

⁷⁰ Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, p. 38.

⁷¹ TWU, *Submission 39.2*, pp. 6–7.

5.72 However, when Toll was asked this question—specifically whether it keeps 'a record of the injury rates, and death rates', of workers within its supply chain when those workers are engaged through labour hire or contracted to other operators, Mr Stokes said:

Yes, we do. We record in our safety statistics for any contractor who works for us as well, whether that is an injury or a serious safety incident, even not resulting in an injury. They are all reported through to our business, including all of our casuals, and all the casuals might work at other companies as well.⁷²

5.73 Mr Stokes said some other large businesses, such as Linfox, have similar systems in place, and he would recommend it for all major transport and logistics operators, because: 'It's the only way that you can ensure that everyone is looking after the safety of everyone who works in their business'.⁷³

5.74 In relation to rates of pay for labour hire or contracted workforces, Mr Stokes said 'we can't necessarily force' contractors to 'put a certain rate in', but Toll monitors and 'manages' this, and only selects contractors who pass agreed criteria, including having adequate 'safety and fatigue management systems'.⁷⁴

5.75 Ms Elizabeth Ferrier, Group Head of Employee and Industrial Relations at Toll Group, added that where Toll engages fleet operators, the company has provisions in its enterprise agreement 'in relation to the minimum payments that need to be paid to those employees', and Toll audits 'those requirements'.⁷⁵

Outsourcing at Qantas

5.76 On 30 November 2020, Qantas announced it had decided to outsource ground handling functions at ten airports where those functions were previously performed by workers who were directly engaged (by Qantas Air Services), or engaged through a subsidiary, Qantas Ground Services Pty Ltd. The decision impacted approximately 2000 ground handling staff and was successfully challenged as 'unlawful' by the TWU in the Federal Court of Australia in 2021.⁷⁶

5.77 Qantas argued that its outsourcing decision was entirely based on the impacts of COVID-19 (evidence discussed in detail below). However, Mr Finch agreed with the assertion that Qantas has previously moved to indirect employment arrangements to 'ensure that the needs of the business, the markets in which

⁷² Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, p. 40.

⁷³ Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, p. 40.

⁷⁴ Mr Stokes, Toll, *Proof Committee Hansard*, 13 October 2021, pp. 40–41.

⁷⁵ Ms Elizabeth Ferrier, Group Head, Employee and Industrial Relations, Toll Group, *Proof Committee Hansard*, 13 October 2021, p. 41.

⁷⁶ TWU, *Submission 39.3*, p. 1.

[Qantas] competed and generally the competitive landscape allowed ... services to be provided in a competitive fashion'.⁷⁷

Qantas Ground Services

5.78 In 2009, Qantas set up an 'internal labour hire company', Qantas Ground Services (QGS). Workers engaged by the new entity were not covered by the collectively-negotiated Qantas enterprise agreements that workers employed by Qantas Airways Ltd were covered by, even where they were 'doing the exact same work and working beside the exact same people'. Committee Chair, Senator Tony Sheldon, noted that this model was 'pioneered' by Qantas and 'replicated by companies like BHP', with its Operations Services labour hire division.⁷⁸

5.79 Mr Kaine said that QGS was created shortly after the union had just signed the 2008 enterprise agreement with Qantas, at a time when all workers 'were engaged directly by Qantas in a mainline agreement':

I signed off on an arrangement in good faith, and, literally days after that document was signed and registered, there was an announcement made that the QGS labour hire company would be created and that from then on workers would be engaged in that entity on inferior terms and conditions.⁷⁹

5.80 This experience led Mr Kaine to believe that more recently, in 2020, Qantas used the pandemic as 'an opportunity' to pursue an outsourcing agenda, to further move away from a unionised workforce.⁸⁰

5.81 Asked if Qantas would have set up QGS if it had been required by law to provide QGS workers with 'the same pay and conditions as their Qantas [Airways Ltd] counterparts', Mr Finch said:

If QGS could not accommodate the needs of the businesses which it served then there would have been little need to set up QGS, that's true ... It depends on what other work practices would be able to be implemented through a separate entity like QGS—productivity changes, efficiency changes, roster changes and the like.⁸¹

5.82 On notice, Qantas also responded that QGS and other internal labour hire providers 'are not used to pay employees lower rates of pay'. Qantas said these entities 'pay at or above market rates', and are 'covered by enterprise agreements negotiated with the relevant unions'.⁸²

⁷⁷ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 28.

⁷⁸ Senator Tony Sheldon, Chair, Select Committee on Job Security, *Proof Committee Hansard*, 13 October 2021, p. 28.

⁷⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 22.

⁸⁰ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 22.

⁸¹ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 28.

⁸² Qantas, Answers to questions taken on notice, public hearing, Canberra, 13 October 2021 (received 2 November 2021), p. 2.

Why were these jobs outsourced?

5.83 Qantas was in a good position going into the pandemic, with multi-billion dollar profits, large dividends and the highest paid airline CEO in the world, but argued it had to act drastically to prevent financial collapse. Group Executive of Corporate Affairs at Qantas, Mr Andrew McGinnes, reported that total revenue at Qantas 'is expected to cross \$20 billion in revenue losses' by Christmas 2021, and its 'statutory losses across two financial years now stand at over \$5 billion'. This is why the company 'acted early to raise capital and restructure its business', Mr McGinnes claimed—'to protect the national carrier from collapse and, in doing so, preserve as many jobs as possible'.⁸³

5.84 Qantas claimed that saving on wages was not the company's aim when it decided to outsource ground handling services. Mr Finch claimed 'wages were not considered at all'. Qantas could save over \$100 million per year because of the efficiencies gained by using 'specialised ground handlers'—dnata, Swissport, and Menzies:

This is their business; this is what they do worldwide, and they do it much more efficiently. ... Let's put it in context. We insourced ground handling at only 10 of our roughly 120 ports worldwide. We had no scale, no efficiencies and, following COVID, no ability to invest further in that business. The dnatas of the world operate in nearly 300 airports. They have 23,000 employees, and they work for 270 airlines. So, in any airport at any one time, they've always got a customer that's using the ground-handling business ...⁸⁴

5.85 As well as saving on wages, Mr Finch claimed Qantas would save on 'maintenance on equipment', 'hire and leasing of storage areas for that equipment', and 'utility costs'.⁸⁵

5.86 Qantas representatives were asked to comment on a 2011 article from the *Sydney Morning Herald* in which reporter Matt O'Sullivan reported on leaked internal documents revealing Qantas was—at that time—planning to outsource its ground handling operations by 2020.⁸⁶ Mr McGinnes claimed the choice to outsource ground services was 'a direct result of the impact of the [COVID-19] crisis and the implications that had for the airline'. In fact, before the pandemic, Mr McGinnes said Qantas was 'actively hiring into its ground-handling function' and investing in new 'ground-servicing equipment'.⁸⁷

⁸³ Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 23.

⁸⁴ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 24.

⁸⁵ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 24.

⁸⁶ Matt O'Sullivan, 'Qantas looked at farming out jobs', *The Sydney Morning Herald*, 24 September 2011, www.smh.com.au/national/qantas-looked-at-farming-out-jobs-20111023-1me12.html (accessed 9 November 2011).

⁸⁷ Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, pp. 23–24.

5.87 Mr Finch also disputed the idea that the plan to outsource ground services pre-dated the pandemic, saying: 'It would have been a very odd plan that had us investing heavily and employing into our ground-handling business in early 2020'. Asked to explain how Mr O'Sullivan could have correctly identified in 2011 the *very year*—2020—that Qantas would choose to outsource ground services jobs, Mr Finch said: 'Unless he had advance notice of the COVID pandemic, I would say it was a mere coincidence'.⁸⁸

Federal Court Judgement

5.88 Federal Court Justice Lee ordered on 25 August 2021 that Qantas had contravened section 340(1)(b) of the *Fair Work Act 2009* (Cth) (Fair Work Act) in announcing the decision to outsource ground handling operations 'by taking adverse action against':

- (c) affected directly-employed Qantas Airways Limited and QCatering Limited employees covered under the *Transport Workers Agreement 2018* 'by prejudicially altering Qantas employees' positions'; and
- (d) affected employees of QGS covered by the *Qantas Ground Services Pty Limited Ground Handling Agreement 2015* 'by altering QGS' position to its prejudice in relation to its contract for services with Qantas'.⁸⁹

5.89 Justice Lee did not agree with Qantas' argument that the decision-makers were 'solely concerned' with 'operational continuity', and stated that he was 'comfortably satisfied' that:

... part of what distinctly mattered to [the decision-makers] was the prospect of the event of Qantas having to deal, in 2021, with the actual exercise by the Union and employees covered by the Enterprise Agreements of the workplace rights identified, and **part of [the] reasoning in endorsing outsourcing in November 2020 was to prevent an anticipated event, being the exercise of these rights** ... This was all part of [an] overall desire to avoid the Union being able to exert industrial power by organising protected industrial action following the Enterprise Agreements reaching their nominal expiry date and protected action being taken for the purpose of supporting or advancing claims in relation to a proposed enterprise agreement.⁹⁰

5.90 In other words, Justice Lee agreed with the union's argument that Qantas had chosen to outsource those operations at that time to prevent employees engaging in protected industrial action and to circumvent enterprise bargaining.

⁸⁸ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 26.

⁸⁹ [2021] FCA 1012.

⁹⁰ Justice Lee, [2021] FCA 1012.

Government assistance to Qantas

5.91 Qantas was asked about the government assistance it received through measures designed to support the company during the pandemic. Mr McGinnes said the company had received 'approximately \$1.6 billion',⁹¹ and is 'conscious that it is a significant amount of money and that it is taxpayer money'. Mr McGinnes maintained that Qantas is 'very grateful for that funding', and outlined what it was used for:

... a large proportion of it went to support our people directly who were stood down, who had no work and who were at home wondering how they were going to make ends meet. For them, that was an absolute lifeline. That was through JobKeeper. That's been half of it. The other component has been fee for service, in terms of the repatriation flights that we've operated—over 400 of them—to bring about 30,000 Australians home and about 1,800 freight flights that we've operated to take a lot of Australia's exports—often agricultural exports—to the world, given that cargo markets have been turned on their head through the pandemic.⁹²

5.92 Mr McGinnes was asked if there were any *conditions* on the funding which required Qantas to 'not outsource or to consult the government before making any outsource decisions', regardless of the government assistance. Mr McGinnes replied: 'In terms of the ground-handling decision, there was no requirement for us to consult with government on that'.⁹³

5.93 Qantas was asked to explain the company's decision to outsource 2000 workers after accepting JobKeeper payments for them, when 'the intention of JobKeeper [was] to keep workers connected'. Mr McGinnes argued that the purpose of JobKeeper was 'to keep people connected to jobs that had a life beyond the pandemic'. It was the view of Qantas that the ground handling jobs 'were not sustainable beyond the pandemic'.⁹⁴ The committee notes that these jobs continue to be performed, albeit now by an outsourced provider.

Effects of outsourcing

5.94 The TWU reported a 'drastic decline in safety' as a result of the outsourcing of ground handling at Qantas. Mr Kaine said the unions has seen 'holes in planes; incorrect weight information given to pilots; and damaged property, including a child's smashed wheelchair'.⁹⁵ Concerns were also raised about wages and conditions for workers in the companies to which Qantas has outsourced its ground operations, primarily Swissport.

⁹¹ Qantas also received 'payroll tax relief in the form of deferrals amounting to approximately \$60 million and waivers of approximately \$6.6 million across the various states and territories as part of their respective COVID-19 assistance packages'. Qantas, Answers to questions on notice, 13 October 2021, p. 3.

⁹² Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 25.

⁹³ Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 25.

⁹⁴ Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 25.

⁹⁵ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, pp. 14–15.

- 5.95 On 16 November 2021, the Australian Transport Safety Bureau reported that a safety problem which forced a Qantas Boeing 787 undertaking a Sydney to Perth flight to return to Sydney Airport, was partly caused by the inexperience of the Swissport ground staff.⁹⁶
- 5.96 Qantas was asked to comment on the Fair Work Commission's rejection of Swissport's enterprise agreement, which failed the 'better off overall' test (or BOOT), as well as media reports about substandard working conditions for Swissport workers. Mr Finch said he could not 'comment on the veracity of those reports', but acknowledged having seen them.⁹⁷
- 5.97 Mr Finch referred to the 'global' scale of Swissport, which has 66 000 employees in over 307 airports worldwide, who—Mr Finch suggested—'are seemingly happy to work with and want to work with that company'. Swissport 'has to comply with the laws, the regulations and the standards' of the countries it works in, and Qantas expects Swissport and other contractors, such as dnata and Menzies, to comply with Qantas' supplier requirements, which include 'safety and management systems'. Mr Finch concluded: 'We've not had any instances of which we're aware of Swissport, dnata, Menzies or Oceania failing those supply requirements'.⁹⁸
- 5.98 Mr Finch was asked if failing the BOOT test when developing an enterprise agreement, or failing to pay workers 'a living wage', was not a 'breach' of the supplier requirements for Qantas. Mr Finch said: 'Why would we be intervening in negotiations between Swissport and their workforce, any more than we'd expect Swissport to be intervening in ours?' He also asked: 'What is a living wage?'⁹⁹
- 5.99 Asked if they understood that people working for contractors and labour hire companies providing ground handling services for Qantas 'are being paid less than the Qantas direct workers were being paid' for the same work, the Qantas representatives said they did not 'have information on the pay rates and income of those contractors', and 'whether they're part time versus casual versus full time'. Mr Finch added:

We pay on a per turn basis, so, when an aircraft comes in to discharge and then receive passengers, we pay per turn of that aircraft. We don't have a breakdown on what their costs are for each turn. There will be some capital expenditure, there will be some utility, there will be some leasing and of course there will be staff.¹⁰⁰

⁹⁶ Australian Transport Safety Bureau, Aviation safety investigations & reports, https://www.atsb.gov.au/publications/investigation_reports/2021/aair/ao-2021-026/ (accessed 25 November 2021)

⁹⁷ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, pp. 26–27.

