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INQUIRY INTO REFORM OF BUSINESS LICENSING IN WESTERN AUSTRALIA CFMEU SUBMISSION

EXECUTIVE SUMMARY

The Construction, Forestry, Mining and Energy Union C&G (CFMEU) is one of Australia's largest trade unions and is the principal trade union in construction.

The CFMEU welcomes the opportunity to provide submissions to the Inquiry into Reform of Business Licensing in Western Australia.

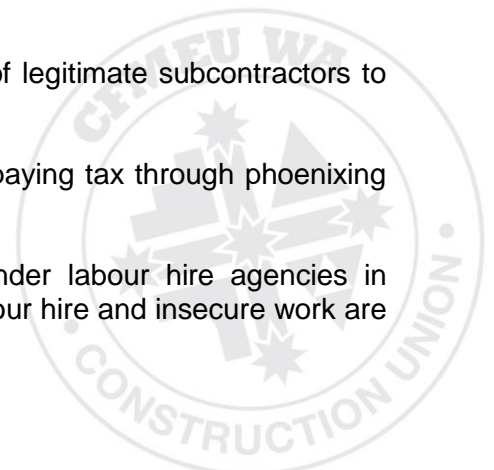
We have made submissions in the following areas:

- a) Labour Hire Licensing;
- b) Trade Licensing;
- c) High Risk Work Licenses;
- d) Construction and Safety Cards or White Cards; and
- e) Building Licensing.

LABOUR HIRE LICENSING

Introduction

1. The existing regulation around this issue, which predominately relates to the direct relationship between employers and employees, is inadequate for regulating the complicated triangular structure of labour hire.
2. Labour hire agencies are undermining Western Australian working conditions through the increased use of precarious work arrangements such as casualisation and engaging workers under sham independent contract arrangements. This extends to the exploitation of vulnerable temporary foreign workers who largely are not aware of their rights in the workplace.
3. Labour hire agencies are also undermining the capacity of legitimate subcontractors to compete in a competitive tendering environment
4. There is also a proliferation of labour hire firms avoiding paying tax through phoenixing activities.
5. Appalling stories of exploitation from people working under labour hire agencies in Western Australia show the negative consequences of labour hire and insecure work are real and common.



6. Submissions from people who are faced with precarious work to the CFMEU, including through labour hire agencies, have consistently shown that they do not believe they are paid fairly, their workplaces are not always safe and that they cannot discuss pay or safety without risking their jobs.
7. The CFMEU's research demonstrates that:
 - a) Labour hire and casual workers are used to avoid paying employee entitlements;
 - b) People who work under labour hire arrangements receive lower wages than the comparable permanent people they work alongside;
 - c) The use of labour hire workers undermines the pay of working conditions of direct hire working people;
 - d) The idea that labour hire arrangements provide "flexibility" for people is inherently false;
 - e) People that work under labour hire arrangements would overwhelmingly prefer to be directly employed;
 - f) Precarious work does not provide opportunities for secure work;
 - g) The use of labour hire workers does not necessarily increase workplace productivity, particularly as it undermines short, medium and long-term skill development and is detrimental to the worker's motivation. In fact, the use of labour hire can reduce productivity; and
 - h) Occupational Health and Safety outcomes are considerably worse for people who work for a labour hire agency.
8. Current conditions experienced by people in the labour hire industry in Western Australia are inadequate and exploitative. To improve these conditions, regulation needs to be implemented and adequately enforced by the Western Australian Government. To reduce the exploitation of workers, the CFMEU recommends that the Western Australian Government:
 - a) Introduce a licensing system which creates barriers to entry to reduce the number of unscrupulous operators in Western Australia. This regulation should include (but not limited to):
 - i. A threshold capital requirement;
 - ii. A licensing bond and annual fee;
 - iii. A compliance unit.
 - b) Establish a statutory maximum period for labour hire assignments with a host organisation;
 - c) Exclude labour hire firms from engaging workers on working holiday visas/student visas; and
 - d) Introduce a training levy requirement for labour hire firms in the construction industry to contribute to the Building and Construction Industry Training Fund.



What is Labour Hire?

1. Labour hire arrangements can be defined simply as a triangular relationship where workers are hired as either an employee or independent contractor by a worker which supplies the worker's labour to a third party for client (the host) for a fee.¹
2. In this arrangement, there is no direct employment contract between the host and the employee. Whilst the host typically has an employer's capacity to direct the work of labour hire workers, other general employment obligations are removed from the host who simply pays a fee to the labour hire agency.²
3. Generally, there are two types of labour hire arrangements:
 - a. Where the worker is an employee of the labour hire agency; or
 - b. Where the worker is hired under a contract by the labour hire agency where no employment contract relationship exists with either the agency or host.

