



Same job, less pay : the exploitation of outsourcing loopholes

ACTU Research Note – May 2023

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There is an explosion of outsourced labour being used to undermine wages, conditions and job security across all industries. Across Australia there are now at least 600,000 labour hire workers - the vast majority of whom are working full time hours yet employed in insecure work and still receiving significantly less pay than direct employees at their place of work or industry.

Companies have created complex corporate structures that go well beyond traditional labour hire to undercut wages and conditions. From large corporations running multiple, tiered labour-hire entities, to employers creating contracting entities to outsource then 're-source' their own labour – these structures are designed to obfuscate responsibility for workers' rights and safety and to undercut the wage standards across industries and instruments.

As with many aspects of workplace laws, the system is out of date and loopholes easily exploited by employers to circumvent secure, well-paid jobs.

This ACTU Research Note examines the use of complex, large-scale outsourcing to undercut wages and conditions and the need for urgent same job, same pay provisions to protect workers from the further deterioration of wages. In particular, it finds that:

- The ACTU estimates around 3.5% - 4.5% of the workforce is employed through labour hire, or **at least 600,000 people**¹. ABS statistics show that growth in labour hire jobs and labour hire employees is outpacing employment growth by a large margin.
- Big business is using **complex, multi-tiered, opaque outsourcing structures** to avoid minimum wages set in Awards or enterprise agreements and pay employees doing the same jobs much lower rates of pay.

¹ Data extrapolated from multiple sources

- In Victoria, the Labour Hire Authority projects that 523,000 workers would be engaged through licensed labour hire providers in in 2023-2023. See Labour Hire Authority, '[Labour Hire Authority Annual Report 2021-2022](#)', pg 21
- Further buttressed by Recruitment, Consulting & Staffing Association's (RSCA's) estimate of on-hire workers at approximately 550,000. See Recruitment, Consulting & Staffing Association, 'RSCA's Submission to the House of Representatives Select Committee on Workforce Australia Employment Services', 2023., pg 2
- And, extrapolated from Queensland Workers' Compensation Claims data, showing between 3.5 and 4.5 per cent of workers are employed through labour hire.

- The largest dozen labour hire providers in Australia all now rank in the top 30 largest commercial employers and have combined **revenues approaching \$20 billion.**²
- The ACTU estimates the labour hire industry has annual revenues in the range of \$30-40 billion. That's roughly **equivalent to the entire food and accommodation services industry.**³
- The Australian Centre for Corporate Responsibility research shows almost **all ASX100 listed companies** across all industries use labour hire.⁴
- **84 per cent** of labour hire workers do not have **paid leave** entitlements, more than quadruple the rate of all employees.⁵
- **81 per cent** of labour hire workers **work full time hours** – despite the overwhelming majority being **employed in insecure work.**⁶
- Labour hire workers earn about **\$4,700 a year less than ordinary workers** when comparing the median hourly rate for a full-time worker.⁷
- Labour hire workers often earn even less than their directly employed colleagues at the same worksite. Demonstrated by workers in mining **earning up to 30 per cent less** due to being employed through labour hire.⁸
- Labour hire workers have lower job stability than direct employees, with **more than 60%** being in their current role for **less than one year** and more than **40% having no guaranteed or minimum hours.**⁹

The use of cheaper, less secure outsourced labour to undercut decent wages and secure jobs is a form of exploitation and avoidance that will only continue to rise without addressing the loopholes in the system that allow this to occur.

Without taking measures to ensure workers who do the same work are paid the same wages, employers will continue to expand the complex systems used to exploit this strategy and wages will continue to be driven down for the whole of the Australian workforce.