⁹⁸ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 27.

⁹⁹ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 27.

¹⁰⁰ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 29.

5.100 Qantas was asked why the company *chose* not to have visibility around the rates of pay for workers performing work for the company through contractors and labour hire providers. Mr Finch suggested pay rates are not the priority issue for Qantas in relation to these contracts, with issues such as 'the efficiencies they provide'—'the cost savings'—being more critical: 'Our focus has been simply on efficiency, cost savings and variability and, to the extent we can and to the extent that it's relevant, avoiding capital expenditure'.¹⁰¹

5.101 In addition, with almost 12 000 suppliers, Mr Finch claimed it would be 'impossible' for Qantas 'to interrogate the terms and conditions', including pay rates, of all of its suppliers.¹⁰² Mr McGinnes added to this that Qantas *relies* on what it sees as the inherent 'safeguards built into the system' by the existence in Australia of 'an enterprise bargaining process', 'award rates', and 'minimum wages'—which 'should give us all confidence regarding those things'.¹⁰³

5.102 Mr Donald Dixon, a Qantas employee of more than 20 years until he was among the 2 000 workers outsourced during the pandemic, described the impact the decision has had among his colleagues, many of whom had worked at Qantas for decades:

The other thing is that the amount of people who have rung me, as the head delegate, with mental health issues is horrible. I get phone calls from people who are losing their homes. They are going to see doctors and they're on antidepressants. It's just horrible...When you ring up the boss and say, 'I'd like to go for the job. I'm 55 years old'—or 60 or whatever the case may be—the phone doesn't ring back. People are saying to me, 'I've had 50 or 60 job interviews. I didn't get a call back'—as soon as they mention their age. Yet, at Qantas, they had responsibilities that far exceeded the jobs that they were going for—putting baked beans on the shelves at Woolworths.¹⁰⁴

5.103 As at the time of writing, the committee has not yet heard evidence from Swissport. However, the committee has invited Swissport to give evidence at a future public hearing, and may revisit this matter in its final report.

¹⁰¹ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, pp. 29–30.

¹⁰² Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 29.

¹⁰³ Mr McGinnes, Qantas, *Proof Committee Hansard*, 13 October 2021, p. 30.

¹⁰⁴ Mr Donald Dixon, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 21.

Box 5.3 Qantas outsourcing

Theo Seremetidis—stood down from Qantas Ground Services¹⁰⁵

Mr Seremetidis worked for Qantas for almost seven years. While working for Qantas Ground Services in 2020, Mr Seremetidis was stood down, and his role 'was later outsourced'.

According to Mr Seremetidis, working conditions at Qantas have eroded over time. In his earlier years at Qantas, 'there were plenty of hours for everybody', 'good conditions and fair pay', and management 'really cooperated' with workers. However, Mr Seremetidis noticed a 'change in culture', where management became 'more aggressive', 'changing the rosters without consultation', 'cost cutting' and compromising safety.

To improve safety for workers, Mr Seremetidis became a health and safety representative. He reported successfully issuing 'about 25 provisional improvement notices in one year' for breaches under the *Work Health and Safety Act 2011*.

Impact of the pandemic

Mr Seremetidis reported a number of serious concerns with safety at Qantas early in the pandemic:

At the start of the pandemic, we were directed to clean planes with just water—no sanitiser for the trays or anything. [Personal protective equipment] PPE was not mandated despite managers wearing hazmat suits. We were not even provided with masks or disinfectant. I made numerous approaches to management to ask for further PPE or for the risk assessments they had done. After everything was declined, I directed a group of workers to cease unsafe work, which is one of the health and safety representative powers. On the day this occurred, I was stood down immediately. At the same time, I and other workers received threats of disciplinary action.

The day Mr Seremetidis was stood down was his last day at Qantas. His position was later outsourced along with 2000 others in February 2021.

Mr Seremetidis reported loss of income and psychological impacts, including 'stress and anxiety'—'I didn't know what they were going to do to me or what allegations they were going to bring against me'—as well as being concerned for his co-workers who were left without a safety rep.

Ongoing legal action

5.104 Qantas has appealed the ruling and an appeal hearing will likely be set for February 2022.¹⁰⁶ In the meantime, 'reinstatement hearings' have been set to

¹⁰⁵ Mr Theo Seremetidis, Private capacity, *Proof Committee Hansard*, 13 October 2021, p. 15. This footnote covers all content in this text box.

begin on 13 December 2021, where the Federal Court will hear evidence on whether or not reinstatement is possible or desirable:

These remedy hearings will see the TWU and Qantas provide evidence over whether the outsourced workers should have their roles reinstated at the airline. Other means of compensation will be discussed at a later hearing, if necessary.

The union has continued to push for the unlawfully outsourced workers to be reinstated at the airline.¹⁰⁷

5.105 A TWU survey of more than 1500 of the approximately 2000 outsourced workers revealed 78 per cent want their old jobs with Qantas back.¹⁰⁸

5.106 Justice Lee indicated that he wanted a decision handed down on reinstatement by Christmas so that 'a very large number of people [could] have some certainty about their lives'.¹⁰⁹ However, it has been reported that Justice Lee previously indicated it is 'unlikely' the workers will be reinstated, due to complicating factors including that workers have received 'finalised redundancy payouts, the time that has passed and the fact that many affected workers are likely to have undertaken new jobs'.¹¹⁰

Industrial action and its outcomes

5.107 The year 2021 has seen significant industrial action across the transport sector. With a number of enterprise agreements up for re-negotiation, and many transport companies doing unprecedented levels of trade, the TWU resumed bargaining in 2021 after holding off in 2020 due to the pandemic. Disputes with some companies have led to industrial action, including strikes and stoppages.

5.108 Mr Kaine was asked if he considered it responsible to 'threaten the supply chains of Australian retail' with transport strikes when retail was already under strain due to COVID-19. Mr Kaine responded that 'decades of evidence'

¹⁰⁶ Hannah Dowling, 'Qantas takes a hit in ongoing outsourcing case', *Australian Aviation*, 21 September 2021, <https://australianaviation.com.au/2021/09/qantas-takes-a-hit-in-ongoing-outsourcing-case/> (accessed 9 November 2021).

¹⁰⁷ Hannah Dowling, 'Outsourced Qantas workers to see reinstatement hearing in December', *Australian Aviation*, 1 October 2021, <https://australianaviation.com.au/2021/10/outsourced-qantas-workers-to-see-reinstatement-hearing-in-december/> (accessed 9 November 2021).

¹⁰⁸ Hannah Dowling, '78% of outsourced Qantas workers want their old jobs back: TWU, 17 November 2021', *Australian Aviation*, <https://australianaviation.com.au/2021/11/78-of-outsourced-qantas-workers-want-their-old-job-back-twu/> (accessed 25 November 2021).

¹⁰⁹ Justice Lee, quoted in: Hannah Dowling, 'Outsourced Qantas workers to see reinstatement hearing in December', *Australian Aviation*, 1 October 2021.

¹¹⁰ Hannah Dowling, 'Outsourced Qantas workers unlikely to have roles reinstated, says Judge', *Australian Aviation*, 4 August 2021, <https://australianaviation.com.au/2021/08/outsourced-qantas-workers-unlikely-to-have-roles-reinstated-says-judge/> (accessed 9 November 2021).

support the view that 'poor conditions in road transport', along with 'poor job security and poor rates' leads to 'increased incidence' of truck crashes and fatalities, endangering drivers and the general public. As such, Mr Kaine argued that fighting to defend the pay and conditions of drivers was the 'responsible thing to do'.¹¹¹

5.109 The TWU also highlighted the 'legal industrial right' of workers to 'withdraw their labour' as part of the bargaining process, saying workers in the transport sector 'have gone through the process of agonising and detailed negotiations with these companies over months', and strikes are a last option.¹¹²

5.110 The TWU submitted that the union has sought to strengthen job security through recent enterprise bargaining rounds by pursuing the following 'core claims':

- Enhanced consultation clauses, particularly in relation to decisions about the introduction of outside hire/agency workers/labour hire with a requirement for each FedEx and StarTrack to consult with the TWU before any definite decision is made. ...
- Improved transparency in relation to the engagement of alternate labour by enhanced auditing and compliance provisions. ...
- Enhanced full utilisation provisions that ensure that all available overtime is first offered to full-time direct hire employees, part-time direct hire employees and direct hire owner drivers before it is otherwise outsourced to labour hire agencies or any other form of alternate labour. ...
- Outside hire ratios that limit the amount of outside hire engaged by the businesses and protect our members position within the business. ...¹¹³

5.111 While being 'met with reluctance to include these provisions' by some companies, the TWU was able to sign agreements with Toll, StarTrack, and others, that guaranteed job security. However, the TWU reported that FedEx 'has advised the TWU it does not consider these matters appropriate for inclusion in a negotiated enterprise agreement'.¹¹⁴

Agreements with Toll and others

5.112 At the public hearing, Mr Kaine announced that the TWU had reached an 'in-principle arrangement' with Toll on a deal that would 'provide enhanced job security provisions ... and an industry-leading 15 per cent superannuation'.¹¹⁵

¹¹¹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 18.

¹¹² Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 18.

¹¹³ TWU, *Submission 39.2*, pp. 5–6.

¹¹⁴ TWU, *Submission 39.2*, p. 6.

¹¹⁵ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 14.

5.113 The deal included 'enhanced protections around outsourcing' and 'enhanced provisions relating to priority'—meaning work would first be offered to permanent workers before being given to outside hire. According to Mr Kaine:

There is understanding that companies at times need to flex up their workforce to deal with peaks. We've always been able to deal with that in transport, and Toll, through this settlement, has acknowledged the need to get the balance right between the need to meet peaks and the need to ensure that the workforce have secure jobs that can't just be contracted out willy-nilly. This is a company that has now agreed to a proportion of work always remaining permanently engaged by the company and to discussions and investigations about how that proportion can be increased over time.¹¹⁶

5.114 On 28 October 2021, the TWU announced that it had signed agreements with six major road transport companies—Linfox, BevChain, Toll, Global Express, Ceva and ACFS, which 'lock in key job security provisions, as well as fair pay and super increases, setting the stage for when we're back at the bargaining table in 2023'.¹¹⁷ Following the TWU's and StarTrack's appearance before the committee, an agreement was also reached between the two parties, with FedEx the only employer continuing to resist calls for job security.

Proposals for reform

5.115 According to Mr Kaine, the current industrial relations framework and bargaining system 'allow employers to contract out jobs'—in other words, 'job insecurity ... is sanctioned by our current system'. The TWU argued there is a need for legislative change to prevent companies simply outsourcing when they are 'under increasing pressure to contract out work' due to the Amazon effect:

So we're getting squeezed from both sides as transport workers, and that's why these workers have made a stand across the economy in the last few weeks and will do so in the coming weeks.¹¹⁸

5.116 Mr Kaine recommended that traditional transport companies continue to support workers—'in partnership'—by signing onto 'appropriate arrangements which ensure job security', and support the unions by supporting the recommendations of the Job Security inquiry. In particular, Mr Kaine encouraged transport employers to lobby the Australian Government to instigate reforms that will 'bring those operators operating

¹¹⁶ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 17.

¹¹⁷ TWU, 'Workers win on job security', *News*, 28 October 2021, www.twu.com.au/trucking/workers-win-on-job-security/ (accessed 14 November 2021).

¹¹⁸ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 17.

outside of the system—getting a completely unfair advantage, exploiting workers and bypassing good employers ... back within the system'.¹¹⁹

5.117 The key recommendation from the TWU to protect job security and safety in the transport sector was its call for the Australian Government to put in place a National Tribunal which could provide transport workers in 'dependent arrangements', including owner drivers and gig workers, 'access to the rights they deserve while promoting fair, sustainable and safe competitive practices':

- A tribunal which has the ability to determine the extent of rights and entitlements categories of workers should receive, depending on the degree or level of dependency.
- A tribunal which has the capacity to resolve (including where necessary through binding decisions) transport supply chain / contract network disputes, including those in relation to the unfair terminations of engagement.
- The ability for all workers to join and be represented by their union in the creation of such standards. An ancillary role for the tribunal to facilitate collective bargaining.
- Ensuring all such standards and conditions are legally enforceable on all supply chain and contracting parties to ensure that minimum standards are upheld. An effective enforcement regime to ensure that these legally enforceable standards are realised.¹²⁰

5.118 Mr Kaine said such a tribunal would be an 'independent body' that could 'set and enforce minimum standards' in the industry to provide certainty for businesses and workers, and 'a level playing field' for employers.¹²¹

5.119 Toll was asked if it would support the creation of a tribunal 'to inquire into arrangements like Uber and make determinations about minimum entitlements'. Ms Ferrier said that, as 'an industry leader in rates and conditions', Toll would support 'lifting and levelling ... the playing field, primarily to ensure that workers work in a manner which is safe and sustainable'. Toll did not have a view on the exact mechanism for achieving this, but expressed support for initiatives that would create 'a level playing field for operators'.¹²²

5.120 FedEx agreed that all companies should be held to the same standards. Mr Gutsche said:

In our view, all transport companies, both new entrants and established providers, should be held to the same regulatory standards that we are held to in terms of engaging contractors and owner-drivers. We are

¹¹⁹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 17.