Who Has Responsibility

1. Much of the concern surrounding labour hire arrangements stems from the difficulty in defining relationships and responsibilities.³ This is a consistent and recurring issue we deal with within the building and construction industry in Western Australia.
2. Watson et al, in his text *Fragmented Futures: New Challenges in Working Life* recognised and addressed this issue and stated:

*"The problems of labour hire are not just the product of cowboys in the industry, but are also rooted in the triangular nature of labour hire arrangements; the fact that workers are paid by one employer but work for another. Confusion over the lines or responsibility...are evident, with serious consequences for workers' conditions and entitlements."*⁴
3. There have been consistent findings throughout a number of State Government inquiries into the use of labour hire in other jurisdictions that clearly establishes that there is a level of ambiguity which exists as a result of this kind of employment practice.
4. For example, findings of the 2004 Inquiry into Labour Hire Employment in Victoria (interim report) found debate regarding what constitutes labour hire as there is significant variation in the bases by which workers are engaged. Workers may be:
 - a) Hired as employees or independent contractors;
 - b) Employees may then be casual;
 - c) Working to a fixed term contract or ongoing contract.

Many employers and employer groups dispute the argument that responsibilities are unclear and that legislation and case law clearly sets out obligations, however it is apparent that this is not the case with the relationship and responsibilities misunderstood by many.⁵ We consider this position to be consistent in the Western Australian context.

¹ Department of Economic Development, Jobs, Transport and Resources: Victorian Inquiry into the Labour Hire Industry and Insecure Work, Final Report [2016] at Pg 48, accessible at:

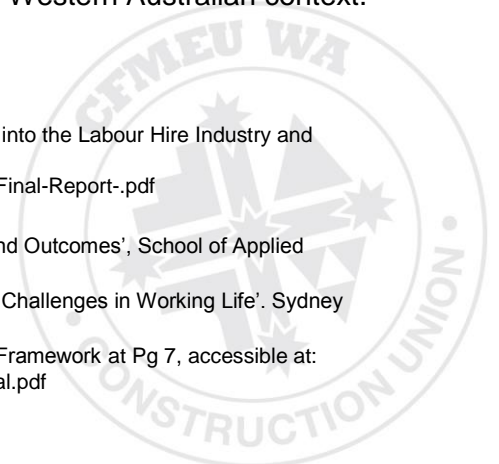
https://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf

² Ibid at Pg 48

³ Brennan, L. Valos, M, and Hindle, K. [2003], 'On-hired workers in Australia: Motivations and Outcomes', School of Applied Communication, RMIT University, Occasional Research Report, Melbourne.

⁴ Watson, I., Buchanan, J., Campbell, I., and Briggs, C., [2003]. 'Fragmented Futures: New Challenges in Working Life'. Sydney Federation Press

⁵ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 7, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf



5. What makes matters worse, is that in many instances, the triangular relationship is further complicated by labour agencies themselves outsourcing or contracting out their labour needs, working to further dilute and complicate relationships and responsibilities throughout the contracting chain.⁶

Labour Hire and Casualisation

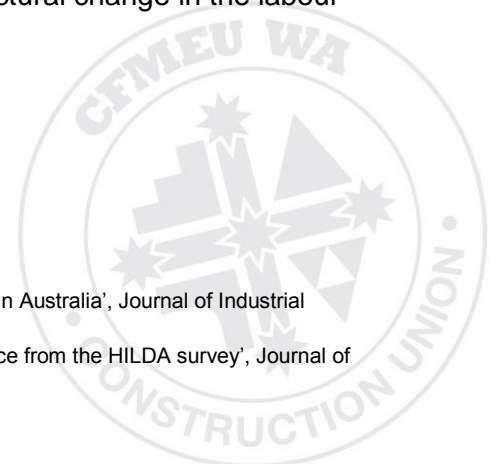
1. In traditional employer employee scenario, workers can be hired either as permanent employees or as casuals. Labour hire has resulted in a more complex set of employment arrangements, where workers are employed by the labour hire agency as either an employee (casual or permanent) as a legitimate independent contractor or sham contractor.⁷
2. The typical form of employment in this area will usually come with no guarantee of permanent work and the ability for the labour hire employer to terminate the employee's employment with little or no notice, usually at the sole discretion of the host.
3. Employees working under labour hire arrangements will usually be paid an all inclusive flat hourly rate of pay which should properly compensate employees for all hours worked and exclude the payments of penalties and loadings that would otherwise be paid to those directly employed through the host. Whilst these workers are classified as "casual and temporary" supplemental labour, the CFMEU submits that labour hire workers in the construction industry are in fact not being used in a casual or temporary manner but rather being forced to remain in these positions for extended periods of time. As an example, the CFMEU has received reports of some of its members working for labour hire agencies for over a decade. We suggest that this indicates the rise of a new form of employment, the "permanent casual".
4. In 2005, Watson encapsulated this position well in article to the Journal of Industrial Relations (vol 47) entitled *Contended Workers in Inferior Jobs? Re-Assessing Casual employment in Australia*, by identifying at that time, not only the increased use of casual workers in the workforce and the alarming growth of casualisation among the full time workforce, but the process of casualisation and the conversion of non-casual work into precarious and casual work. More importantly for this Inquiry, Watson linked this process with the spread of outsourcing and recruitment of workers through labour hire firms.⁸
5. What we see practically with the rise of casualisation through labour hire practices is that it provides opportunity for labour hire agencies and the host to drive down wages and entitlements for the individual worker and the construction industry more broadly and highlights the need for regulation in the area.
6. Wooden and Warren in their text *Non Standard employment and job satisfaction: Evidence from the HILDA survey*, stated that casual employment is common among labour hire companies and temporary worker agencies with such agencies employing approximately 9% of all casual employees and that casual workers accounting for over 60% of all labour hire workers.⁹
7. Buchanan [2004] went further by pointing to a broader structural change in the labour market, by stating:

⁶ Ibid at Pg 7

⁷ Ibid at Pg 7

⁸ Watson [2005], 'Contended Workers in Inferior Jobs? Re-Assessing Casual Employment in Australia', Journal of Industrial Relations, vol 47, no. 4, Pg 371-92.

⁹ Wooden M. and Warren D [2004] 'Non-standard employment and job satisfaction: Evidence from the HILDA survey', Journal of Industrial Relations, vol. 46, pp. 275-97



“it appears that much of the growth in these forms of labour are being driven by efforts to redefine workers’ entitlements to labour standards rather than to changes in the way labour is engaged in production on a day to day basis”¹⁰

8. Consequently, much of the precarious nature of casual work applies to workers hired under labour arrangements. There is no doubt that a rise in the level of casualised work through labour hire arrangements has significant impact for the Western Australian economy and must be considered as part of this Inquiry.

Labour Hire and Sham Contracting

1. In addition to the rise of casual labour within the labour hire industry, we submit that there is prolific use of sham contracting arrangements in the labour hire industry.
2. Sham contracting occurs where the employer (e.g. the labour hire agency) disguises an employment relationship as an independent contracting arrangement in order to avoid their obligations as an employer.¹¹
3. To provide an indication as to the prevalence of this problem within the Australian context, in a submission to the Standing Committee on Employment, Workforce Relations and Workforce Participation’s 2005 inquiry into independent contracting and labour hire arrangements, the Queensland Department of Industrial Relations stated that it had grave concerns for the use of sham contract arrangements to hide a genuine employment relationship. The submission went further to state that in the 1980’s a number of companies began to engage workers as contractors rather than employees with the aim of avoiding responsibility for employee entitlements such as leave, superannuation and workers compensation. The Department estimated that around 20% to 25% of all labour hire workers are engaged as contractors.¹²
4. Sham contracting is particularly prevalent in the construction industry. In 2010, the CFMEU undertook a report on the issue of sham contracting entitled *‘Race to the Bottom’*, which found that although it accounts for only 9% of the total Australian employment, the construction industry comprises 33% of all persons working as independent contractors.¹³ Whilst we obviously concede that legitimate contracting does occur within the industry, the report uncovered widespread sham contracting arrangements with the number of sham contracting arrangements in the construction industry at between 92,000 and 168,000 as at November 2010.¹⁴

Phoenix Activity in the Labour Hire Industry

1. Phoenix activity is the avoidance of paying outstanding debts including employee entitlements, taxes, etc. by a business through the deliberate liquidation of corporate entities.¹⁵
2. The Australian Government defines phoenix activity in its most basic form as involving:

¹⁰ Buchanan J [2004] Paradoxes of Significance: Australian Casualisation and Labour Productivity. Paper prepared for ACTU, RMIT and the Age Conference ‘Work Interrupted: Casual and insecure employment in Australia’, Hotel Sofitel, Melbourne, 2 August 2004.

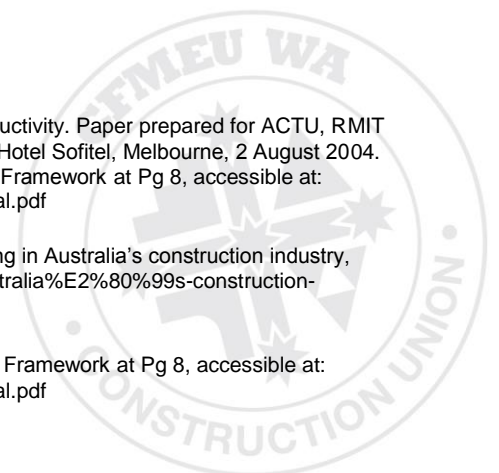
¹¹ CFMEU [2015], ‘Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 8, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

¹² Ibid at Pg 8

¹³ CFMEU Construction & General [2011], ‘Race to the Bottom’, a report on sham contracting in Australia’s construction industry, accessible at: <https://www.cfmeu.org.au/policy-research/race-bottom-sham-contracting-australia%E2%80%99s-construction-industry>

¹⁴ Ibid

¹⁵ CFMEU [2015], ‘Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 8, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf



“One corporate entity carrying on a business, accumulating debts without the intention of paying those debts (for the purpose of wealth creation or to boost the cash flow of the business) and liquidating to avoid repayment of the debt. The business then continues in another corporate entity, controlled by the same person or group of individuals”¹⁶