² ACTU analysis using Australian Taxation Office 2020-21 Tax transparency data. Available at

<https://www.ato.gov.au/Business/Large-business/Corporate-Tax-Transparency/Corporate-tax-transparency-reports/>

³ Australian Bureau of Statistics Australian Industry series. Available at <https://www.abs.gov.au/statistics/industry/industry-overview/australian-industry/latest-release>

⁴ Australian Centre for Corporate Responsibility 2020 Labour Hire & Contracting Across the ASX100 <https://www.accr.org.au/research/labour-hire-contracting-across-the-asx100/>

⁵ Australian Bureau of Statistics, 'Labour Hire Workers, June 2022', 2022 Available at <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>> [accessed 6 April 2023].

⁶ Australian Bureau of Statistics, 'Labour Hire Workers, June 2022'.

⁷ ABS Characteristics of Employment, August 2022.

⁸ McKell Institute, 'Submission to the Senate Education and Employment Committee into the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022', 2022

⁹ Australian Bureau of Statistics, 'Labour Hire Workers, June 2022'.

Avoidance by design

Outsourcing as undercutting

Most workers are directly employed by the person for whom they perform that work – their employer.

As "employees" their terms and conditions come from Awards, enterprise agreements or individual contracts of employment. The wages and conditions in these instruments are either set by the Fair Work Commission to reflect requirements of the specific industry in which the employer operates (Awards) or are negotiated between the employees and the employer to reflect the common interest of both parties (contracts or enterprise agreements).

Increasingly however, these instruments and their obligations have been circumvented by the direct employment relationship being replaced by complex outsourcing models. These models allow for a business ("**the host**") to engage its workforce indirectly through a third party ("**the provider**") – such as a labour hire company. This allows for workers in secure jobs paid at the industry or negotiated standard to be replaced by cheaper workers not bound by the instrument that applies to that host.

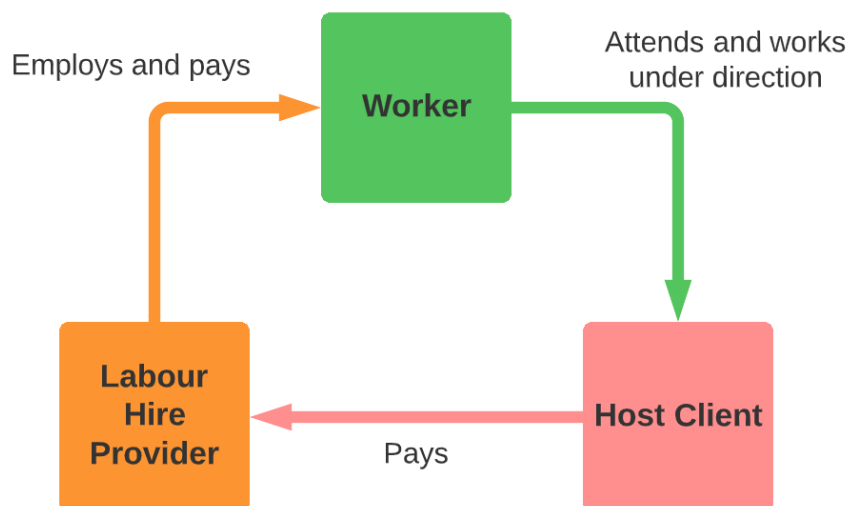


Figure 1 - basic labour hire structure

Obfuscation models

The structures of labour hire providers themselves obfuscate responsibility and the capacity for workers, unions or compliance bodies to ensure fair and appropriate wages and entitlements.

The majority of large firms in the labour hire industry are complex multilayered structures that expand well beyond hiring individual workers or groups of workers to work at host clients for a fee.

They often include layers of subsidiary labour hire entities and go beyond short-term labour provision to include services or entities in areas such as business consultants, recruitment (often across permanent and contractor engagements), delivery of outsourced functions (such as IT or facility services) and project contracting.

Additionally, many host employers further exploit the loopholes in the system by creating their own distinct entities to outsource their own workforces – such as host-owned labour hire companies or host-owned contracting companies. These allows them to avoid any instrument applicable to the host – such as an enterprise agreement – and engage part, or all, of the workforce on rates well below that instrument’s minimum standards.