¹²⁰ TWU, *Submission 39.2*, p. 7.

¹²¹ Mr Kaine, TWU, *Proof Committee Hansard*, 13 October 2021, p. 15.

¹²² Ms Ferrier, Toll, *Proof Committee Hansard*, 13 October 2021, p. 41.

concerned that the current regulatory environment does not create a level playing field amongst all providers in the industry. The state and federal governments should ensure that all transport companies play by the same rules and should be obligated to provide their contractors and owner-drivers with fair rates and conditions.¹²³

5.121 Mr Peter Anderson from the Victorian Transport Association and the Australian Road Transport Industrial Organisation, argued for 'minimum standards in supply chains'. Asked if enforceable minimum standards should include making clients accountable for ensuring their contractors are operating 'in a fair way', Mr Anderson said 'a minimum standards regime' would provide assurance for customers that suppliers they engage are operating with an adequate level of 'ethical and physical standards'—'So, yes, we believe there should be that level of understanding and formalised standards between the parties in the contract'.¹²⁴

5.122 Mr Anderson added that a minimum standards tribunal could enforce these standards:

What we really need is a level of minimum standard upon which people operate—that we agree, as an economy and as a community, that we can't go below a certain level. I would like to see a minimum standards tribunal. That would help the industry in a great way.¹²⁵

Committee view

5.123 Transport workers move our country. They help get us safely where we need to go; transport the fuel, medicines, produce and goods we rely on; and deliver mail and packages to our loved ones.

5.124 During the pandemic, transport workers kept Australians in lockdown supplied with essentials, kept businesses trading by delivering products sold online, and transported key medical supplies, including COVID tests and vaccines, around the nation.

5.125 While some transport workers were stood down from their jobs as a result of the pandemic—mainly in the aviation sector—many transport workers stood up. Truckies, posties and couriers carried unprecedented volumes of cargo, as the demand for groceries, consumer goods, and even garden supplies, reached unexpected highs.

5.126 In this context, many transport workers were on the frontline of COVID-19. Putting themselves and their families at risk, travelling across state borders,

¹²³ Mr Gutsche, FedEx, *Proof Committee Hansard*, 13 October 2021, p. 57.

¹²⁴ Mr Peter Anderson, Chief Executive Officer, Victorian Transport Association; and National Secretary, Australian Road Transport Industrial Organisation, *Proof Committee Hansard*, 13 October 2021, p. 50.

¹²⁵ Mr Anderson, Australian Road Transport Industrial Organisation, *Proof Committee Hansard*, 13 October 2021, p. 48.

required to maintain strict hygiene practices, and manage regular testing regimes.

5.127 Transport workers are essential, and their jobs are essential.

Aviation—responding to outsourcing

5.128 The committee is concerned but not entirely surprised that Qantas chose to use the cover of a global pandemic to outsource 2000 ground handling jobs.

5.129 There will always be commercial arguments to be made as to the savings and efficiencies achieved—and the committee has no doubt that these arguments were a factor in the decision—but, like Justice Lee, the committee believes the desire to prevent workers from exercising their industrial rights was front and centre.

5.130 As concerning as the loss of 2000 quality Australian jobs, is the fact that Qantas has *no interest* in the pay and conditions that will be offered to the workers who will now handle its ground services. Representatives from Qantas told the committee that it is not a priority for Qantas to make itself aware of the pay rates or contract conditions offered by its contractors—Qantas is interested in 'the efficiencies they provide' and 'the cost savings'.¹²⁶

5.131 It is deeply concerning to this committee that Australia's largest airline—our national airline—does not care enough about Australian jobs to insist that these subcontracted workers are paid and treated fairly.

5.132 The committee believes it is a failure of Australian Government policy that Qantas was handed between \$1.6 to \$2 billion in public bailout money, and at the same time was permitted to illegally outsource 2000 ongoing jobs. This disgraceful behaviour should prompt the introduction of new standards upon highly profitable large businesses in receipt of large sums of public funding.

Recommendation 16

5.133 The committee recognises the merit of an independent body with the power to make and enforce binding standards on aviation supply chain participants, including airports and their central role. Those standards include 'same job, same pay' for outsourced and labour hire workers performing functions directly connected to aviation operations, job security protections, and fair procurement standards. The committee recommends the Australian Government consults with industry participants, including unions, employers, and other stakeholders on the development of this body.

¹²⁶ Mr Finch, Qantas, *Proof Committee Hansard*, 13 October 2021, pp. 29–30.

Recommendation 17

5.134 The committee recommends the Australian Government imposes obligations upon companies in receipt of future public bailouts, which prioritise job security and guarantee that companies cannot follow Qantas' lead, and exploit emergencies to engage in illegal workforce restructuring.

Road transport—defending job security

5.135 Without security in the road transport sector, safety suffers. Drivers forced to work long hours to make a living wage are more vulnerable to fatigue. Workers pushed to meet unrealistic deadlines may resort to speeding, or breaking road rules, putting themselves and the public at risk.

5.136 Unions and workers in this sector have worked hard over decades—alongside employers—to craft enterprise agreements that provide fair and adequate pay, reasonable conditions, and appropriate safety standards. These achievements are now being put under threat.

5.137 New market players in the transport and distribution industry, like Uber and Amazon, are threatening traditional employment relationships and undermining fair and reasonable contracting arrangements by engaging workers on insecure and inferior terms. This is the Amazon effect.

5.138 Employers must recognise that participating in this 'race to the bottom' will not benefit them or the sector. It can only lead to the loss of skilled and experienced workers, an increase in accidents and fatalities, and skills shortages in the sector—as demonstrated by the truckie shortages in the United Kingdom.¹²⁷

5.139 The committee commends Toll, StarTrack, and the other companies that have signed agreements with the TWU that include provisions that protect job security. We strongly encourage FedEx to agree to these job security clauses—to protect and strengthen the transport industry in Australia, and ensure it can continue to provide secure, high quality jobs into the future.

5.140 The implementation of Recommendations 1, 2, 3, 4 and 7 from Chapter 2 in this report would ensure that:

- labour hire workers had the option to sign on under the enterprise agreement in force at their host employer;
- wages and conditions for labour hire workers were equivalent to directly employed workers;
- employers were not able to specifically utilise labour hire as a means to reduce wages and conditions of their permanent workforce;

¹²⁷ Holly Ellyatt, 'After causing chaos in the UK, truck driver shortages could soon hit the rest of Europe', *CNBC*, 4 October 2021, www.cnn.com/2021/10/04/truck-driver-hgv-shortage-in-uk-could-soon-hit-the-rest-of-europe.html (accessed 15 November 2021).

- labour hire workers would be protected by a national labour hire licensing scheme covering all business sectors, and requiring mandatory registration and continuous compliance by all operators with all legal obligations; and
- labour hire workers would be encouraged to promptly raise workplace health and safety concerns with both their host organisations and labour hire operators, and be safeguarded from reprisals.

5.141 In its first interim report, which addressed the insecure, precarious and often exploitative conditions of work in the on-demand platform sector, the committee made a number of recommendations designed to provide greater protections for workers who are not employees, including independent contractors. These included:

- Recommendation 7, aimed at expanding the definitions of 'employment' and 'employees' in the *Fair Work Act 2009* to 'capture new and evolving forms of work', and extending the coverage of rights and standards protected under the Act to workers who fall outside the definition of employment, 'including low-leveraged and highly dependent workers'.¹²⁸
- Recommendation 9, which would expand the powers of the Fair Work Commission to allow it to 'resolve disputes and make orders for minimum standards and conditions in relation to all forms of work', as well as to:
 - adjudicate work status disputes;
 - set 'binding minimum standards and conditions in relation to non-standard forms of work, regardless of employment status'; and
 - resolve disputes 'in a low-cost and effective manner'.¹²⁹
- Recommendation 11, which was designed to provide:
 - ... greater protections for independent contractors who are sole traders by establishing an accessible low-cost national tribunal to advise on, oversee, and make rulings relating to employment relationships involving low-leveraged independent contractors, such as those in the rideshare and other platform sectors.¹³⁰

5.142 While the committee sought feedback on, and intends to revisit, the recommendations from its first interim report, these recommendations—if implemented—would provide significant benefits for many workers in the transport sector.

5.143 However, evidence presented in this report demonstrates that there is also a need for specific additional reform in the transport sector, due to the nature of

¹²⁸ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. x.

¹²⁹ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. xi.

¹³⁰ Senate Select Committee on Job Security, *First interim report: on-demand platform work in Australia*, June 2021, p. xi.

the work and the inherent risks to safety. As such, Government must move to enforce minimum standards in the industry and protect the standards and conditions that workers have struggled to achieve over decades. All transport companies, including new entrants, should be held to the same minimum standards on safety, pay and conditions.

5.144 Companies that contract out work must be accountable for ensuring that their contractors adhere to the same standards to which they themselves are held. Workers who work side by side, doing the same job, should receive the same pay and labour hire must not be used to undermine better, and more secure jobs.

5.145 The committee is supporting the establishment of an independent body to provide oversight of workforce arrangements, standards and conditions in the transport sector. In establishing such a body, the Government should consider jurisdictional issues—specifically which categories of workers should be covered by the body, and which functions it should undertake—as well as which functions would be better undertaken by the Fair Work Commission.

Recommendation 18

5.146 The committee recommends the Australian Government works with the Transport Workers' Union, the transport industry, and relevant stakeholders to establish an independent body, such as a National Transport Tribunal, which would:

- **review and set minimum standards for safety, pay and conditions for all operators and workers including contractors in the transport sector;**
- **ensure minimum standards are enforceable on all supply chain and contracting parties, including by providing an effective enforcement regime and penalties for infringements;**
- **adjudicate transport contract network disputes, including in relation to the unfair termination of engagements; and**
- **defend the rights of all workers, including contractors, to join and be represented by their union and facilitate collective bargaining.**

Senator Tony Sheldon
Chair

Dissenting report by Liberal and National Senators

Employment truths expose Labor's lies

- 1.1 Labour hire engagement has held steady as a proportion of the workforce over the previous decade, hovering at around 1 per cent.¹ This dispels Labor's very first claim of the third interim report of 'increased rates of casualisation and the utilisation of insecure labour hire workers and independent contractors', with this baseless claim being pushed for partisan political purposes by the Australian Council of Trade Unions.
- 1.2 In stark contrast, the highest ever recorded rate for labour hire was 1.5 per cent, which occurred twice on Labor's watch, in both 2008 and 2011.
- 1.3 For additional context, in Australia's workforce of 13 million people, less than 115 000 employees Australia-wide are employed by a labour hire firm.
- 1.4 The proportion of independent contractors has remained broadly stable over the last decade at between 8 and 9 per cent. The all-time record high of 9.8 per cent also occurred under Labor in 2010.
- 1.5 The proportion of fixed-term contractors has remained steady at approximately 4 per cent since 2004, rising from 3.7 per cent to a peak of 4.2 per cent under Labor's watch in 2011.
- 1.6 Labor and Greens Senators, at the bidding of their unions, promote an idea of 'insecure work' to replace the classical definitions of non-ongoing employment. This 'same job, same pay' campaign is misleading and serves only as a trojan horse for job-destroying policies that will lead to increased unemployment across all sectors and industries. Labor really stands for 'no job, no pay' unless you are one of their union mates.
- 1.7 Despite Labor having the hide to again call for a National Transport Tribunal to address the so-called 'plague and pandemic of insecure work', the Transport Workers Union advertised in 2021 for 'food delivery union organisers' in Sydney, a part-time (10–20 hours per week) fixed term contract for 3 months—thereby itself utilising the work arrangements it decries when used by other employers.
- 1.8 Labor and the unions use the term 'insecure work' to reference any type of work that is temporary or non-ongoing, which is normally work that unions

¹ Geoff Gilfillan and Liz Wakerly, Australian Parliamentary Library, *Labour market and workplace relations*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/WorkplaceRelations (accessed 30 November 2021).

have less control over. This goes to the heart of the issue—Labor's union mates will say or do anything to arrest the declining membership of unions in Australia, even if that means demonising the diverse forms of work that allow people to fit work around their life, rather than being forced to fit life around work.

- 1.9 It is important to understand that union membership has plunged from 40 per cent to just 14.3 per cent over the last 30 years, mainly as a result of Australian workers opting to have more flexibility and management over their own employment agreements. Australians are voting with their feet when it comes to the forms of work that suit them best.
- 1.10 Under the Coalition Government, more than 60 per cent of total jobs growth was in the form of full-time employment. More people are employed full-time now than before the onset of the COVID-19 pandemic.
- 1.11 It is important to understand, however, that as RBA Governor Philip Lowe described, 'we should not think of part-time jobs as being bad jobs, and full-time jobs as being good jobs' because over 75 per cent of part-time workers are happy with current employment status and don't desire to increase their workload.
- 1.12 The Westpac Melbourne Institute Unemployment Expectations Index measures concerns about losing employment over the next 12 months. Most recently released in November 2021, it showed an index of 95.3 which is the lowest (and therefore best) result since the mid-1990s. Australians, having seen the strong economic recovery supported by the Morrison Government's policies, have confidence that the Australian economy delivers for them.

