

Transport Workers' Union of New South Wales Submissions to the ACTU
Secure Jobs Inquiry

‘Insecure Work in the Private Sector Waste Industry’



1. Introduction

1.1 This is the Transport Workers' Union of New South Wales (**TWU**) submission to the Independent Inquiry into Insecure Work in Australia (**the Inquiry**) as chaired by Mr Brian Howe, AO and commissioned by the Australian Council of Trade Unions (**ACTU**). The TWU also acknowledges a submission by the union's National Office (The Transport Workers' Union of Australia) and both supports and endorses that submission.

1.2 This submission will deal with the issue of insecure work in the New South Wales private sector waste industry and the economic and social pressure it places on employees. This submission will focus on the plight of a NSW waste worker, Mr Alan Mathison, who has experienced a career plagued by the issue of insecure work in the industry.

1.3 Insecure work in the private sector waste industry occurs mainly as a result of the short term nature of local government contracts and the cutthroat nature of the tendering process.

2. Overview of Work in the Private Waste Industry

2.1 Workers in the NSW private sector waste industry are offered little job security due to the short term nature of their employers contract with local councils and their inability to secure future tenders.

2.2 Many local councils in NSW outsource their waste services to companies including J.J. Richards & Sons Pty Ltd (**J.J. Richards**), United Resource Management (**URM**), SITA and Veolia. These companies are awarded contracts through a tendering process which generally last around three to five years.

2.3 During the period of the contract a waste worker accumulates their normal entitlements, such as annual leave, long service leave and sick leave.

2.4 However, if at the expiry of the contract the new tender is awarded to a different waste company, employees are placed in an extremely precarious

position with regards to their future employment. Due to the way in which the new company has taken over the contract, the transfer of business provisions under Part 2-8 of the *Fair Work Act* often do not apply which means that existing employees are left with no protections in terms of their future employment.

2.5 This means that a waste worker is essentially left to fend for themselves. Many waste workers with the former waste company find it hard to obtain work with the new waste company as there is often tension between the two waste companies who refuse to work with each other during the transition. Coupled with this, the new waste company often wants to begin work on the contract with a completely new workforce or transfer existing employees from other contracts over. In both of these cases, a waste worker is forced to accept a redundancy from the old company and go and look for another job in spite of the fact that the work they previously performed still exists, albeit with a new company.

2.6 In other cases where the existing waste worker is able to obtain work with the new company, the new company will not recognise their previous service (as they are not required to as outlined above), meaning that the worker's existing entitlements are paid out by the old company and they are forced to begin work as if they were a totally new employee. This means a probation period, no accrued leave and often pay rates below those that existed with their previous employer. This will be further explored in relation to Mr Alan Mathison below.

2.7 It should also be pointed out that an anti-union company taking over the council waste contract will not hire union members, activists or delegates with the old company.¹ Whilst legal mechanisms exist to fight this, these are long and litigious steps which often do little to remedy the situation.

¹ *Rhodes & others & JJ Richards & Sons Pty Ltd* [2001] NSWIRComm 1063 (28 September 2001). In this case it was found that union members were not hired by the incoming company, JJ Richards, due to their union membership.

3. Unscrupulous Employers

3.1 It should also be noted that many anti-union waste companies are winning tenders with local councils. URM and J.J. Richards are two examples, and the below cases illustrate the nature of these companies.

3.2 The first example involves TWU Member Mr Tony Forrow and URM.² Mr Forrow was a waste worker with Warringah Council and employed by URM before he was dismissed by the company. Just prior to his dismissal URM had instructed Mr Forrow to work hours which breached driver fatigue management regulations. Mr Forrow raised this concern with management and was not given anymore shifts by URM. URM argued that Mr Forrow had left the company on his own initiative and had therefore not been terminated. On the jurisdictional point, Fair Work Australia found that Mr Forrow had been dismissed and that the dismissal was in direct retaliation for Mr Forrow questioning URM's unlawful direction.

3.3 The second example involves the now infamous J.J. Richards case.³ In this case, the company continually refused to bargain with the TWU and our members decided to take protected industrial action in order to leverage the company to begin discussions. Rather than beginning negotiations with the TWU, the company has chosen to continue to appeal the decision of the Full Bench of Fair Work Australia, even in spite of the fact that they no longer perform work on the contract concerned.

4. Waste Worker Profile: Mr Alan Mathison

4.1 TWU Delegate Alan Mathison, a worker with 25 years experience in the waste industry, is someone who has experienced the nature of insecure work firsthand. Alan has worked on the Canterbury Council waste contract for the last 24 years, having first worked for Johnsons Waste for eight years, Thiess

² *Tony Forrow v United Resource Management* [2011] FWA 3411. Note this case was appealed though this part of the decision remained.

³ *J.J. Richards & Sons Pty Ltd v Transport Workers' Union of Australia* [2011] FWA 3377.

for seven years and J.J. Richards for the last nine years. During all of this time, Alan has yet to accrue a single day of long service leave and everytime the contract changes hands Alan's entitlements have been cashed out and reset by the incoming company.

4.2 Alan also highlighted the fact that whenever Canterbury Council changed waste companies, employees on the previous contract were placed on trial and probation periods regardless of their length of service and experience working on the contract.

4.3 A further issue relates to rates of pay when contracts change hands. Due to the transfer of business provisions often not applying, an employee's pay rate can drop by hundreds of dollars a week if the former company operated under an enterprise agreement and the new company reverted to the Modern Award.

4.4 Canterbury Council have recently announced that a different company has been awarded the new tender. This means that Alan and his workmates will once again have to fight to gain employment with the incoming company and will more than likely have their entitlements start from scratch.

4.5 In summary, Alan said:

“We're all in the same boat. We all just want to be able to feed out families, pay the mortgage and keep our heads afloat. At the end of the day you need a secure job to do that”.

5. Conclusion

5.1 As outlined above, there are numerous factors producing and influencing the nature of work in the New South Wales private waste industry. Ultimately, the issue of insecure work is one that affects almost all industries; it is however, from the perspective of the TWU, one that adversely impacts upon the working lives of thousands of Australians in the waste industry and their families.

5.2 The TWU commends this Inquiry for creating a renewed focus on what is an extremely important issue. The TWU would be happy to make further submissions at the request of the Inquiry.