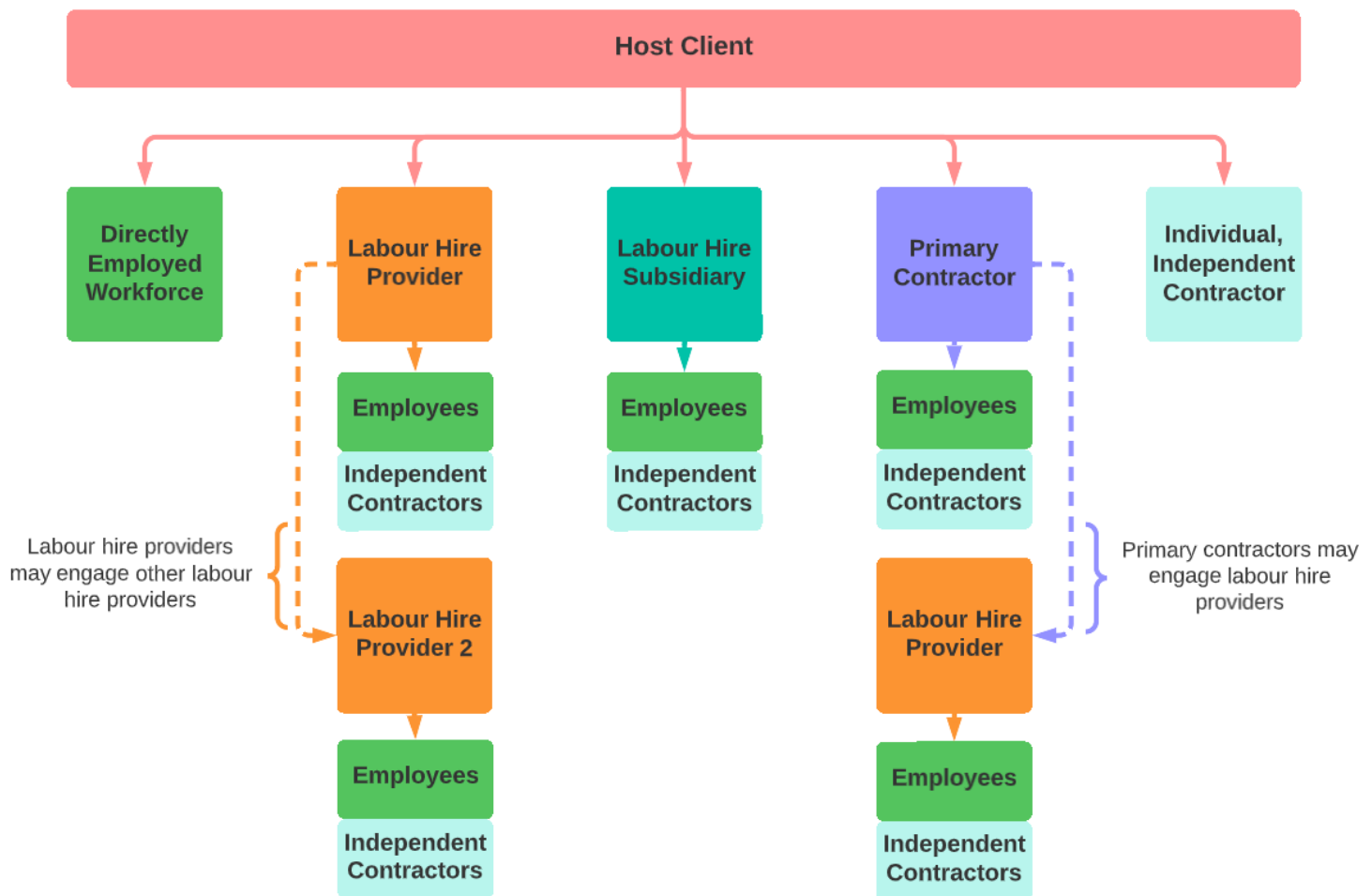


Figure 2 – complete labour hire and contracting structure

A strategy beyond traditional labour hire

To confine the problem, and any solutions proposed, to traditional labour hire engagements that intentionally undermine wages would be to remain out of step with the current workforce environment.