The Labor lie of 'same job, same pay'

- 1.13 'Same job, same pay' is little more than a slogan, much less a workplace relations policy. Australians already know what employers think of this thought bubble, as they told the country before the 2019 election.
- 1.14 Worse still, many Australian employers are crying out for staff, meaning that to tie them up in red tape and make it harder to employ more people would actually threaten our economic recovery from COVID-19.
- 1.15 Innes Willox, CEO of Ai Group, said that the bill was 'unfair and unworkable... It is all cost, all barriers... This policy takes us back to a 1960s-style nine-to-five workplace which is unsuitable for a 21st century economy'.
- 1.16 Andrew McKellar, CEO of ACCI, said that 'This Bill means that labour hire employees won't receive the pay rates they negotiated, but instead rates negotiated by other employers and employees they have never met. Labour hire employees will become the only employees in the country denied any role in negotiating their wages', before also saying 'the Federal Opposition's plan

to increase labour hire regulation risks undermining the competitiveness and flexibility of Australia's workforce'.²

- 1.17 Steve Knott, CEO of AMMA, stated that Labor are 'using unsubstantiated claims and baseless accusations to push for excessive regulation and disincentives to high-paid labour hire arrangements'.³
- 1.18 Last time Labor proposed to upset the enterprise agreement system with this policy, analysis by Deloitte Access Economics showed Labor's 'same job, same pay' policy would cost 6400 jobs every year and \$15.3 billion in lost economic activity.⁴

Labour hire registration in Australia

- 1.19 The committee has recommended the immediate introduction of a comprehensive national labour hire registration scheme covering all business sectors and requiring mandatory registration and continuous compliance with all legal obligations.
- 1.20 Labour hire is a crucial component of Australian employment across multiple critical sectors and allows employers to fulfil surge periods effectively while also providing flexible conditions preferred by employees.
- 1.21 The Migrant Workers' Taskforce found that, while the labour hire industry plays an important role in facilitating key economic activity in Australia, a minority of unscrupulous labour hire providers take advantage of vulnerable workers.
- 1.22 Since the Migrant Workers' Taskforce was handed down, some jurisdictions have introduced their own regulatory regimes. That is why the Australian Government is pursuing a national approach to labour hire regulation through the harmonisation of state and territory labour hire regulation schemes, thereby ensuring a nationally consistent approach in this area.

² Australian Chamber of Commerce and Industry, *Fair Work Amendment tramples the preferences of employees*, 23 November 2021, <https://www.australianchamber.com.au/news/fair-work-amendment-tramples-the-preferences-of-employees/#:~:text=%E2%80%9CThis%20Bill%20means%20that%20labour,employees%20they%20have%20never%20met.&text=%E2%80%9CThe%20reality%20is%20that%20unions,workers%20do%27t%20join%20unions>. (accessed 30 November 2021).

³ Australian Mines and Metals Association, *Federal opposition slammed over labour hire policy*, 24 July 2018, <https://www.amma.org.au/news-media/media-center/federal-opposition-slammed-labour-hire-policy/> (accessed 30 November 2021).

⁴ Deloitte Access Economics, *Economic effects of changes to labour hire laws*, Prepared for Minerals Council of Australia, June 2019, <https://www.minerals.org.au/sites/default/files/DAE%20-%20MCA%20-%20Labour%20Hire%20Final%20Report%204%20June%202019.pdf> (accessed 30 November 2021).

- 1.23 The national approach that the Government is committed to will reduce worker exploitation, improve accountability, provide greater transparency and drive behavioural change where appropriate, without causing major disruption or undue red tape burden on businesses.
- 1.24 Consultation on the approach is underway, with a report to state and territory industrial relations ministers on the opportunity for harmonisation due by 20 December 2021.
- 1.25 The Federal Government has resourced the Fair Work Ombudsman through the Budget for \$16 million to administer the process.

Labour hire in the Australian economy

- 1.26 Mr Yannopoulos, Department of Finance, and Mr Hetherington, Australian Public Service Commission, stated, in response to how the Australian Government utilises labour hire:

Mr Yannopoulos: I guess in generic terms that it's generally where agencies need to surge to meet immediate priorities. In the past that was particularly for agencies like Services Australia—which I think was called human services then—particularly in dealing with the phone call volumes, or for the tax office through its processes, particularly around tax time and the lodgement peak that I think we're in around now... But I think the general approach to use of labour hire is to supplement a workforce for surge or terminating activities, where it's not going to be an ongoing program of government.

Mr Hetherington: I will just add to that. I support the comments that Mr Yannopoulos made there. The other area is where we need a particular skill set for a short period of time and where we know that we don't have an enduring basis upon which to bring them in on an ongoing basis. That might be another area where we would seek to use a contracted solution but, generally, the points that Mr Yannopoulos made are what we see.

Mr Hetherington: That's right. We think that there will be an ongoing need for contracted support for those reasons and that it's entirely appropriate. As I said, agency heads will make those decisions based on the business outcomes they need to achieve in their particular circumstances.⁵

- 1.27 Public sector service demand is dynamic and therefore workload changes in due to that dynamism.
- 1.28 It is obviously entirely appropriate that government departments scale to meet the expectations of the community and fulfil the necessary tasks to serve the community accordingly.
- 1.29 When workload inevitably fluctuates, then the public sector must be flexible enough to meet increased demand of services. The additional employment

⁵ Mr Matt Yannopoulos, Deputy Secretary, Budget and Financial Reporting, Department of Finance; and Mr Patrick Hetherington, Acting Deputy Australian Public Service Commissioner, Australian Public Service Commission, *Proof Committee Hansard*, 27 August, p. 3.

provided by labour hire firms to meet surge demand is crucial in fulfilling these expectations.

- 1.30 Surge demand being handled with short-term and flexible employees is the best outcome for taxpayer funded services, and for those employees valuing the short-term flexible contracts.
- 1.31 Labour hire in the private sector largely fulfills the same requirements. In the same way that government agencies experience surge demand periods, private companies also deal with changing demand for services or skills in our dynamic economy.
- 1.32 Labour hire employees have the same rights and protections as all other employees when it comes to standards such as unfair dismissal, award entitlements, work health and safety protections, among others.
- 1.33 Important to note is that when Labor was in government, they created and implemented an employment framework which labour hire employees working under enterprise agreements will have rights and entitlements above the award minimum safety net. This framework remains in place today.
- 1.34 Under Labor's *Fair Work Act 2009* (Fair Work Act), the wages and conditions payable to employees are determined by the relevant industrial instrument—either the enterprise agreement made by the employer with its employees, or the relevant award, or arrangements made with employees in excess of the award.
- 1.35 There is no requirement under Labor's Fair Work Act for enterprise agreements to provide for a particular level of pay above the safety net—only that every employee is better off under the agreement compared to the relevant award. That means that employees are regularly working in conjunction with employees of different employers and that their pay and conditions differ.
- 1.36 In the real world, the reality is that many worksites have more than one employer operating with employees who separately negotiate their pay and conditions. Consider an airport, a large construction project, a shopping centre, a mine site or large manufacturing facility—if Labor seriously propose to rip up 30 years of enterprise bargaining, where employers and employees directly negotiate to land pay and conditions that suit those particular cohorts, it is incumbent on them to disclose more than a slogan before the next election.
- 1.37 The partisan cherry-picking of evidence that has consistently undermined any shred of credibility for the entire Inquiry has continued unabated. During a hearing, Senator Sheldon remarked that:

The ABCC conducted an investigation, as I mentioned, of the labour hire sector and in 2020 published a report revealing that 79 per cent of labour hire companies in construction are breaking the law ... So we have 79 per cent of labour hire companies breaking the law, most of them stealing from

their workers, in the case of wage theft, and the ABCC does not seem to have taken a single fine against a single one of them.⁶

- 1.38 Mr Schmitcke (Master Builders of Australia) corrected the record on this misleading claim by providing important context:

I do recall that the ABCC go on to mention that, of that 79 per cent where they find that there was noncompliance, the nature of the noncompliance was either (a) inadvertent or (b) of a minor nature—for example, not necessarily providing pay slips or those types of matters. So I think that that needs to be put in a little bit of context... Secondly, I think they also go on to say that, where these issues were discovered, they largely were minor and inadvertent and, as soon as they were discovered, they were rectified straightaway. Any moneys that hadn't been paid or any pay slips that hadn't been provided—all that was rectified, and the ABCC assisted in overseeing that.⁷

- 1.39 Whilst Mr Schmitcke advised the inquiry that Labor's alterations to the current system would inevitably jeopardise the economic and employment safety of and in the sector, both for companies and employees, the inquiry reports thus far have overlooked such evidence:

Mr Schmitcke: [Daily hire] enables employees to be engaged and receive all the conventional conditions and benefits of permanent employment, but with a higher hourly rate in exchange for allowing both parties flexibility with conventional notice periods.⁸

[That the industry was] forecast to grow and require approximately 300,000 extra workers over the next five years.⁹

- 1.40 The Coalition Government will always find ways to support growth in a sector or industry. Legislation that increases the barriers to entry, reduces employee flexibility, hurts worker pay, damages the ease of trade for businesses and obstructs operation in the sector would be an economic and social disaster.

Mr Schmitcke: we cannot understate how important it is to not conflate/confuse any issues associated with 'precarious' or 'insecure' work with independent contracting as it is used in, and underpins, building and construction... This disregards employee behaviour and forgets the very real circumstance within building and construction that employees may consider there to be an advantage to being a contractor and seek to be engaged as such. Master Builders' members report a high level of

⁶ Senator Tony Sheldon, Chair, Senate Select Committee on Job Security, *Proof Committee Hansard*, 26 July 2021, p. 9.

⁷ Mr Shaun Schmitke, Deputy Chief Executive Officer, Master Builders Australia, *Proof Committee Hansard*, 26 July 2021, p. 9.

⁸ Mr Shaun Schmitke, Deputy Chief Executive Officer, Master Builders Australia, *Proof Committee Hansard*, 26 July 2021, p. 2.

⁹ Mr Shaun Schmitke, Deputy Chief Executive Officer, Master Builders Australia, *Proof Committee Hansard*, 26 July 2021, p. 2.

circumstances in which 'workers' demand to be engaged as a contractor and refuse offers of engagement on any other basis.¹⁰

1.41 The Australian Mines and Metals Association (AMMA), who represent most employers across mining, oil and gas, and allied service sectors, stated that labour hire, independent contracting and casual employment are essential elements of their industry.

1.42 The arrangement to provide flexibility and opportunity to skilled workers is recognised as a strong positive of the industry, by all parties:

In the contracting supply chain, highly skilled employees often take well-paid fixed-term or casual contracts where their capabilities are in greatest demand and command the highest hourly rates.¹¹

1.43 These arrangements are especially useful for attracting skilled workers for short-term work in the more cyclical, project-based areas of the industry.

Employment within Australia's resource sector

1.44 The resources sector remains a highly desirable industry for hundreds of thousands of Australians, with higher than average wages and opportunities for employees, particularly in regional Australia. Median weekly earnings for mining workers are more than double the median for all industries.¹²

1.45 Given the sheer number of recommendations that relate to the resource sector, it is necessary to balance the record to reflect the nature of the evidence taken by the committee.

1.46 At the outset, the interim report seeks to give credence to the notion that FIFO/DIDO and labour hire are increasingly prevalent in the sector by citing an academic report that was commissioned by the CFMMEU. The impartiality of such evidence is therefore in doubt, especially in light of this exchange:

Senator SMALL: ...what does 'commissioned by the CFMEU' mean? Did they resource the study or did they just ask for it? How does it work?

Dr Whelan : ... To be honest I was paid to prepare the report. In terms of the information that I was provided with and that was used in the production of the report, some of it was provided by the CFMEU, as has been disclosed in the report.¹³

¹⁰ Mr Shaun Schmitke, Deputy Chief Executive Officer, Master Builders Australia, *Proof Committee Hansard*, 26 July 2021, p. 3.

¹¹ Mr Tom Reid, Head of Policy and Public Affairs, Australian Resources and Energy Group, AMMA, *Proof Committee Hansard*, 28 July 2021, p. 42.

¹² Mr Sid Maris, Deputy Chief Executive Officer, Strategy, State and Territory Relationships, Minerals Council of Australia, *Proof Committee Hansard*, 14 July 2021, p. 2.

¹³ Dr Stephen Whelan, private capacity, *Proof Committee Hansard*, 13 July 2021, p. 4.

