



**Canberra
Business
Chamber**



INQUIRY INTO THE EXTENT, NATURE AND CONSEQUENCE OF INSECURE WORK IN THE ACT

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Submission from Canberra Business Chamber

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About Canberra Business Chamber

1. Canberra Business Chamber (CBC) is an employer organisation representing over 5,000 organisations and businesses in direct membership, and over 10,000 affiliated industry and association groups across the ACT Region. Members of the Chamber are typically small to medium sized businesses and community organisations.
2. CBC's aim is to represent the interests of the private sector, by providing access and avenues for members and industry to both Federal and Local Government to assist shape and develop policies that are in the best interest for ACT business.
3. This submission is in response to the ACT Government's request for submissions on the extent, nature and consequence of insecure work in the ACT.

1. Commonwealth powers to legislate Workplace Relations matters

There are a range of Federal and Territory laws that govern employment in the ACT. These include but are not limited to the *Fair Work Act 2009 (Cth)*, State based Health and Safety and workers compensation laws, Federal and State anti-discrimination laws, superannuation and taxation laws. On 1 January 2010, the Australian Capital Territory (along with all other Australian states, with the exception of Western Australia) referred workplace relation's powers to the Commonwealth, through the introduction of the *Fair Work Act 2009 (Cth)*. This approach was intended to create a more uniform and simple workplace relations system.

This centralised system was designed to ensure that a nationally consistent framework could be applied to all parties during workplace relation matters. It is the Canberra Business Chamber's position that the existing federal workplace laws governing the employment relationship already mitigate against any unlawful practices or conduct, regardless of whether the Employer is a labour hire business or business of another kind.

Federal Versus State based Licencing schemes

To the extent that this inquiry seeks to strengthen or mandate laws and / or regulations with respect to labour hire or independent contracting arrangements, Canberra Business Chamber recommends the ACT Government take a cautious and considered approach to reduce any additional regulatory burden on business.

The Queensland Government has recently introduced a bill for a labour hire-licensing regime – the *Labour Hire Licensing Bill 2017 (QLD)*. Similarly, the Victorian Government has announced its intention to reform the labour hire industry following its own inquiry.

The Chamber recommends that the ACT Government closely monitor workplace relation developments in these (and other states) to ensure that any legislative adjustments remain consistent across State borders with a view towards ensuring business can easily operate between jurisdictions without penalty or differing requirements. Additionally, the Australian Chamber of Commerce and Industry (ACCI) has highlighted the need to recognise the benefits of non-standard forms of work to business, and the broader economy, and has advocated to ensure that any targeted regulation 'does not create a barrier to their use'¹. The Canberra Business Chamber supports this position and recommends that this be considered as part of this inquiry.

¹ Australian Chamber Of Commerce and Industry (2015). *Victorian Inquiry into the Labour Hire Industry and Insecure Work*

2. Definition of Insecure Employment

The term 'insecure employment' is not a clearly defined concept; rather it is often explained through examples of what individuals and organisations consider to be alternate forms employment to that of a permanent type arrangement. Insecure employment types may fall under various categories such as labour hire, casual employees, and independent contracting arrangements.

The definition used by the Independent Inquiry into Insecure work in Victoria was: *"poor quality work that provides workers with little economic security and little control over their working lives, the characteristics of these jobs can include fluctuating and unpredictable pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; a lack of security and / or uncertainty over the length of the job; and a lack of any say at work over wages, conditions and work organisations. These challenges are most often associated with non-permanent forms of employment like casual work, fixed term contracts, independent contracting and labour hire."*²

Canberra Business Chamber believes this definition fails to capture the reality of the changing and dynamic nature of work in today's modern society. The Victorian definition implies that secure work only comes from a full-time, permanent role, which based on advice from Canberra Business Chamber's members and the broader business community, is not consistent with the needs and wants of both employees and businesses operating in the ACT.

Brought largely about by the evolution of digital technology, we know modern workplaces are changing the way they do business to ensure they can respond and adapt to customer and employee demands. The traditional 9 – 5pm Monday to Friday paradigm, in many cases, is not relevant or viable for businesses that operate in a globalised market. Due to this evolution, we have seen the successful introduction of other type of work arrangements including independent contractors, casual employment and labour hire. In many cases, these work arrangements have successfully been adopted for the mutual benefit of business, consumers and employees and should not necessarily be included within the definition of insecure employment,

Casual Employment

Whilst there is no statutory definition, casual employment is generally regarded as employees who do not have regular or systematic hours of work and who are entitled to receive a higher base rate of pay (i.e. 'casual loading'), in lieu of any benefits to paid sick or annual leave.

CBC notes that casual employment has been included in the discussion on insecure work. The Chamber recommends that casual employment arrangements are not included in the definition of 'insecure' work, or the inquiry into insecure work arrangements in the ACT.