Labour hire does continue to be used to purposefully undercut the bargained wages and conditions of enterprise agreements. However, labour hire (as traditionally understood and as it has evolved) is but one mechanism by which workers (however engaged) can come to perform the work previously undertaken by others in a particular business.

A diverse range of cooperate structures and contracting models are increasingly having the effect of undermining the wages and conditions of direct employees. These include successive competitive tendering arrangements for outsourced services, corporate restructuring which alienates or supplements core operations and opaque service provision contracts which involve both labour supplementation and some local management or facility control.

It is also critical to recognise that hinging the solution on whether outsourcing *intentionally* undercut the wages of direct employees is also misguided. Confining application to this measure in any new provisions is bound to miss the goal more often than it scores. There are no doubt examples where the motivation to cease to utilise directly employed staff is driven by cost concerns - and perhaps a handful where the decision makers involved have reduced their motivations to writing. However, focussing regulatory solutions on those examples alone will not adequately address the need to restore equity and fairness across the range of labour supply arrangements that *have the effect* of undermining the prevailing terms and conditions of employment. It will not get wages moving again.

The profits and the (human) costs

Exorbitant profits

The profits in these outsourcing models are exorbitant. Using ATO data the ACTU estimates the labour hire industry has annual revenues in the range of \$30-40 billion. That's roughly equivalent to the whole of the food and accommodation services industry.¹⁰

The largest dozen labour hire providers in Australia all now rank in the top 30 largest commercial employers and have combined revenues approaching \$20 billion.¹¹

¹⁰ Australian Bureau of Statistics Australian Industry series. Available at <https://www.abs.gov.au/statistics/industry/industry-overview/australian-industry/latest-release>

¹¹ ACTU analysis using ATO Tax Transparency/ABS/WGEA/Modern Slavery Register reports

The top 30 labour hire firms make up more than half of the entire labour hire industry and are dominated by multinational companies who pay little-to-no corporate tax and are run out of the UK, Japan and France. ASX listed Downer, via its subsidiary Spotless Services, is the largest labour hire provider in Australia. All up these top 30 firms earn approximately \$24 billion in revenue.

Many large, listed corporates such as BHP, Qantas, Qube and CIMIC have also established their own internal labour hire subsidiaries that suppress wages. BHP's internal labour hire subsidiary BHP OS [Operations Services] employs around 5,000 workers many of whom are on rates lower than union negotiated agreements.

BHP claims paying its host-owned labour hire workers the same as workers on union agreements will cost AU\$1.3 billion.¹² If assumed that this calculation is correct, it is a marker of how significant the sum that has been denied to workers as a result of inequal pay across their operations.

Resolving this inequity by way of paying workers who perform the same work the same rate would have a minimal impact on BHP yet huge implications for those working people.

In 2022, BHP recorded a global group profit of US\$34.1 billion up from US\$25.5 billion the previous year. The AU\$1.3 billion (US\$0.85 billion) increase in wages would have reduce BHP profits by a little under 2.5%. That represents just 2.6% of group expenses (US\$32.3 billion excluding financing costs) and 1.3% of BHP group revenue (US\$65 billion).¹³