- 1.47 This same academic report is then extensively cited through the interim report, along with a number of quotes from the CFMMEU—the very same union that paid the academic in question to write the report.
- 1.48 Government Senators will not be lectured by the Australian Labor Party or their union mates, especially when they failed to support key, job-creating resources projects such as Adani at both the state and federal level and have failed to rule out a power-sharing arrangement with the Australian Greens after the next election.
- 1.49 An appropriate use of labour hire and casual workers is key for the resources sector to balance the needs of its workforce demands across its project lifecycle and operations.
- 1.50 According to the latest ABS data in August 2020, casual and permanent employees in the mining industry had similar median weekly earnings. \$2321.20 for casual employees compared to \$2358.10 for permanent employees.
- 1.51 However, on average employees paid by a labour hire firm or employment agency in the mining industry had a median weekly earnings of \$2643.80, around \$300 or 13 per cent higher than both casual and permanent employees.
- 1.52 Last time Labor proposed to upset the enterprise agreement system, analysis by Deloitte Access Economics showed Labor's 'same job, same pay' policy would cost 6400 jobs every year and \$15.3 billion in lost economic activity.
- 1.53 With such a track record, anyone of the more than 256 000 Australians who work in the resources sector should recognise that the greatest threat to their job security is a Labor/Greens Government.

Keeping tough cops on the beat

- 1.54 The current right of entry laws strike the right balance between the rights of registered employee organisations to represent workers and for employers to run their business. There have been several changes to right of entry laws since the Fair Work Act commenced in 2009 and Government Senators remain concerned that any proposals to expand laws to give unions greater access risk a return to the bad old days.
- 1.55 This is all the more prescient given the stated policy intention of the Labor Party to disband the Australian Building and Construction Commission (ABCC) and the Registered Organisations Commission (ROC) in the event that they form government. In essence, they want to take the cops off the beat and replace them with union thugs—the proposition should terrify every Australian business.
- 1.56 The Government has already made clear it has zero tolerance for any exploitation of workers and has given more evidence gathering powers and

committed over \$160 million in new funding to the Fair Work Ombudsman, as well as increasing penalties for lawbreaking employers by up to ten-fold.

Safety and employment

- 1.57 Labor and Greens Senators claim that the Government should investigate whether labour hire workers are more reluctant to raise safety concerns due to fears of reprisal from their employer, and selectively presented evidence from a separate inquiry focused on a single worksite along with unsubstantiated claims from union leaders.
- 1.58 Despite having called Safe Work Australia before the committee, and having taken evidence that points to there being no significant difference in serious injury rates between differing types of employment, the committee has chosen to make pre-emptive recommendations:

... we have the work-related traumatic injury fatality data. This reports on all work-related deaths, so, again, it covers the full scope of employment arrangements. It doesn't cover workers who died due to medical intervention or natural causes, so there are some exclusions, but broadly it covers the full scope of employment engagement arrangements. What we know, for example, is the data from the survey I talked about, which does cover the totality of employment arrangements, doesn't really show a big difference. For example, for employees with paid leave entitlements, the proportion of workers who did not experience a work-related injury or illness in the previous 12 months was 95.5 per cent. When it comes to employees without paid leave entitlements it was 96.4 per cent. So, it doesn't vary too much when you look at the aggregate level.¹⁴

Senator the Hon Matthew Canavan
Deputy Chair
Nationals Senator for Queensland

Senator Ben Small
Liberal Senator for Western Australia

¹⁴ Ms Meredith Bryant, Branch Manager, Safe Work Australia, *Proof Committee Hansard*, 10 June 2021, p. 40.

Additional comments from Senator the Hon Matt Canavan

- 1.1. I support the substance of the Chair's recommendations 6 to 9 as they relate to fly-in, fly-out and drive-in, drive-out work practices. These work practices should only be used as a last resort where there are no local workers available.
- 1.2. However, fly-in, fly-out and drive-in, drive-out work is regulated by state and territory governments not the Australian Government. For example, the Queensland Government already has restrictions on the proportion of a workforce that can be employed in this way. Therefore, it would make more sense for these recommendations to be enacted by state and territory governments under their existing regulations, rather than creating a new layer of regulation from the Australian Government.

Senator the Hon Matthew Canavan
Deputy Chair
Nationals Senator for Queensland

Appendix 1

Submissions and additional information

Submissions

- 1 La Trobe Casuals Network
- 2 Professor Michael Quinlan & Professor Elsa Underhill
- 3 Professor Joellen Riley & Dr Michael Rawlings
- 4 EveryAGE Counts
- 5 ARC Gig Cities Research Team
- 6 Australian Institute of Employment Rights
- 7 Law Society of New South Wales
- 8 Australian Association of Social Workers
- 9 Restaurant and Catering Australia
- 10 Dr Caleb Goods, Dr Tom Barratt, Dr Brett Smith, Mr Rick Sullivan & Dr Alex Veen
- 11 National Foundation for Australian Women
- 12 WEstjustice
- 13 Victorian Council of Social Service (VCOSS)
- 14 Treating Families Fairly
- 15 Queensland Nurses and Midwives' Union (QNMU)
- 16 Victorian Government
- 17 Maurice Blackburn Lawyers
- 18 Professor Rae Cooper
- 19 Uber
- 20 Deliveroo
- 21 Department of Social Services
- 22 Safe Work Australia
- 23 Hireup
- 24 Mable
- 25 Australian Retailers Association
- 26 Migrant Workers Centre
- 27 Australian Nursing and Midwifery Federation
- 28 Fair Work Ombudsman
- 29 National Retail Association
- 30 Per Capita
- 31 Victorian Trades Hall Council (VTHC)
- 32 National Youth Commission Australia
- 33 Australian Services Union
- 34 Housing Industry Association Ltd
- 35 Associate Professor Angela Knox & Associate Professor Susan Ainsworth

- 36 Australian Medical Association
- 37 Mr George Stribling, Lauren Kavanagh, Shirisha Nampalli, Quyen Nguyen, Joshua Paveley and Maddy Yates
- 38 Associate Professor Alysia Blackham
- 39 Transport Workers' Union of Australia
- 40 St Vincent de Paul Society National Council
- 41 Australia Institute, Centre for Future Work
- 42 Carers Australia
- 43 Dr Troy Henderson
- 44 DoorDash Inc
- 45 The Salvation Army
- 46 Australasian Centre for Corporate Responsibility
- 47 National Tertiary Education Union (NTEU)
- 48 The Australian Council of Learned Academies (ACOLA)
- 49 ACT Government
- 50 Youth Action NSW
- 51 Carers NSW
- 52 TEACHO Limited
- 53 Direct Selling Australia
- 54 United Workers Union (UWU)
- 55 Dr Veronica Sheen
- 56 Springvale Monash Legal Service
- 57 Green Institute
- 58 Franklin Women
- 59 The University of Sydney Casuals Network
- 60 Minerals Council of Australia
- 61 Science & Technology Australia
- 62 National Association for the Visual Arts Ltd
- 63 The National and State Youth Peaks
- 64 Council of Australian Postgraduate Association (CAPA)
- 65 Australian Small Business and Family Enterprise Ombudsman
- 66 Multicultural Youth Advocacy Network (MYAN)
- 67 Centre for Multicultural Youth
- 68 Children and Young People with Disability Australia
- 69 NSW Labor Lawyers
- 70 Queensland Law Society
- 71 Australian Chamber of Commerce and Industry (ACCI)
- 72 Liberty Victoria
- 73 Recruitment, Consulting and Staffing Association (RCSA)
- 74 Rideshare Drivers Association of Australia
- 75 Attorney-General's Department, Department of Education, Skills and Employment and Department of Industry, Science, Energy and Resources
- 76 Victorian Multicultural Commission

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- 77 The Australian Industry Group
78 Unions NSW
79 Construction & General Division of the Construction, Forestry, Maritime,
Mining and Energy Union (CFMEU)
80 MATES in Construction
81 Mr Tony LaMontagne, Dr Tania King and Ms Yamna Taouk
82 South Coast Labour Council
83 National Farmers' Federation (NFF)
84 Health Services Union (HSU)
85 Young Workers Centre
86 McKell Institute Victoria
87 *Confidential*
88 Emeritus Professor David Peetz FASSA
89 Distinguished Professor Sara Charlesworth
90 Retail and Fast Food Workers Union
91 Jesuit Social Services
92 Kingsford Legal Centre and Redfern Legal Centre
93 Centre for International Corporate Tax Accountability and Research (CICTAR)
94 Anglicare Australia
95 Job Watch Inc.
96 Unions ACT
97 COTA Australia
98 Australian Council of Trade Unions (ACTU)
99 Young Workers Centre, Unions ACT
100 Western Australian Government
101 Queensland Teachers' Union
102 Community and Public Sector Union (CPSU)
103 Airtasker Limited
104 Queensland Government
105 *Name Withheld*
106 *Confidential*
107 *Name Withheld*
108 *Confidential*
109 *Name Withheld*
110 *Name Withheld*
111 *Name Withheld*
112 Dr Paula McDonald, Professor Greg Marston, Acting Professor Tess Hardy,
Professor Sara Charleston, Acting Professor Robyn Mayes and Dr Penny
Williams
113 Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)
114 Amazon Australia
115 Academy of the Social Sciences in Australia Inc
116 Rail, Tram and Bus Union

- 117 Queensland Council of Unions
- 118 Western Australian Council of Social Service Inc.
- 119 UnionsWA
- 120 *Name Withheld*
- 121 *Name Withheld*
- 122 Australian Manufacturing Workers' Union
- 123 Dr Adam Heaton
- 124 HR Nicholls Society
- 125 The WorkPac Group
- 126 Dr Fiona Macdonald
- 127 Dr Mitchell Sarkies
- 128 Mr Saul Eslake
- 129 *Name Withheld*
- 130 Angus
- 131 Simon
- 132 *Name Withheld*
- 133 Pirthpall
- 134 Mark
- 135 Marie
- 136 Robert
- 137 Terri
- 138 Hao
- 139 Terry
- 140 Dave
- 141 Chris
- 142 Rebecca
- 143 Kristie
- 144 John
- 145 Alison
- 146 Alam
- 147 Cathy
- 148 Chris
- 149 Brett
- 150 Mounir
- 151 Roger
- 152 Tim
- 153 Genevieve
- 154 Abdul
- 155 Russell
- 156 Peter
- 157 Keith
- 158 Drew
- 159 Petar

-
- 160 Mathew
161 Ronald
162 Peter
163 Rebecca
164 Gary
165 Gary
166 Neil
167 Lachlan
168 Andrew
169 Jason
170 Melek
171 Chris
172 Elizabeth
173 Beverley
174 Elizabeth
175 Rigzin
176 Passang
177 *Name Withheld*
178 Jamie
179 National Union of Students
180 NSW Aboriginal Land Council
181 Suicide Prevention Australia
182 Harmony Alliance
183 Queensland Tourism Industry Council
184 Isaac Regional Council
185 Advocacy for Inclusion
186 Hunter Workers
187 Sabrina
188 Kathleen
189 Narelle
190 Sarah
191 *Name Withheld*
192 Nabin
193 BSA
194 CEPU
195 Downer Group
196 Ventia
197 National Council of Single Mothers & their Children Inc
199 Australian Workers' Union
200 Health Services Union NSW/ACT/Qld
201 Australian Education Union Federal Office
202 Ms Kate Jenkins, Sex Discrimination Commissioner
203 Ms Jane Scott

- 204 Finance Sector Union of Australia
- 205 Australian Hotels Association
- 206 Unions Tasmania
- 207 Australian Fresh Produce Alliance
- 208 Miss Dakota Woods
- 209 Working Women's Centre SA
- 210 Mr Sinopoli, Associate Professor Marmo and Dr Guo – Flinders University
- 211 United Services Union
- 212 *Name Withheld*
- 213 Mick
- 214 Simon
- 215 Fatima
- 216 Mr Adam Nelson
- 217 *Name Withheld*
- 218 Mr Benjamin Cronshaw
- 219 Australian Community Industry Alliance

Additional Information

- 1 Additional information received from Ryan Batchelor, Executive Director, McKell Institute Victoria - Blue Harvest report hearing 19 April 2021 (received 26 April 2021)
- 2 International Transport Workers' Federation, Submission to the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales - Revised 10 June 2021 (received 11 June 2021)
- 3 International Lawyers Assisting Workers network, Taken for a ride: Litigating the Digital Platform Model 2021 (received from International Transport Workers' Federation 11 June 2021)
- 4 Additional information - Correction to evidence from Sarah Costello of Safe Work Australia at public hearing 10 June 2021 (received 16 June 2021)
- 5 Transport Workers Union Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2020 (received 17 June 2021)
- 6 Richard Johnstone, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 7 Michael Quinlan, comments on Draft Guide to Managing Work Health and Safety in the Food Delivery Industry 2021 (received from the TWU 17 June 2021)
- 8 Transport Workers Union Submission to the Safe Work NSW and Transport NSW Taskforce into Food Delivery Worker Deaths 2021 (received 17 June 2021)
- 9 Transport Workers Union Submission to the Consultation - Personal injury insurance arrangements for food delivery riders 2021 (received 17 June 2021)