Firstly, CBC argues that casual employment arrangements do not provide 'inferior rights and entitlements' as suggested by the definition above. The casual loading provided for in the majority of modern awards takes into account a range of factors, such as leave, redundancy and reduced engagement periods.

Canberra Business Chamber echoes the position of the Australian Chamber of Commerce and Industry (ACCI) which has identified that the changing nature of the casual workforce has been adequately addressed in the existing workplace relations framework. *"This is most noticeably reflected in the National Employment Standards, in which long term casual engagements are recognised as a distinct category of employment, with access to specific leave entitlements such as unpaid parental leave, compassionate leave and community service leave."*³

Evidence suggests that flexible work options such as casual employment, can provide individuals with the ability to better manage family and personal responsibilities, and can also create other innovative opportunities for work arrangements.⁴

²https://www.google.com.au/search?q=independent+inquiry+into+insecure+work+in+australia&rlz=1C5CHFA_enAU713AU713&oeq=independent+inquiry+into+insecure+w&aqs=chrome.0.0j69i57j0l3.9190j0j7&sourceid=chrome&ie=UTF-8

³ <https://www.cciwa.com/CMSPages/GetAzureFile.aspx?path=~%5Ccciwa%5Cmedia%5Cadvocacy%5Ccci-response-to-union-claims-to-restrict-employment-options.pdf&hash=ddc1b693a93239384de048019dbd6409ddc676968075d21bbfce37e79f2c0e29>

⁴ Australian Chamber Of Commerce and Industry (2015). *Victorian Inquiry into the Labour Hire Industry and Insecure Work*

Specific terms of reference

Below are the specific terms of reference that Canberra Business Chamber has responded to based on the input obtained on this important issue from its members.

- *Evidence that labour hire and sham contracting arrangements are being used to avoid workplace and statutory obligations*

It appears that one of the major concerns relating to 'insecure' forms of employment are due to situations where a person misrepresents an employment relationship in a conscious attempt to avoid responsibility for employee entitlements, or better known as 'sham contracting' arrangements.

Whilst Canberra Business Chamber is not aware of any sham contracting arrangements taking place we would however, takes a strong stance against any such unlawful practices. In fact such practices would disadvantage our members commercially as it results in members having to compete against competitors who prices are not representative of market and whose costs are illegitimately reduced.

Canberra Business Chamber is not aware of any evidence suggesting that members who operate labour hire businesses, or who engage labour through an agency, are any less compliant with meeting their statutory employment obligations than those who engage labour under the traditional permanent type arrangement.

- *Positive or negative outcomes for ACT workers, businesses and the broader community from the use of insecure work arrangements*

Flexibility in the way in which labour is employed is vital for a healthy and sustainable economy. Whilst flexibility is key to all workplaces, it is particularly vital in small and medium enterprises that often have distinct characteristics requiring specific operational and financial considerations.

CBC's members have highlighted the importance of ensuring that flexible work arrangements remain a viable and easily accessible option. For example, a range of positive benefits have been cited by CBC members when engaging casual employees. These include: increased productivity, flexibility around completing a specific task or project, and increased capacity to manage operational requirements (i.e. peaks and lows in work demands).

A number of Canberra Business Chamber members use independent contracting arrangements for the mutual benefit of both business and employee. For example, businesses indicated that they had previously offered contractors permanent employment opportunities, however the majority of the contractors declined this offer, indicating that they preferred the flexibility and autonomy which came with an independent contractor arrangement.

Independent contracting arrangements are both mutually beneficial to the contractor and to business. The contractor has a high level of autonomy and control over how the that work is performed and type of jobs they pursue. Equally, the benefits to business can include certainty around pricing for the task performed and flexible avenues to engage individuals with specific skills sets to perform specific work packages and projects.

Findings of Other Inquiries

Canberra Business Chamber recommends the committee review and consider the Productivity Commission's findings into Australia's workplace relations framework which includes a comprehensive analysis of the developments in the Australian labour market and the use of temporary forms of employment.

Summary

Canberra Business Chamber believes the existing Federal workplace laws governing employment related matters such as labour hire arrangements, casual employment and independent contractors should continue to rest with the Commonwealth to ensure a nationally consistent framework.

In the event that any state based regulation around the use of labour hire arrangements be introduced, CBC would encourage the ACT Government to proceed with caution and consider the regulatory burden this would pose to business, particularly in light of the Government's commitment to red tape reduction.

Given its close proximity to NSW and the fact many Canberra-based businesses operate across several jurisdictions, consistency in regulation must be a priority. CBC would not support a patchwork approach of differing state based workplace relations legislation.

Canberra Business Chamber is not aware of any evidence which suggests operators of labour hire businesses or those using independent contractors in the ACT do so to avoid their workplace and statutory obligations. However, if any such activities were to be identified, we support the vigorous application of the existing regulatory system to eliminate these unlawful practices.

Canberra Business Chamber welcomes the opportunity to provide further evidence or examples before the Committee in relation to this inquiry.