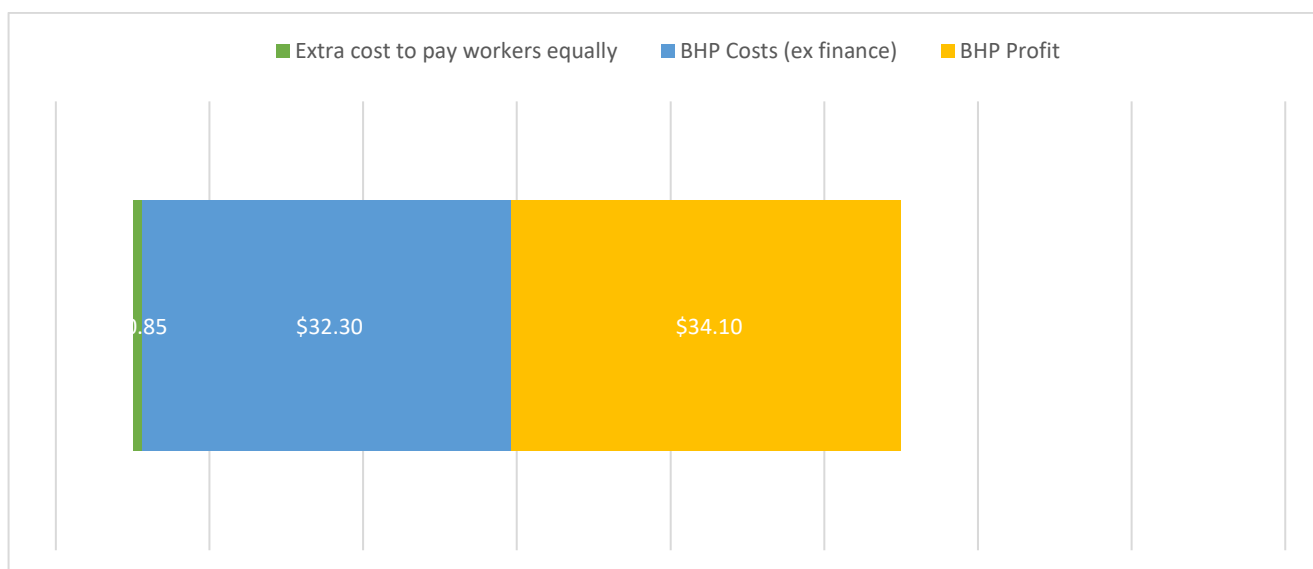


Figure 3 - Cost of paying BHP workers equally is small (BHP 2022 Result, US \$billions)

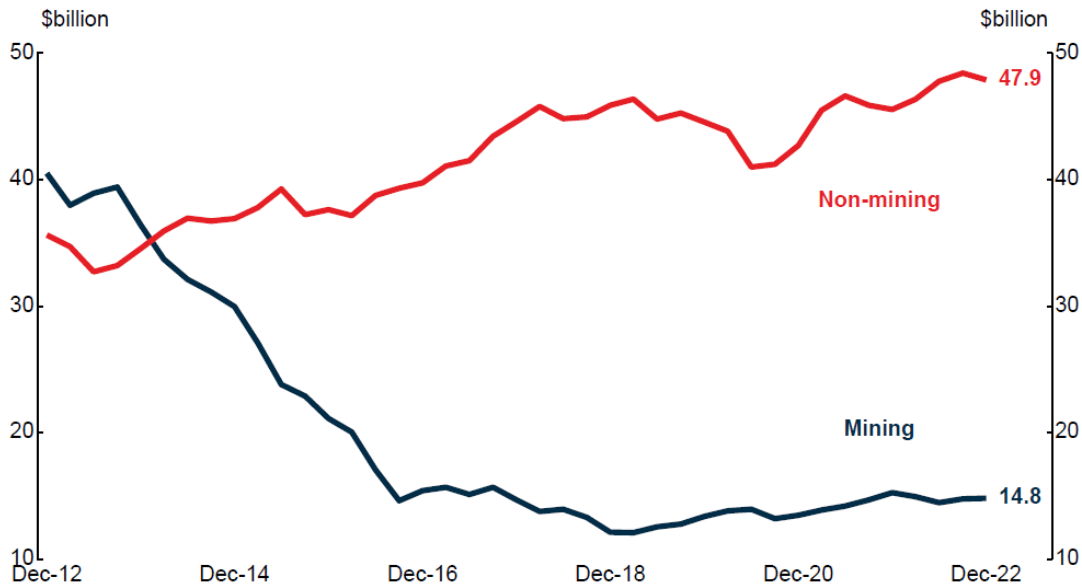
¹² Clun, R., 'BHP claim proposed labour-hire policy would cost company 1.3b a year', *The Sydney Morning Herald*, 22 May 2023