- 10 An article titled 'Can a Driver Uprising Make Food Apps Deliver?' published on 3 June 2021 by Luis Deliz Leon, provided to the Committee by Bernard Corden (received 20 June 2021)
- 11 Minerals Council of Australia – Question on notice from the Senate Education and Employment Legislation Committee’s public hearing into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions] on 8 July 2021 (received 14 July 2021)
- 12 Chandler Macleod – response to adverse comment made by the Australian Workers Union at a public hearing in Canberra on 14 July 2021 (received 2 August 2021)
- 13 Menulog - Response to use of evidence in the committee's first interim report: on-demand platform work in Australia (received 16 August 2021)
- 14 European Agency for Safety and Health at Work, Digital platform work and occupational safety and health, 2021 (received from Professor Quinlan 21 October 2021)
- 15 European Trade Union Institute, Social protection of non-standard workers and the self-employed during the pandemic, 2021 (received from Professor Quinlan 21 October 2021)
- 16 A plea for the need to investigate the health effects of gig-economy, 2021 (received from Professor Quinlan 24 September 2021)
- 17 Australasian Meat Industry Employees Union QLD Branch – Evidence on the difference in pay rates for labour hire verses direct employees (received 14 October 2021)
- 18 Dr Antonia Aitken - Casual conversion rejection email (received 24 November 2021)
- 19 Australian Bureau of Statistics, Jobs in Australia data on Labour supply services (labour hire) jobs 2011-12 to 2018-19 (received 17 November 2021)
- 20 Woolworths – Clarification of evidence, public hearing, 11 October 2021 (received 23 November 2021)
- 21 StarTrack – Clarification of evidence provided at public hearing on 13 October 2021 (received 15 November 2021)

Answers to Questions on Notice

- 1 Fair Work Ombudsman - Answer to question taken on notice, Uber Australia investigation finalised, Melbourne 21 April 2021 (received 22 April 2021)
- 2 Mable - Answer to question taken on notice Media release, Sydney 12 April 2021 (received 27 April 2021)
- 3 Menulog Australia - Answer to question taken on notice Europe Employment Market, Sydney 12 April 2021 (received 27 April 2021)
- 4 Ola - Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)
- 5 Hireup - Answers to questions taken on notice, Sydney 12 April 2021 (received 27 April 2021)

- 6 Aged and Community Services Australia - Answers to questions taken on notice, Melbourne 19 April 2021 (received 4 May 2021)
- 7 Uber - Answer to question taken on notice, public hearing, Sydney 12 April 2021 (received 7 May 2021)
- 8 Fair Work Ombudsman - Answers to questions taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
- 9 Ai Group - Answer to question taken on notice, Melbourne 21 April 2021 (received 7 May 2021)
- 10 Ola - Answers to additional written questions taken on notice from Senator Sheldon, sent 29 April 2021 (received 22 June 2021)
- 11 Hireup - Answers to additional written questions taken on notice, Senator Sheldon 29 April 2021 (received 13 May 2021)
- 12 Ai Group - Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)
- 13 Aged and Community Services Australia - Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 18 May 2021)
- 14 Australian Unemployed Workers' Union - Answers to questions taken on notice, Melbourne 20 April 2021 (received 7 May 2021)
- 15 Menulog Australia - Answers to written questions taken on notice, 29 April 2021 (received 20 May 2021)
- 16 Uber - Answers to written questions taken on notice, 29 April 2021 (received 16 May 2021)
- 17 Australian Higher Education Industrial Association - Answers to additional written questions taken on notice, Senator Sheldon 3 May 2021 (received 17 May 2021)
- 18 National Indigenous Australians Agency - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 19 Department of Agriculture, Water and the Environment - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 20 Department of Defence - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 21 CSIRO - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 22 Defence Housing Australia - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 23 Department of Home Affairs - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 24 Department of Industry, Science, Energy and Resources - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 25 Department of Veterans' Affairs - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 26 Department of Social Services, Services Australia, National Disability Insurance Agency and National Disability Insurance Scheme Quality and

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- Safeguards Commission - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 27 Department of Health - Answers to written questions taken on notice, 31 March 2021 (received 7 May 2021)
- 28 Department of Education, Skills and Employment - Answers to written questions taken on notice, 31 March 2021 (received 11 May 2021)
- 29 NBN Co Limited - Answers to written questions taken on notice, 31 March 2021 (received 14 May 2021)
- 30 Attorney General's Department - Answers to written questions taken on notice, 31 March 2021 (received 20 May 2021)
- 31 Department of Finance- Answers to written questions taken on notice, 31 March 2021 (received 13 May 2021)
- 32 Aged Care Industry Association - Answers to written questions taken on notice, Senator Sheldon 3 May 2021 (received 28 May 2021)
- 33 Department of Foreign Affairs and Trade - Answers to written questions taken on notice, 31 March 2021 (received 17 September 2021)
- 34 Deliveroo - Answers to written questions taken on notice, 29 April 2021 (received 28 May 2021)
- 35 Australia Post - Answers to written questions taken on notice, 31 March 2021 (received 30 April 2021)
- 36 Department of Infrastructure, Transport, Regional Development and Communications - Answers to written questions taken on notice, 31 March 2021 (received 4 June 2021)
- 37 Mable - Answers to written questions taken on notice, 29 April 2021 (received 10 June 2021)
- 38 Mr Lawrence Ben from Retail, Wholesale and Department Store Union - Answers to written questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 39 Safe Work Australia - Answers to questions taken on notice, Canberra 10 June 2021 (received 16 June 2021)
- 40 Amazon Australia - Answers to written questions taken on notice, Senator Sheldon (questions numbered 43–65 and 76–83), 10 June 2021 (received 18 June 2021)
- 41 The Treasury - Answers to written questions on notice from Senator Sheldon, sent 31 March 2021 (received 17 June 2021).
- 42 Amazon Australia - Answers to written questions from Senator Sheldon and Senator Faruqi, 10 June 2021, and answers to questions taken on notice, public hearing, Canberra, 10 June 2021 (received 9 July 2021)
- 43 One Key Resources - Answers to questions taken on notice, public hearing, Canberra, 13 July 2021 (received 27 July 2021)
- 44 Department of the Prime Minister and Cabinet - Answers to written questions taken on notice, 31 March 2021 (received 30 July 2021)

- 45 Fair Work Commission - Answers to questions taken on notice and answers to written questions from Senator Sheldon, Canberra, 15 June 2021 (received 30 July 2021)
- 46 Chamber of Commerce & Industry Queensland – Answers to Questions on notice, public hearing, Canberra, 14 July 2021 (received 2 August 2021)
- 47 Heritage Care – Answers to Questions on notice, public hearing, Canberra 28 July 2021 (received 3 August 2021)
- 48 Hays Recruitment – Answers to Questions on notice, public hearing, Canberra, 13 July 2021 (received 3 August 2021)
- 49 Minerals Council of Australia and member company representatives – Answers to Questions on notice, public hearing, Canberra, 14 July 2021 (received 3 August 2021)
- 50 UnionsWA – Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 3 August 2021)
- 51 Retail, Wholesale and Department Store Union - Answer to questions taken on notice, public hearing, Canberra, 10 June 2021 (received 5 August 2021)
- 52 Dr Caleb Goods and Dr Tom Barratt - Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 5 August 2021)
- 53 AMMA - Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 (received 5 August 2021)
- 54 Programmed - Answers to questions taken on notice, public hearing, Canberra, 27 July 2021 (received 5 August 2021)
- 55 Western Australian Council of Social Service - Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 6 August 2021)
- 56 Construction, Forestry, Maritime, Mining and Energy Union, Construction & General Division - Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 8 August 2021)
- 57 Circle Green Community Legal - Answers to questions taken on notice, public hearing, Canberra, 26 July 2021 (received 8 August 2021)
- 58 Australian Chamber of Commerce and Industry - Answers to written questions taken on notice, Senator Sheldon, 3 May 2021 (received 11 August 2021)
- 59 Recruitment, Consulting and Staffing Association - Answers to questions taken on notice, public hearing, Canberra 27 July 2021 (received 16 August 2021)
- 60 Rio Tinto - Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 17 August 2021)
- 61 Heritage Care - Answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 17 August 2021)
- 62 Hays Recruitment - Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 17 August 2021)
- 63 Chandler Macleod - Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 18 August 2021)
- 64 Bolton Clarke - Answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 18 August 2021)

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- 65 Dr Fiona Macdonald - Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 (received 18 August 2021)
 - 66 TriCare - Answers to questions taken on notice, public hearing, Canberra, 28 July 2021 and answers to written questions taken on notice, Senator Walsh, 5 August 2021 (received 18 August 2021)
 - 67 TriCare - Answers to written questions taken on notice, Senator Sheldon, 9 August 2021(received 23 August 2021)
 - 68 Heritage Care - Answers to written questions taken on notice, Senator Sheldon, 9 August 2021 (received 23 August 2021)
 - 69 BHP - Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 26 August 2021)
 - 70 Anglo American - Answers to written questions taken on notice, Senator Sheldon, 3 August 2021 (received 27 August 2021)
 - 71 Australian Retailers Association - Answers to written questions taken on notice, Senator Sheldon, 29 April 2021(received 6 September 2021)
 - 72 ManpowerGroup Australia - Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
 - 73 Australian Public Service Commission (APSC) - Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
 - 74 Australian Maritime Safety Authority (AMSA) - Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 10 September 2021)
 - 75 One Key Resources - Answers to written questions on notice, Senator Sheldon, 3 August 2021(received 10 September 2021)
 - 76 Services Australia - Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 16 September 2021)
 - 77 Hays Recruitment - Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 17 September 2021)
 - 78 Programmed – Answers to written questions taken on notice, Senator Sheldon, 9 August 2021 (received 20 August 2021)
 - 79 Downer – Answers to questions taken on notice, Canberra, 15 September 2021 (received 27 September 2021)
 - 80 Fulton Hogan – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 23 September 2021)
 - 81 Service Stream – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 28 September 2021)
 - 82 Hays – Answers to questions taken on notice, public hearing, Canberra, 15 September 2021 (received 30 September 2021)
 - 83 BSA – Answers to questions taken on notice, public hearing, Canberra, 14 September 2021 (received 28 September 2021)
 - 84 Australian Public Service Commission (APSC) - Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)
 - 85 ManpowerGroup - Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)

- 86 Department of Finance - Answers to questions on notice, public hearing, Canberra, 27 August 2021 (received 1 October 2021)
- 87 AMSA - Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 1 October 2021)
- 88 Australian Tax Office (ATO) - Answers to questions taken on notice, public hearing, Canberra, 27 August 2021 (received 6 October 2021)
- 89 ACCC - Answers to written questions, Senator Sheldon, 14 September 2021 (received 11 October 2021)
- 90 Service Stream - Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 6 October 2021 (received 12 October 2021)
- 91 NBN Co - Answers to questions taken on notice, public hearing, Canberra, 14 September 2021 (received 12 October 2021)
- 92 BSA - Answers to additional questions on notice, Senator Sheldon, 14 September, public hearing, Canberra (received 13 October 2021)
- 93 Lendlease - Answers to additional questions taken on notice, Senator Sheldon, 15 September 2021, public hearing, Canberra (received 13 October 2021)
- 94 Department of Finance - Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra 27 August 2021 (received 21 October 2021)
- 95 Ventia - Answers to additional written questions, Senator Sheldon, 6 October 2021 (received 13 October 2021)
- 96 Department of Agriculture, Water and the Environment - Answers to questions taken on notice, Senator Ciccone and Senator Sheldon, public hearing, Canberra, 11 October (received 26 October 2021)
- 97 NBN Co - Answers to written questions taken on notice, Senator Sheldon, 6 October 2021 (received 26 October 2021)
- 98 Prof LaMontagne - Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 16 September 2021 (received 24 September 2021)
- 99 Teys Australia - Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 11 October 2021 (received 26 October 2021)
- 100 Unions NSW - Answers to questions taken on notice, Senator Sheldon, public hearing, Canberra, 11 October 2021 (received 2 November 2021)
- 101 Department of Home Affairs - Answers to questions taken on notice, Senator Sheldon and Senator Canavan, public hearing, Canberra, 11 October 2021 (received 2 November 2021)
- 102 Woolworths Group - Answers to questions taken on notice, Senator Sheldon and Senator Canavan, Public hearing, Canberra, 11 October 2021 (received 2 November)
- 103 BHP – Answers to written follow up questions taken on notice, Senator Sheldon, 11 October 2021 (received 20 October 2021)
- 104 Qantas - Answers to questions taken on notice, Senator Sheldon, Public hearing, Canberra, 13 October 2021 (received 2 November 2021)
- 105 Toll Group - Answers to questions taken on notice, Senator Sheldon, Public Hearing, Canberra, 13 October 2021 (received 2 November)

- 106 Coles Group - Answers to questions taken on notice, Senator Sheldon, Public hearing, Canberra, 13 October 2021 (received 3 November 2021)
- 107 Amazon Australia - Answer to question taken on notice, public hearing 4 November 2021 (received 4 November 2021)
- 108 Woolworths – Answers to written questions taken on notice, Senator Sheldon, 11 November 2021 (received 24 November 2021)
- 109 StarTrack - Answers to questions taken on notice, public hearing, Canberra, 13 October 2021 (received 15 November 2021)
- 110 NBN Co – Answer to written question on notice, Senator Sheldon, 6 October 2021 (received 16 November 2021)
- 111 OzGroup – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 23 November 2021)
- 112 Services Australia - Answers to written questions taken on notice, Senator Sheldon, 17 September 2021 (received 8 October 2021)
- 113 Australian Education Union – Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 24 November 2021)
- 114 Uber – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 115 Dr Antonia Aitken – Answer to question taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 116 Amazon Australia – Answers to questions taken on notice, public hearing, Canberra, 4 November 2021 (received 24 November 2021)
- 117 Australian Manufacturing Workers Union – Answers to questions taken on notice, public hearing, Canberra, 3 November 2021 (received 24 November 2021)
- 118 Mondelez - Answers to questions on notice, public hearing, Canberra, 3 November 2021 (received 26 November 2021)
- 119 Star Track - Answers to written questions taken on notice, Senator Sheldon, 11 November 2021 (received 28 November 2021)