3. This practice is extremely costly for employees and for the Western Australian economy more generally. These employees lose the income and superannuation that is owing to them as a result of their employment.
4. In a report commissioned by the Fair Work Ombudsman in 2012, PricewaterhouseCoopers (PWC) estimated the total impact of phoenix activity is up to \$3.19 billion each year, including up to \$655 million in costs to employees.¹⁷ Further, Phoenix activity has been highlighted as significant issue in the labour hire industry.¹⁸
5. Typically, the fraudulent labour hire phoenix arrangement will be structured as follows:
 - a) A private group is set up consisting of several entities including a labour hire entity;
 - b) The labour hire entity typically has a single director who is not the ultimate ‘controller’ of the group;
 - c) The labour hire entity has few, if any, assets and minimal share capital;
 - d) The labour hire entity fails to meet its liabilities and is placed into administration or liquidation;
 - e) A new labour hire entity is set up and the labour is moved to this entity;
 - f) The process is repeated with the financial benefits from the unpaid liabilities shared amongst the group.¹⁹

Avoiding Employee Entitlements: Labour Hire Workers receive a Lower Hourly Rate of Pay than Comparable Direct Hire Workers

“All studies of wage outcomes for labour hire workers, in Australia and overseas, have found that they receive a lower hourly rate of pay than their direct hire counterparts.”

Dr Elsa Underhill, Deakin University

1. The Fair Work Ombudsman states that casual employees (the large majority of labour hire employees may be considered casual) are ‘entitled to a higher hourly pay rate than equivalent full-time or part time employees. This is called casual loading because they don’t get benefits such as sick leave or annual leave.’
2. On this issue, May, Cambell and Burgess in their discussion paper entitled ‘*The rise and rise of casual work in Australia: who benefits, who loses?*’ suggest that while many advocates of precarious work state that casual work is not so bad due to casual loadings, the argument is not ‘backed up by the facts’. Researchers find that casual loading does not fully compensate for all of the forgone benefits.²⁰ Further, it is the

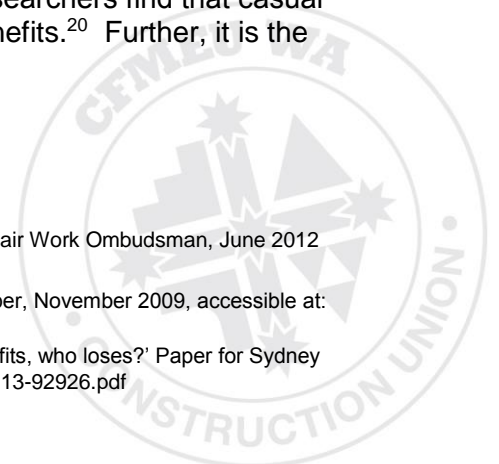
¹⁶ Ibid at Pg 8

¹⁷ PWC (2012) Phoenix activity: Sizing the problem and matching solutions, report for the Fair Work Ombudsman, June 2012

¹⁸ Ibid

¹⁹ Australian Government (2009), ‘Action against fraudulent phoenix activity’, proposals paper, November 2009, accessible at: http://archive.treasury.gov.au/documents/1647/PDF/Phoenix_Proposal_Paper.pdf

²⁰ May, Campbell, Burgess, [2005] ‘The rise and rise of casual work in Australia: Who benefits, who loses?’ Paper for Sydney University seminar, June 2005, accessible at: <http://apo.org.au/system/files/1113/apo-nid1113-92926.pdf>



CFMEU's experience that workers would overwhelmingly prefer to be employed permanently.

3. Maria Azzurra Tranfaglia, Research Fellow at the Centre for Employment and Labour Relations Law at the University of Melbourne states that unlike in many European countries, labour hire workers *"are not defined by the law as employees of the agency and there is no general legal principal of equal treatment."*²¹
4. Dr Else Underhill argues that all studies of wage outcomes for labour hire workers, in Australia and overseas, have found that they receive a lower hourly rate of pay than their direct hire counterparts.²²
5. Susan Houseman [2014] finds that temporary agency work is associated with lower earnings with workers in such arrangements earning considerably less than comparable direct-hire workers.²³
6. In a survey of labour hire agencies in 2003, Brennan et al. found that, on average, less than half of blue collar non-Recruitment & Consulting Services Association (RCSA) member labour workers receive equivalent rates of pay to the host organisation's pay rates.²⁴
7. Using data from the Household, Income and Labour Dynamics in Australia HILDA dataset, Watson [2005] compares wages of casual and permanent workers. He finds that after accounting for casual loading, part-time workers are penalised for working as casuals with men earning 12% less and women 17% less. He concludes that from the point of view earnings, casual jobs are inferior jobs.²⁵
8. The results are consistent with findings of Brennan et al. [2003] who found that of Australian labour hire survey respondents who are aware of minimum award rates, 7.5% claim to have been paid less than the minimum award rate. Labour hire agencies surveyed state that over 50% of blue collar labour hire workers are only paid their minimum award entitlements, whilst almost two-thirds of all labour hire workers surveyed would exchange their casual loading in return for receiving paid leave entitlements such as annual leave and sick leave.²⁶
9. Labour hire workers largely do not receive the same rates of pay and other beneficial conditions as direct employees of a host, primarily because there is no requirement for those workers to be covered by a collective agreement covered for the enterprise. This means it is not only an effective way for employers to skirt the enterprise bargaining system, but also enables a labour hire agency to pay a labour hire worker less than a direct employee he or she works directly alongside. In fact, Brennan et al. (2003) found that 31% of host companies do not require employment agencies to provide the equivalent basic terms and conditions of employment they provide to their own employees.²⁷