¹³ Calculations using BHP 2022 Annual Report

(Without specification in available media source, assumption made the 1.3billion is in AUD and conversion rate applied as of 29 May 2023)

While making super-profits over the last decade, BHP and the rest of the mining industry has also underinvested in the Australian economy.¹⁴

Business investment



While the profits of employers engaged with outsourced labour have thrived, and are robust enough to continue to do so – the cost of this model on working Australians and the wages crisis are extremely damaging.

Critical costs to workers and the wages crisis

The ACTU estimates around 3.5% - 4.5% of the workforce is employed through labour hire, and at least 600,000 people.¹⁵

Labour hire workers earn less and have less secure jobs than directly engaged employees. While the vast majority of labour hire workers work full time hours, they are nearly 4 times more likely to be employed in insecure work than the rest of the workforce. Labour hire

¹⁴ Treasury (presentation to 2023 ABRES Conference 7 March 2023)

¹⁵Data extrapolated from multiple sources

- In Victoria, the Labour Hire Authority projects that 523,000 workers would be engaged through licensed labour hire providers in in 2023-2023. See Labour Hire Authority, '[Labour Hire Authority Annual Report 2021-2022](#)', pg 21
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workers earn \$4,700 a year less than ordinary workers when comparing the median hourly rate for a full time worker.¹⁶