Media Releases

- 1 Senate Select Committee on Job Security - Media release 21 December 2020

Tabled Documents

- 1 Transport Workers Union - Amazon Flex Briefing Note (tabled at public hearing in Sydney on 12 April 2021)
- 2 Transport Workers Union - Food Delivery Survey (tabled at public hearing in Sydney on 12 April 2021)
- 3 Transport Workers Union - Rideshare Survey (tabled at public hearing in Sydney on 12 April 2021)
- 4 Professor Catherine Bennett, Chair in Epidemiology, Deakin University, COVID-19 and the Casual Workforce (tabled at the public hearing held in Melbourne on 19 April 2021)

- 5 Australian Unemployed Workers Union, Member statement (tabled at public hearing in Melbourne on 20 April 2021)
- 6 Excerpt from the Senate Education and Employment Legislation Committee's public hearing (8 February 2021) Hansard transcript for the inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020, pp. 56-61 (tabled by Senator Tony Sheldon at public hearing in Canberra on 14 July 2021)
- 7 Rae Wilson, 'Miner tells Senators casual employees now outnumber full-time employees two to one', *The Courier Mail*, 13 July 2021 (tabled by Senator Sheldon at public hearing in Canberra on 14 July 2021).
- 8 Workplace Gender Equality Agency, Public report submitted by Programmed Maintenance Service Limited, 2016-17 (tabled by Senator Sheldon at public hearing on 27 July 2021).
- 9 Senate Rural and Regional and Transport Legislation Committee, Budget estimates 2020-21, response to question on notice SQ21-000383 (tabled by Senator Tony Sheldon at public hearing on 27 August 2021).
- 10 Australian Government, Statement of Expectations for NBN Co Limited, 26 August 2021 (tabled by Senator Sheldon at public hearing on 14 September 2021).
- 11 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (291), Budget Estimates 2021-2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021).
- 12 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (290), Budget Estimates 2021-2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021).
- 13 Senate Standing Committee on Environment and Communications, Answers to Senate Estimates Questions on Notice (287), Budget Estimates 2021-2022, Communications Portfolio, NBN Co Limited (tabled by Senator Sheldon at public hearing on 14 September 2021).
- 14 Spotless - Defense cleaning contact letter (tabled by Senator Sheldon, public hearing, Canberra, 4 November 2021)

Appendix 2

Public hearings

Monday, 12 April 2021

The Wilarra room, Level 1

The Grace Hotel

77 York Street

Sydney

Transport Workers Union

- Mr Michael Kaine, National Secretary
- Mr Jack Boutros, Strategic Campaigner

Australian Services Union

- Ms Natalie Lang, Branch Secretary, Australian Services Union

Ola Australia

- Ms Ann Tan, Director and Head of Business Excellence and Legal

Uber

- Mr Dominic Taylor, General Manager

Uber Eats

- Mr Matthew Denman, General Manager

Deliveroo

- Mr Ed McManus, Chief Executive Officer
- Ms Julia Duck, Head of Operations, Strategy and Performance

HireUp

- Mr Jordan O'Reilly, Chief Executive Officer and Co-Founder
- Ms Jessica Timmins, Senior Director of Service

Mable

- Mr Peter Scutt, Chief Executive Officer

Professor Joellen Riley Munton, Professor of Law, University of Technology Sydney (Private capacity)

Dr Sandra Peter, Director of Sydney Business Insights, Business School, University of Sydney (Private capacity)

Menulog

- Mr Morten Belling, Managing Director

- Mr Steven Teoh, Director of Delivery

Statements by delivery driver/rider workers

- Mr Assad Manzoor, Private capacity
- Mr Ashley Moorland, Private capacity
- Mr Esteban Salazar, Private capacity

Tuesday, 13 April 2021

The Wilarra room, Level 1

The Grace Hotel

77 York Street

Sydney

Shop, Distributive and Allied Employees' Association

- Mr Gerard Dwyer, National Secretary-Treasurer

Health Services Union

- Mr Lloyd Williams, National Secretary

Australian Retailers Association

- Mr Paul Zahra, Chief Executive Officer

Migrant Workers Centre

- Mr Matt Kunkel, Director
- Dr Hyeseon Jeong, Research and Policy Officer

National Tertiary Education Union (NTEU)

- Dr Alison Barnes, National President
- Dr Terri MacDonald, Director, Policy and Research

Casualised, Unemployed, and Precarious University Workers (CUPUW)

- Dr Yaegan Doran, Member, CUPUW
- Mx Morgan Jones, Member, CUPUW
- Mx Dani Cotton, Member, University of Sydney Casuals Network

Ms Donna Tolhurst (Private capacity)

Wednesday, 14 April 2021

The Vue Room, The Nineteenth
Wollongong Golf Club
151-161 Corrimal Street
Wollongong

Shoalhaven City Council

- Councillor Amanda Findley, Mayor

South Coast Labour Council

- Mr Arthur Rorris, Secretary

Business Illawarra

- Mr Evan Marginson, Policy Manager
- Mr Adam Zarth, Executive Director

United Workers Union

- Ms Jo Briskey, Official
- Ms Tracy Cartan, Member
- Mr Ken Brown, Member
- Ms Kathy Dryden, Member

Statements by workers

- Mr Rob Long, Tafe Organiser – New South Wales Teachers Federation
- Mr Jim Scardanas, Private capacity
- Mr Brad Cowie, Delegate – Public Service Association
- Mr Mark Rogers, Member – National Tertiary Education Union

Statements by small business owners

- Mr Gary McCarthy, Private capacity

Monday, 19 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Australian Nursing and Midwifery Federation

- Ms Annie Butler, Federal Secretary
- Ms Lori-Anne Sharp, Assistant Federal Secretary

Health Services Union (HSU)

- Mr Raymond Collins, Industrial Organiser

United Workers Union – Aged Care

- Ms Ffion Evans, Coordinator – Member Power
- Ms Anu Singh, Member
- Ms Tracy Colbert, Member

Per Capita

- Ms Emma Dawson, Executive Director
- Mr Matthew Lloyd-Cape, Research Economist

Distinguished Professor Sara Charlesworth, Work, Gender and Regulation, School of Management, and Director, Centre for people, Organisation and Work, College of Business – RMIT University(Private capacity)

Aged and Community Services Australia

- Ms Patricia Sparrow, Chief Executive Officer
- Mr Malcolm Larsen, Executive Director - Government and Public Affairs

Australian Health Services Research Institute

- Professor Kathy M Eagar, Director

Professor Catherine Bennett, Chair in Epidemiology - Deakin University (Private capacity)

McKell Institute Victoria

- Mr Ryan Batchelor, Executive Director

Tuesday, 20 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Dr Michael Reich (Private capacity)

Mr Rodney Stiles, Former Assistant Commissioner at NYC Taxi and Limousine Commission/Freelance Mobility and Labour Consultant (Private capacity)

Victorian Council of Social Services

- Ms Emma King, Chief Executive Officer
- Ms Deborah Fewster, Manager - Advocacy
- Ms Charlotte Newbold, Policy Advisor

Hospo Voice

- Mr Tim Petterson, Organiser
- Mr Darcy Moran, Member

Young Workers Centre

- Ms Mairead Lesman, Acting Director
- Ms Jorja Hickey

Brotherhood of St Laurence

- Ms Emma Cull, Senior Manager Service Development and Strategy
- Dr Joseph Borlagdan, Principal Research Fellow

Australian Unemployed Workers Union

- Mr Peter Littlejohn, National Operations Co-Coordinator
- Ms Kristin O'Connell, Communications Coordinator

Victorian Trades Hall Council (VTHC)

- Dr Carina Garland, Assistant Secretary

Australia Institute, Centre for Future Work

- Dr James Stanford, Economics and Director
- Mr Dan Nahum, Economist

United Workers Union

- Mr Ben Redford, Director

Australian Services Union

- Ms Lisa Darmanin, Branch Secretary - Victorian and Tasmanian Branch
- Mr Leon Wiegard, Assistant Branch Secretary - Victorian and Tasmanian Branch

- Mr Andy Sinclair, Member - Victorian and Tasmanian Branch

Maurice Blackburn Lawyers

- Mr Kamal Farouque, Principal Lawyer

Australian Higher Education Industrial Association

- Mr Stuart Andrews, Executive Director

Wednesday, 21 April 2021

The Ballroom

The Victorian Hotel

215 Little Collins Street

Melbourne

Fair Work Ombudsman

- Mr Jeremy O’Sullivan, Chief Counsel
- Mr Steven Ronson, Executive Director – Enforcement

Aged Care Industry Association

- Mr Luke Westenberg, Chief Executive Officer

Australian Chamber of Commerce and Industry

- Mr Scott Barklamb, Director - Workplace Relations
- Ms Tamsin Lawrence, Deputy Director - Workplace Relations

Australian Industry Group

- Mr Stephen Smith, Head of National Workplace Relations Policy
- Ms Julie Toth, Chief Economist

Thursday, 10 June 2021

Committee room 2S3

Parliament House

Canberra

Retail, Wholesale and Department Store Union

- Mr Lawrence Ben, Political Coordinator

Professor Paula McDonald, Professor of Work and Organisation – Queensland University of Technology Business School (Private capacity)

Amazon Commercial Services Pty Ltd (Amazon Australia)

- Mr Michael Cooley, Director - Public Policy Australia and New Zealand
- Mr Ryan Smith, Manager - Public Policy

Transport Workers' Union of Australia

- Mr Micheal Kaine, National Secretary

International Transport Federation

- Mr Scott McDine, Head - Sydney ITF Office

Shop, Distributive and Allied Employees Association

- Mr Bernie Smith, Branch Secretary-Treasurer

Safe Work Australia

- Ms Rebecca Newton, Branch Manager - Chemicals, Occupational Hygiene Policy and High Risk Work Policy
- Ms Meredith Bryant, Branch Manager
- Ms Sarah Costelloe, Branch Manager

Tuesday, 13 July 2021

Senate Committee Room 2S1

Parliament House

Canberra

Dr Stephan Whelan, Private capacity

Construction, Forestry, Maritime, Mining & Energy Union (CFMEU)

- Mr Stephen Smyth, District President, CFMMEU Mining & Energy Division Queensland District
- Mr Chad Stokes, mine worker
- Mr Wayne Goulevitch, mine worker

Queensland Council of Unions

- Mr Michael Clifford, General Secretary

One Key Resources

- Mr Ben Lewis, Managing Director

Chandler Macleod

- Mr Peter Acheson, Chief Executive Officer
- Mr Alan Hayes, Regional Manager, Mining
- Mr Mark Graham, Chief People Officer & Head of Industrial Relations

Hays Recruitment

- Mr Nick Deligiannis, Managing Director, Australia and New Zealand

Mackay Regional Council

- Councillor Greg Williamson, Mayor
- Councillor Karen May, Deputy Mayor

Resource Industry Network (RIN)

- Mr Tim Magoffin, Deputy Chairperson
- Mr Dean Kirkwood, General Manager

Wednesday, 14 July 2021
Senate Committee Room 2S1
Parliament House
Canberra

Minerals Council of Australia

- Mr Sid Marris, Deputy Chief Executive Officer – Strategy, State & Territory Relationships
- Dr Matthew Steen, General Manager – Economic Policy
- Mr Warwick Jones, Chair, MCA Workplace Relations Reform Taskforce

Anglo American Australia

- Mr Warwick Jones, Head of Human Resources

BHP

- Mr Matthew Furrer, Vice President – Operations Services

Rio Tinto

- Mr Ben Mansour, General Manager Employee Relations and Human Resources

Australian Workers Union

- Mr Daniel Walton, National Secretary

Health Services Union – NSW/ACT/QLD

- Mr Gerard Hayes, Secretary
- Ms Lauren Hutchins, Aged Care Division Secretary

Queensland Nurses and Midwives' Union

- Ms Ashleigh Pawsey, Research and Policy Officer
- Mr Kevin Crank, Industrial Officer
- Ms Sherree Clarke, Growth and Campaigns Officer
- Ms Virginia Mashford, Member

Chamber of Commerce and Industry Queensland

- Ms Luisa Baucia, Policy Advisor
- Mr Corey Dyer, HR Services Operations Manager

Ms Cherie Miller, Principal Consultant and Master Trainer, Suicide Prevention Programs, Patria Consulting; and Chairperson, Moranbah Community Health Partnership

Isaac Regional Council

- Councillor Anne Baker, Mayor
- Councillor Kelly Vea Vea, Deputy Mayor, Councillor Division 5

Monday, 26 July 2021

Main Committee Room

Parliament House

Canberra

Master Builders Australia

- Mr Shaun Schmitke, Chief Executive Officer

Circle Green Community Legal

- Mr Rowan Kelly, Legal Practice Manager

Dr Caleb Goods, Private capacity

Dr Tom Barratt, Private capacity

Western Australian Council of Social Service Inc.