²¹ Tranfaglia, M. A., [2015], 'Australian dream a nightmare for many in the labour hire employees', The Conversation, July 25 2012, accessible at: <http://theconversation.com/australian-dream-a-nightmare-for-many-labour-hire-employees-37479>

²² Underhill, E. [2015], Submission in response to the Workplace Relations Framework Draft Report, Submission DR321, accessible at: https://www.pc.gov.au/_data/assets/pdf_file/0019/193303/subdr0321-workplace-relations.pdf

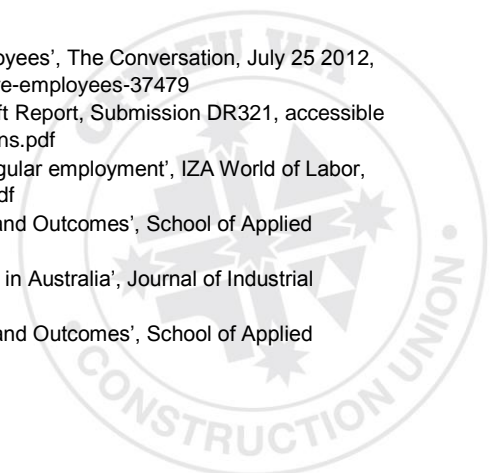
²³ Houseman, S. [2014] 'Temporary work is not generally a stepping a stepping-stone to regular employment', IZA World of Labor, Vol. 27, accessible at: <https://wol.iza.org/uploads/articles/27/pdfs/temporary-agency-work.pdf>

²⁴ Brennan, L. Valos, M, and Hindle, K. [2003], 'On-hired workers in Australia: Motivations and Outcomes', School of Applied Communication, RMIT University, Occasional Research Report, Melbourne.

²⁵ Watson [2005], 'Contended Workers in Inferior Jobs? Re-Assessing Casual Employment in Australia', Journal of Industrial Relations, vol 47, no. 4, Pg 371-92.

²⁶ Brennan, L. Valos, M, and Hindle, K. [2003], 'On-hired workers in Australia: Motivations and Outcomes', School of Applied Communication, RMIT University, Occasional Research Report, Melbourne.

²⁷ Ibid



10. These findings indicate that the majority of labour hire employees see casual loading as inadequate compensation for losing benefits such as leave entitlements.²⁸
11. In terms of superannuation, where workers are engaged as independent contractors, employers are far less likely to make provision for superannuation. For workers engaged as employees, employers are required to make superannuation contributions.²⁹ However, Buchanan [2004] finds that while less than one in twenty permanents did not have or were not contributing to superannuation, 40% of casuals were effectively not covered.³⁰

Undermining Work: Labour Hire Weakens the Pay and Working Conditions of Direct Hire Workers

1. The fact that labour hire employees receive a lower rate of pay than their direct hire counterparts is not only unfair to the workers themselves, but it also undermines the fair pay and working conditions of other permanent workers.³¹
2. In a CFMEU report into sham contracting in Australia's construction industry, we noted the use of labour hire not only affects labour hire workers, but also those workers directly hired by the host employer.³²
3. It is the CFMEU's experience, that labour hire is no longer used not to supplement but replace direct employees as their pay is often less than direct employees. They are used as a cost cutting measure which undermines the working conditions of direct employees.³³
4. In 2005, May et al. reflected this position by stating:

“(labour hire) exerts downward pressure on the wages and conditions even those employees that continue to be viewed as permanent”.....and processes such as labour hire “threaten the direct or indirect replacement of permanent workers by casual workers”³⁴

5. The Fair Work Ombudsman has stated that on-hire workers are not covered by enterprise agreements made between the host organisation and its own direct workers, unless the on-hire business itself is a party to the agreement.³⁵
6. Underhill [2015] argues that labour hire employment can undermine employee bargaining power. She states:

“unless collective agreements provide scope for provisions relating to the use of labour hire workers, those collective agreements are at risk of being undermined by the very same employer who has entered into the agreement. This is not consistent with the objective of a workplace relations system producing fair and equitable pay and conditions for employees, nor consistent with good faith bargaining. Prohibiting the inclusion of restrictions upon the use of labour hire employment from collective

²⁸ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 11, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

²⁹ Ibid

³⁰ Buchanan J [2004] Paradoxes of Significance: Australian Casualisation and Labour Productivity. Paper prepared for ACTU, RMIT and the Age Conference 'Work Interrupted: Casual and insecure employment in Australia', Hotel Sofitel, Melbourne, 2 August 2004.