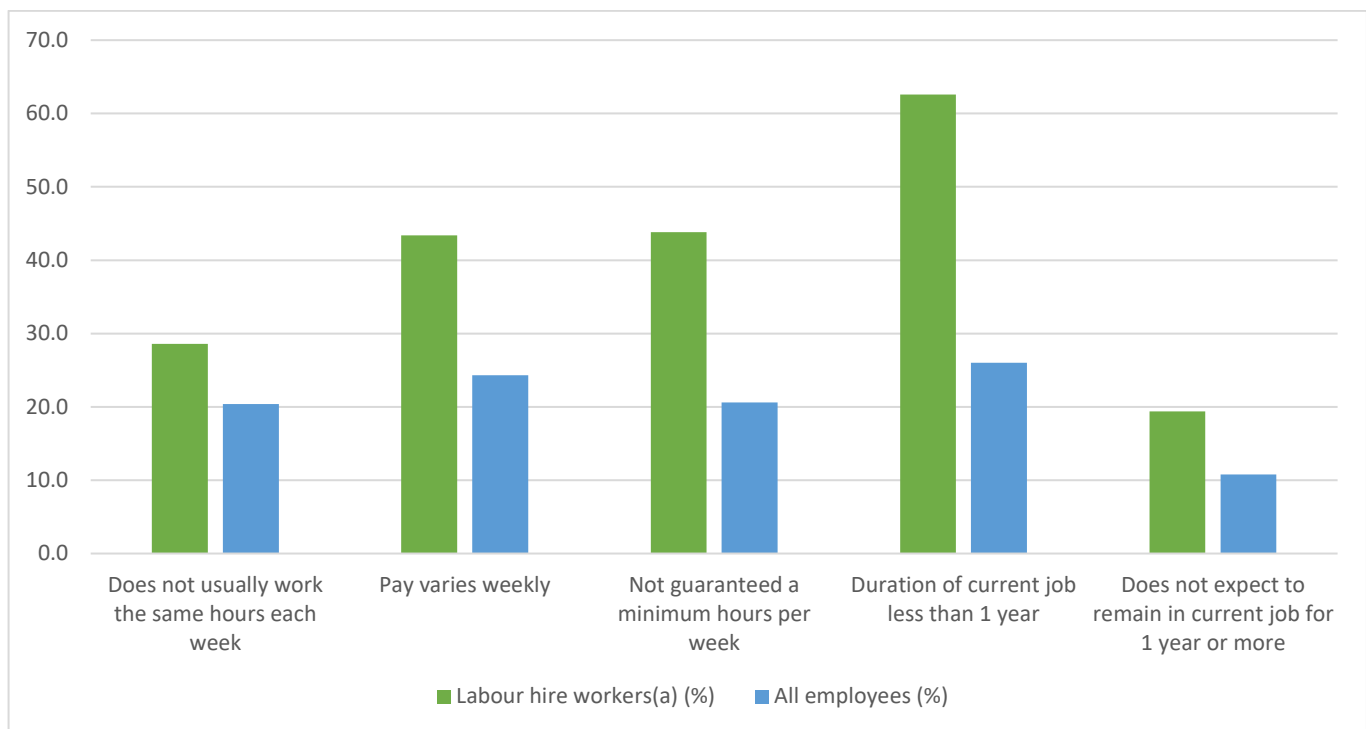


Figure 3 - Indicators of job stability, August 2022 (Original),¹⁷
(a) in main job.

In a cost of living crisis where working people continue to experience real wage cuts, the use of cheaper outsourced labour not only effects the outsourced employees – but also the broader Australian workforce.

Whether used as an intentional threat or not, the risk of being outsourced undermines the capacity of these workers to negotiate for the wages they need to stay afloat and for wages to get moving again across the country.

The systematic use by ASX100 listed companies and other large employers of labour hire and other contingent arrangements can help explain the decade long decline in enterprise bargaining, declining real wages and increasing corporate profit share.

In a 2020 study, the McKell Institute estimated the negative local and regional economic impacts of mining companies pursuing labour cost reduction strategies in two key mining regions: the Hunter region in New South Wales and the Bowen Basin in central Queensland. Collectively, it identified a negative economic impact of up to \$825 million in these two

¹⁶ ABS Characteristics of Employment, August 2022.

¹⁷ Australian Bureau of Statistics, 'Labour Hire Workers, June 2022'.

regions alone as a result of an increase in casualisation and labour hire in the mining sectors.¹⁸

Labour hire is also the epicentre of serious problems that impact workers. For example Queensland workers compensation data reveals that labour hire employees are involved in workplace accidents at rates higher than the industry average.¹⁹ Multiple state and Commonwealth parliamentary and public inquiries have identified that labour hire providers are often at the epicentre of ‘sharp practice’, exploitation and illegal conduct. These findings have been confirmed by NGO and third party reports, including most recently, in the Grattan Institute’s report on the exploitation of migrant workers.²⁰ Those practices include:

- Wage and super theft - labour hire providers have been implicated by unions and the Fair Work Ombudsman in systemic wage theft
- Sham contracting - involves pressuring direct employees into registering an ABN and/or incorporate to continue working
- Phoenixing – the ATO has identified labour hire as an industry with a heightened risk of illegal phoenix activity²¹
- Modern slavery abuses²² - labour hire providers are a major conduit for workers on temporary visas entering Australia to fill roles in known high-risk industries. High risk industries include hospitality, horticulture, meat processing, food manufacturing, transport, property services (maintenance, security, cleaning), mining, civil and building construction
- Sexual harassment and assaults – extensive use of labour hire was identified as a contributing factor to sexual harassment and assaults on Western Australian FIFO mine sites. The Enough is Enough report found ... *“the high rates of labour-hire, contracting and sub-contracting companies on sites contributes to diluted lines of responsibility between contracting companies, operating companies and employees.”*²³