- Mr Chris Twomey, Leader Policy & Research
- Ms Eva Perroni, Social Policy Officer

UnionsWA

- Mr Owen Whittle, Secretary
- Mr Tim Dymond, Organising and Strategic Research Officer
- Ms Jill Hugo, Assistant Branch Secretary
- Mr Peter O'Keeffe, General Secretary

Construction & General Division of the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU)

- Mr Dave Noonan, National Secretary
- Mr Mick Buchan, State Secretary, Western Australia
- Mr Stephen Catania, Co-ordinator, Political and Industrial
- Ms Lucinda Weber, Senior National Legal Officer

Australian Manufacturing Workers' Union

- Mr Steve McCartney, State Secretary, Western Australia
- Mr Chris Kirkby, Member

Electrical Trades Union of Australia

- Mr Peter Carter, Secretary, Western Australia

Tuesday, 27 July 2021

Main Committee Room

Parliament House

Canberra

Recruitment, Consulting and Staffing Association (RCSA)

- Mr Charles Cameron, Chief Executive Officer
- Ms Brooke Lord, Head of Advocacy and Policy

The WorkPac Group

- Mr Cameron Hockaday, Chief Commercial and Risk Officer

Mr Duncan Fletcher, Private capacity

Programmed Skilled Workforce

- Mr Nic Fairbank, Chief Executive Officer
- Mr Kevin Cameron, Head of People

HR Nicholls Society

- Mr Kyle Kutasi, President

Transport Workers' Union of Australia

- Mr Tim Dawson, Branch Secretary, Western Australia

The National and State Youth Peaks

- Mr Stefaan Bruce-Truglio, Senior Policy & Advocacy Officer, Youth Affairs Council of Western Australia
- Mr Luke Rycken, Executive Officer, Australian Youth Affairs Coalition

Self Employed Australia

- Mr Ken Phillips, Executive Director

Wednesday, 28 July 2021
Senate Committee Room 1S3
Parliament House
Canberra

Dr Fiona MacDonald, Private capacity

Dr Katherine Ravenswood, Private capacity

United Workers Union

- Ms Carolyn Smith, Aged Care Director
- Ms Melinda Vaz, Aged Care Member

Bolton Clarke

- Ms Melissa Leahy, Chief People Officer

TriCare

- Ms Kerin McMahon, Chief Executive Officer

Heritage Care

- Mr Gregory Reeve, Chief Executive Officer

Australian Resources and Energy Group AMMA

- Mr Tom Reid, Head of Policy & Public Affairs

Friday, 27 August 2021

Senate Committee Room 2S3

Parliament House

Canberra

Australian Public Service Commission

- Mr Patrick Hetherington Acting Deputy Commissioner
- Mr Grant Lovelock, First Assistant Commissioner and Head of APS Academy
- Mr Marco Spaccavento, Assistant Commissioner, Workplace Relations

Department of Finance

- Mr Matt Yannopoulos, Deputy Secretary, Budget and Financial Reporting
- Ms Amanda Lee, First Assistant Secretary, Budget Policy and Coordination Division, Budget and Financial Reporting
- Ms Stacie Hall, Acting Deputy Secretary, Commercial and Government Services
- Mr Gareth Sebar, Assistant Secretary, Significant Matters Taskforce, Procurement and Insurance Division, Commercial and Government Services
- Mr Iain Scott, First Assistant Secretary, Corporate Services Division, Business Enabling Services
- Mr Grant Stevens, Chief Financial Officer, Corporate Services Division, Business Enabling Services

Community and Public Sector Union (CPSU)

- Ms Melissa Donnelly, National Secretary
- Mr Alistair Waters, National President
- Ms Beth Vincent-Pietsch, Deputy Secretary
- Mr Nicholas Thackray, Workplace Delegate

ManpowerGroup Australia

- Mr David Bruch, Chief Financial Officer/Acting Managing Director
- Ms Ellen Nelson, Head of Legal

Australian Maritime Safety Authority (AMSA)

- Ms Sachi Wimmer, Deputy Chief Executive Officer
- Ms Cherie Enders, Chief Operating Officer

Services Australia

- Ms Annette Musolino, Chief Operating Officer
- Mr Michael Nelson, General Manager People

Hays Recruitment

- Mr Nick Deligiannis, Managing Director

Australian Taxation Office

- Ms Michelle Allen, Assistant Commissioner, Risk and Strategy - Employer Obligations
- Ms Emma Rosenzweig, Deputy Commissioner, Strategy and Support

Tuesday, 14 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Communications, Electrical and Plumbing Union of Australia (CEPU)

- Mr Shane Murphy, National Divisional President
- Mr Peter O'Connell, NSW Branch Vice President
- Mr Amir Aghamohammadkhan, Member and NBN field technician sub-contractor
- Mr Burak Sagol, Member and NBN field technician sub-contractor
- Mr Mohammed Yehia, Member and NBN field technician sub-contractor
- Mr Steve Nedelkovski, Member and NBN field technician sub-contractor

BSA

- Mr Tim Harris, Managing Director and Chief Executive Officer
- Mr Richard Bartley, Executive General Manager

NBN Co.

- Mr Stephen Rue, Chief Executive Officer
- Ms Katherine Dyer, Chief Operating Officer
- Ms Sally Kincaid, Chief People and Culture Officer

Australian Competition and Consumer Commission (ACCC)

- Mr Scott Gregson, Chief Operating Officer
- Mr Rami Greiss, Executive General Manager Consumer and Fair Trading
- Ms Sarah Proudfoot, Executive General Manager Infrastructure Regulation

Wednesday, 15 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Ventia

- Mr Neil Barnes, General Manager
- Mr David Black, General Manager People and Capability – Telecommunications Sector
- Mr Tim Harwood, Group Executive, Telecommunications

Service Stream

- Mr Leigh Mackender, Managing Director

Downer Group

- Mr Damien North, Group Manager Industrial Relations
- Mr Steve Schofield, Group Head of Human Resources and Industrial Relations

Fulton Hogan Utilities

- Mr Lee Revell, Chief Executive Officer, Utilities
- Mr Peter Andreopoulos, General Manager Communications

Lendlease

- Mr Toby Matthews, Managing Director, Services

Thursday, 16 September 2021

Senate Committee Room 2S3

Parliament House

Canberra

Mr Tony LaMontagne, Private capacity

Australian Women Against Violence Alliance

- Ms Terese Edwards, Chief Executive Officer, National Council of Single Mothers & their Children

COTA Australia

- Mr Ian Yates, Chief Executive

MATES in Construction

- Mr Chris Lockwood, National Chief Executive Officer

Ms Kate Jenkins, Sex Discrimination Commissioner, Australian Human Rights Commission, Private capacity

National Foundation for Australian Women

- Professor Helen Hodgson, Chair, Social Policy Committee
- Dr Kathleen MacDermott, Member

Suicide Prevention Australia

- Ms Nieves Murray, Chief Executive Officer
- Mr Matthew McLean, Director of Policy and Government Relations

Australian Medical Association

- Dr Antonio Di Dio, AMA Public Health Committee Member

Monday, 11 October 2021

Senate Committee Room 2S1

Parliament House

Canberra

National Farmers' Federation (NFF)

- Mr Tony Mahar, Chief Executive Officer
- Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs

Unions NSW

- Mr Mark Morey, Secretary
- Mr Thomas Costa, Assistant Secretary
- Ms Sophia Nasser, Legal and Industrial Officer
- Ms Kate Hsu
- Mr Decheng Sun

Australasian Centre for Corporate Responsibility

- Dr Katie Hepworth, Director of Workers' Rights

Shop, Distributive and Allied Employees Association

- Mr Gerard Dwyer, National Secretary-Treasurer
- Mr Bernie Smith, NSW Branch Secretary

Dr Joanna Howe, Private capacity

Australian Meat Industry Employees Union

- Mr Matt Journeaux, Queensland Branch Secretary and, Acting Federal Secretary

Teys Australia

- Mr John Langbridge, General Manager Industry and Corporate Affairs

Woolworths Group

- Carmel Pelunsky, Director, Talent and Future of Work
- Tom Windeyer, General Manager, Last Mile with WooliesX
- Craig Adams, General Manager, National Operations, Primary Connect
- Jessica Digby, Workplace Relations Partner;
- Laura McManus, Human Rights Manager
- Maggie Lloyd, Senior Manager, Government Relations and Industry Affairs

Department of Home Affairs

- Mr Pablo Carpay, First Assistant Secretary, People and Culture
- Ms Lee-anne Monterosso, First Assistant Secretary, Procurement, Property and Contracts, Chief Procurement Officer
- Mr Radi Kovacevic, Deputy Group Manager, Chief Information Officer, ICT

- Mr Michael Willard, First Assistant Secretary, Immigration Programs
- Ms Tara Cavanagh, First Assistant Secretary, Immigration Integrity, Assurance and Policy
- Mr Robert Ewing, Economic and Deregulation Chief Economist
- Ms Sharon Huey, Assistant Commissioner, ABF Workforce Command

Department of Foreign Affairs and Trade

- Ms Danielle Heinecke, First Assistant Secretary, Land and Connectivity Division, Office of the Pacific

Department of Agriculture, Water and the Environment

- Rosemary Deininger, Deputy Secretary, Agriculture Policy, Research and Portfolio Strategy

Wednesday, 13 October 2021

Main Committee Room
Parliament House
Canberra

Professor Michael Quinlan & Professor Elsa Underhill, Private capacity

Australian Workers' Union

- Mr Stephen Crawford, Assistant National Secretary
- Mr Shane Roulstone, National Organiser
- Mr Ron Cowdrey, AWU NSW Vice President and Organiser
- Mr Decheng Sun, NSW Assistant Industrial Officer
- Mr Xuelaing Wang, Member
- Mr Feng Wang, Member

Transport Workers' Union of Australia

- Mr Michael Kaine, National Secretary
- Mr Matthew Spring, Vice President, SA/NT Branch
- Mr Theo Seremetidis
- Mr Donald Dixon

Qantas

- Mr Andrew McGinnes, Group Executive Corporate Affairs
- Mr Andrew Finch, General Counsel and Group Executive, Office of the CEO

StarTrack

- Ms Michelle Skehan, Spokesperson
- Mr Nick Macdonald, General Counsel & Corporate Secretary
- Mr Wayne Josh, Operations General Manager

Toll Group

- Ms Elizabeth Ferrier, Group Head, Employee and Industrial Relations
- Mr Peter Stokes, President, Global Logistics

Australian Road Transport Industrial Organisation

- Mr Peter Anderson, Federal Secretary/Treasurer and, Chief Executive Officer - Victoria Transportation Association
- Mr Paul Ryan, National Industrial Officer

Coles

- Ms Vittoria Bon, Government and Industry Relations Manager

FedEx Express Australia Pty Limited

- Mr Peter Gutsche, Managing Director, Operations

Wednesday, 3 November 2021

Senate Committee Room 2S3

Parliament House

Canberra

Australian Education Union Federal Office

- Ms Susan Hopgood, Federal Secretary

NSW Teachers Federation

- Mr Angelo Gavrielatos, President

Independent Education Union of Australia

- Mr Anthony Odgers, Assistant Federal Secretary

Australian Manufacturing Workers' Union

- Mr Steve Murphy, National Secretary
- Mr Aaron Malone, Organiser
- Mr Chris Cleave, Union Delegate

Mondelez International

- Mr Darren O'Brien, President Australia, New Zealand, and Japan

Young Workers Centre, Unions ACT

- Ms Arian McVeigh, Manager
- Ms Sabrina Clarke, Young worker, Volunteer
- Mr Lorenzo McMiken, Young worker, Volunteer

Australian Hotels Association

- Mr Stephen Ferguson, National Chief Executive Officer
- Mr Sean D'Almada-Remedios, Senior Lawyer

Restaurant & Catering Industry Association of Australia

- Mr Wes Lambert, Chief Executive Officer

Centre for International Corporate Tax Accountability and Research (CICTAR)

- Mr Jason Ward, Principal Analyst

Unions Tasmania

- Mrs Jessica Munday, Secretary
- Ms Thirza White, General Secretary – Community and Public Sector Union
- Mr John Short, Tasmanian State Secretary – Australian Manufacturing Workers Union
- Mr Michael Wickham, State Organiser – Australian Manufacturing Workers Union
- Mr Kerry Goodwin
- Ms Natalie Barkoczy

Thursday, 4 November 2021

Senate Committee Room 2S3

Parliament House

Canberra

Ms Lorna Berry, Private capacity

Uber Driver X, Private capacity

Australian Council of Trade Unions (ACTU)

- Ms Michele O'Neil, President
- Ms Antonia Aitken, private capacity

Uber

- Mr Dominic Taylor, General Manager Mobility
- Mr Matthew Denman, General Manager Delivery

Amazon Australia

- Mr Craig Fuller, Director, Amazon Australia Operations
- Mr Michael Cooley, Director, Public Policy, Amazon Australia and New Zealand

Emeritus Professor David Peetz, Private capacity

United Workers Union (UWU)

- Ms Lyndal Ryan, Director Property Services
- Ms Christine Wagland, private capacity
- Mr Leonardo Barajas, private capacity
- Ms Karma Dema, private capacity

Oz Group

- Mr James Kellaway, Chief Executive Officer
- Ms Kylie Hoschke, Seasonal Worker Project Manager

Australian Bureau of Statistics

- Mr Bjorn Jarvis, Program Manager, Labour Statistics Branch
- Ms Gemma Van Halderen, General Manager, Population, Labour and Location Statistics Division

Assetlink

- Mr Ron Heinrich, Chairman – Assetlink Group
- Ms Allison Freeman, National Human Resources Manager