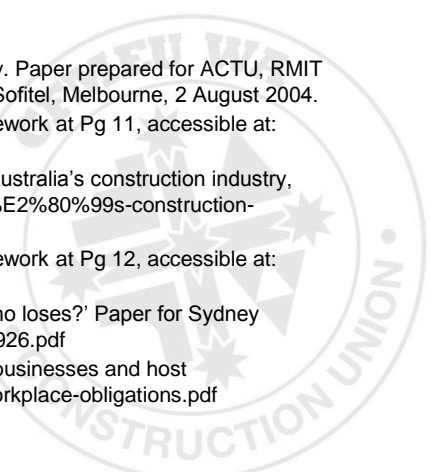
³¹ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 11, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

³² CFMEU Construction & General [2011], 'Race to the Bottom', a report on sham contracting in Australia's construction industry, accessible at: <https://www.cfmeu.org.au/policy-research/race-bottom-sham-contracting-australia%E2%80%99s-construction-industry>

³³ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 12, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

³⁴ May, Campbell, Burgess, [2005] 'The rise and rise of casual work in Australia: Who benefits, who loses?' Paper for Sydney University seminar, June 2005, accessible at: <http://apo.org.au/system/files/1113/apo-nid1113-92926.pdf>

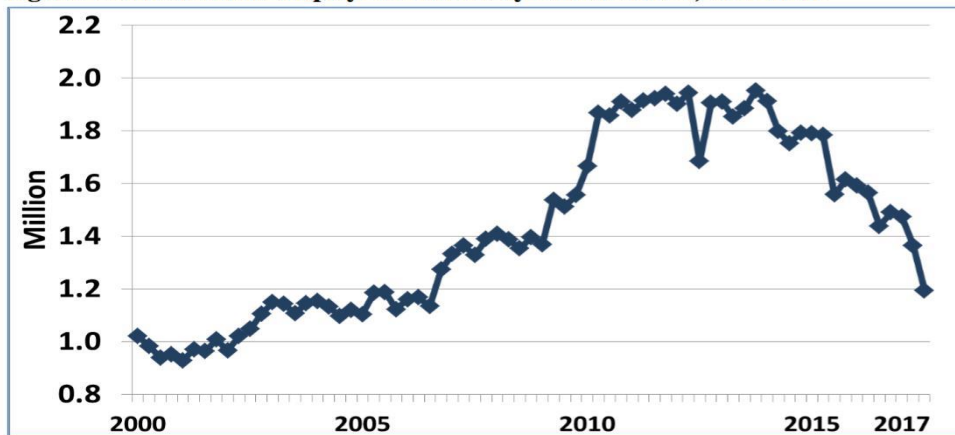
³⁵ Fair Work Ombudsman [2015], 'Understanding on-hire employee services: A guide for on-hire businesses and host organisations', accessible at: <file:///C:/Users/SCatania/Downloads/On-hire-employees-services-workplace-obligations.pdf>



agreements provides employers with a free choice to side-step the terms and conditions of collective agreements which they have entered into.”³⁶

7. In fact, we suggest that the rise of labour hire and casualisation has had a marked effect of the enterprise bargaining system as whole. The significant decrease in private sector employees covered by an enterprise agreements in the last decade (in our view) is evidence of this.

Figure 2. Private Sector Employees Covered by Current EBAs, 1990-2017.



Source: Dept. of Jobs and Small Business, "Trends in Enterprise Bargaining," September 2017.

8. In 2005, the Department of Industrial Relations in Queensland found that while the development of enterprise bargaining since the 1980's has resulted in EBA's providing rates of pay and conditions of work that are superior to awards, in the labour hire sector 'very few employees are covered by EBAs. Most are covered by basic awards and conditions.'³⁷
9. Even in the instances where labour hire employees are covered by EBAs, anecdotal evidence suggests labour hire workers may be working on an EBA which pays lower than the agreement covering the permanent counterpart they are working directly alongside.³⁸ In fact, the CFMEU has uncovered instances where an EBA which was negotiated to cover labour hire workers on a given project did not meet the Better Off Overall Test (BOOT) as required by the *Fair Work Act 2009* (Cth).
10. Labour hire not only undermines the pay and working conditions of direct hire workers, but research undertaken by Hall [2000] suggests that it also undermines the trust and loyalty of permanent workers.³⁹ Hall undertook a detailed study of the use of labour hire in the Electricity Trust of South Australia (ETSA) Corporation and found that the use of labour hire workers as supplement and substitute for permanent employees had a very pronounced negative effect on employee loyalty and commitment and trust with labour hire workers.⁴⁰ This is undoubtedly is linked to productivity and economic development within an organisation and within an industry as a whole.