This conduct is facilitated by labour hire providers creating complex corporate group structures, sub-contracting work to other providers, using differentiated branding and

¹⁸ Wage-cutting strategies in the Mining Industry. Available at <https://mckellinstitute.org.au/research/reports/wage-cutting-strategies-in-the-mining-industry/>

¹⁹ Queensland Workers' Compensation scheme statistics reports. Available at <https://www.worksafe.qld.gov.au/resources/statistics>

²⁰ Coates, B., Wiltshire, T., Reysenbach, T., 2023, *Short Changed – how to stop the exploitation of migrant workers*, Grattan Institute Report No. 2023-07, May 2023

²¹ see Australian National Audit Office 2019 review of the Phoenixing Taskforce <https://www.anao.gov.au/work/performance-audit/addressing-illegal-phoenix-activity>

²² Risks are overviewed by FWO here <https://www.fairwork.gov.au/find-help-for/contracting-labour-supply-chains>

²³ 2022, *Enough is Enough* (Report 2), Community Development and Justice Standing Committee, Parliament of Western Australia

operating across borders which allows them to recruit workers in low-transparency and/or high-risk jurisdictions.

Case Study: Margi, RTBU member

Margi is a 39-year-old terminal operator and a member of the RTBU. She lives in Brisbane with her partner and 2 kids. Her kids take up most of her time, but she likes to get into nature, and enjoys the arts.

She likes working with the trains and heavy machinery and appreciates that her roster has fewer days at longer hours which is good for having full days off to spend with the kids.

Margi has been a direct employee since March and worked in labour hire prior to that. Even though she has “made it” to full-time with the company, she knows that her worksite still has lots of labour hire workers on a lower rate without job security.

This creates a second class of worker on site where the company employees have their EBA and can negotiate, but it’s much harder for those engaged by labour hire agencies. Delegates find it much harder to help labour hire workers, which makes arising issues more challenging to resolve.

Margi has said that the impact of this on her workplace is lower pay and worse conditions for people doing the same work.

“People who are labour hire are also scared to try and make a change because they might lose their job. The workplace has four different rates of pay for the same job...”

Case Study: Pepe, AMWU member

Pepe, from Ingleburn, New South Wales, is a mum and an active member of the Australian Manufacturing Workers Union.

Pepe has been employed for the past 10 years as a full-time permanent machine operator. She is also a union delegate and Health and Safety Representative (HSR) and has dedicated herself to advocating for the rights and well-being of her fellow workers. She and her workmates have been concerned about the increased use of labour hire and what it means for wages.

This is especially true with the rising cost of living crisis affecting everyone on site. Over the past few years, the rising cost of living has made it increasingly difficult for workers to

maintain their standard of living. As a single mother, Pepe faces additional challenges in providing for her child while trying to meet the high expenses of rent, transportation, and utilities. The stagnant wages, lagging behind inflation, have further exacerbated the financial strain on workers, making it nearly impossible for Pepe to consider purchasing a home.

“I am worried about how much worse the pressures are if labour hire keeps driving down wages for everyone. It is about all of us being able to secure wages that can keep us afloat.”

Solving these problems

The outdated system is being exploited to create an inherently unjust and unequal labour market where secure work is outsourced and people are forced to do the same job for less pay.

Workers are continuing to experience real wage cuts while profits and productivity soar. And the systems intended to do the critical work of getting wages moving (Award and agreements) are being rendered moot by the avoidance and obfuscation of outsourcing.

Without immediate action to close the loopholes that allow for widespread outsourcing that undercuts instruments, wages will not grow, work will become increasingly unsafe and insecure, and families will be further crushed by the cost of living crisis.

That is why the ACTU is supporting proposed same job, same pay laws that will ensure workers doing the same work are paid equally, and that hosts and providers are properly held to account to end the corporate trickery used to avoid their obligations.