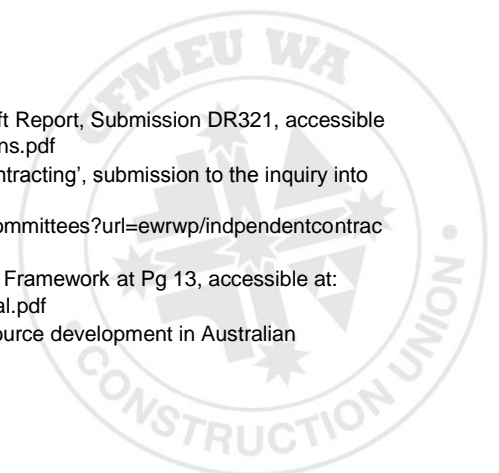
³⁶ Underhill, E. [2015], Submission in response to the Workplace Relations Framework Draft Report, Submission DR321, accessible at: https://www.pc.gov.au/_data/assets/pdf_file/0019/193303/subdr0321-workplace-relations.pdf

³⁷ Department of Industrial Relations, Queensland [2005], 'Submission: Labour hire and contracting', submission to the inquiry into independent contracting and labour hire arrangements, accessible at: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=ewrwp/independentcontracting/report.htm

³⁸ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 13, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

³⁹ Hall, R. [2002] 'Outsourcing, Contracting-out and labour hire: implications for human resource development in Australian organisations', *Asia Pacific Journal of Human Resources*, Vol. 39, no. 2, pp.23-41

⁴⁰ Ibid



The Flexibility Myth: Labour Hire Workers Overwhelmingly Would Prefer to be Employed Directly

“It is not correct to say that many people in nonstandard employment have positive views about their jobs. Labour hire employees have particularly negative views about their employment.”

Dr Elsa Underhill, Deakin University

1. Advocates of labour hire argue that non-standard employment provides greater choice for workers within the labour market. Labour hire arrangements are supposedly beneficial as they provide flexibility for those wishing to work limited hours.⁴¹ However, this is not the reality.
2. ABS workforce data from Victoria suggests that only 7% of employees state flexibility as a reason for using a labour hire firm and the majority of workers employed through a labour hire firm were more likely to work full-time hours than other Victorian employees.⁴² We consider that there is consistency in these statistics in the Western Australian context.
3. The overwhelming majority of employees used a labour hire firm due to the ease of finding work or inability to find work. This included:
 - a) 71% who cited the ease of obtaining work;
 - b) 9% who stated it was a condition of working in the job or industry;
 - c) 7% who cited an inability to find work in their line of business; and
 - d) 2% whose lack of experience prevented them from finding a permanent job.⁴³
4. The reality is that employees predominately enter into labour hire arrangements due to lack of secure employment opportunities⁴⁴. For growing numbers of blue collar workers, casual work is the only form of employment available.⁴⁵
5. Monash university’s Veronica Sheen states that for many people, casual jobs, like many labour hire positions, are ‘the only jobs they can find and are neither transitional nor a lifestyle preference.’⁴⁶ This is entirely consistent with Brennan et al. [2003] who found that approximately one third of labour hire workers felt they had no choice but to be labour hired and two thirds of workers who would rather be hired directly.⁴⁷
6. In terms of casual labour, Buchanan [2004] concluded that it was clear that growing numbers of workers are in a weaker position to enforce rights or fulfil their working time preferences.⁴⁸ He stated:

“Casualisation is part of a new regime of the management of labour. It is not one unlimited choice and flexibility that is mutually advantageous to workers and

⁴¹ Brennan, L. Valos, M, and Hindle, K. [2003], ‘On-hired workers in Australia: Motivations and Outcomes’, School of Applied Communication, RMIT University, Occasional Research Report, Melbourne.

⁴² ABS [2010], Australian Labour Market Statistics Jan 2010, Cat 6105.0, Labour Hire Workers, released 08 January 2010, accessible at: http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/218562E41D8F6E23CA2576A400112CD7/%24File/61050_Jan%202010.pdf

⁴³ Ibid

⁴⁴ CFMEU [2015], ‘Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 14, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

⁴⁵ Buchanan J [2004] Paradoxes of Significance: Australian Casualisation and Labour Productivity. Paper prepared for ACTU, RMIT and the Age Conference ‘Work Interrupted: Casual and insecure employment in Australia’, Hotel Sofitel, Melbourne, 2 August 2004.

⁴⁶ Sheen, L. (2012), ‘Labour in vain: Casualisation presents a precarious future for work’, The Conversation, July 25 2012, accessible at: <https://theconversation.com/australian-dream-a-nightmare-for-many-labourhire-employees-37479>

⁴⁷ Brennan, L. Valos, M, and Hindle, K. [2003], ‘On-hired workers in Australia: Motivations and Outcomes’, School of Applied Communication, RMIT University, Occasional Research Report, Melbourne.

⁴⁸ Buchanan J [2004] Paradoxes of Significance: Australian Casualisation and Labour Productivity. Paper prepared for ACTU, RMIT and the Age Conference ‘Work Interrupted: Casual and insecure employment in Australia’, Hotel Sofitel, Melbourne, 2 August 2004

employers. Rather, it is a regime which fits many workers into the needs of production and service provision by offering very little choice to workers”⁴⁹

The Current State of Regulation

“Corrupt practices have become the norm in the recruitment industry, and those agencies that will not entertain them face a hard struggle to survive, as complicit end users drive prices ever lower....the mass exploitation of hundreds of thousands of workers could easily be stopped by a government that had the will to do so. Recruitment agencies should be licensed, with the highest standards set, and loss of licences for those that fail to match them. It should not only be unacceptable for agencies to exploit the very workers who earn them money: it should be impossible.”

Adrian Gregory, Director, Extraman Recruitment UK

1. The regulation of labour hire in Australia is complicated comprising both Federal legislation and state based laws which impact on different forms of working arrangements.⁵⁰
2. The primary source of employment rights and conditions for employees in all states including Western Australia is outlined in the federal Fair Work Act 2009, which applies to all workers and includes National Employment Standards, Modern Awards, Enterprise Agreements, protections from unfair dismissal and protections from sham contracting.⁵¹
3. At the Federal level, there is no regulatory mechanisms for labour hire (such as the joint liability schemes or joint employment doctrines adopted by parts of Europe and the United States, which divide responsibilities between the agency and the host) or regulatory requirements, such as financial guarantees, limitation to activities or authorisation.⁵²
4. In terms of joint employment, where the agency and the host would both have responsibility and obligations towards the labour hire worker, the status of such joint employment in Australia is unclear.⁵³ However, a decision of the Fair Work Commission in 2014 rejected the concept of joint employment. As such, the laws that currently exist, primarily relate to the relationship between the employee and the labour hire firm.
5. As previously mentioned, as labour hire employees are often not covered by the collective agreement or EBA covering direct employees at a host organisation, their rates of pay and other working conditions can be, and often are substantially worse. These issues extend to workers under sham contracting arrangements.⁵⁴
6. In terms of State based regulation, Western Australia provides general rights entitlements for workers in relation to long service leave, OHS, equal opportunity and workers' compensation etc.
7. However, the current regulatory framework is inadequate when it comes to regulating the distinct triangular relationship that exists in the labour hire industry. Not only are joint employment doctrines lacking, but there is no sufficient regulation for the industry itself in terms of licensing, restrictions on scope of service, authorisation, monitoring and compliance (among other things).

⁴⁹ Ibid

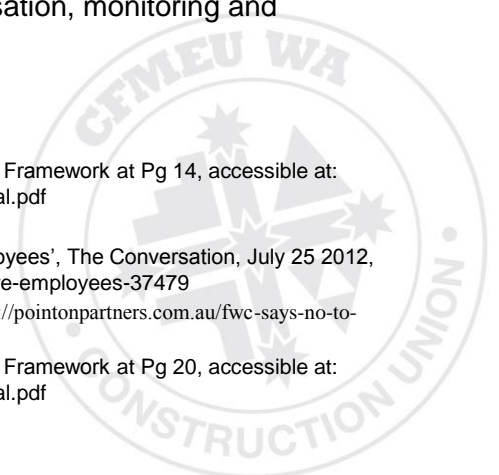
⁵⁰ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 14, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

⁵¹ Ibid

⁵² Tranfaglia, M. A., [2015], 'Australian dream a nightmare for many in the labour hire employees', The Conversation, July 25 2012, accessible at: <http://theconversation.com/australian-dream-a-nightmare-for-many-labour-hire-employees-37479>

⁵³ Pointon Partners [2014] 'FWC says no to more than one boss!', 16 April 2014, accessible at: <http://pointonpartners.com.au/fwc-says-no-to-more-than-one-boss/>

⁵⁴ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 20, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf



8. While labour hire agencies may argue they are regulated by laws in relation to minimum wage, workers' compensation insurance, etc., the large and growing number of dodgy operators exploiting workers, and the conditions previously mentioned, has proven that the system alone is not working. Labour hire workers are particularly vulnerable to exploitation due to the triangular work relationship and the precarious nature of their work.⁵⁵
9. Having regard to the above, we consider that the industry is largely self-regulated and we believe this is problematic. It is obviously in the self-interest of some providers to act unscrupulously for their own benefit at the expense of their workers.⁵⁶
10. The CFMEU believes that any effective regulation needs to be implemented at the state level. It cannot be voluntary and it needs to be enforceable

RECOMMENDATION 1: INTRODUCTION OF A LICENSING SYSTEM

Current conditions for workers in the labour hire industry are inadequate. To improve these conditions, regulation needs to be implemented and adequately enforced by the Western Australian Government.

The CFMEU believes this is best achieved through the use of a licensing system, as in other jurisdictions such as Queensland and South Australia, which creates barriers to entry to reduce the number of unscrupulous operators and includes a system of enforcement which results in adequate penalties and removal of licensing requirements are breached.

Underhill [2013] has stated that in the past decade, a number of countries have introduced licensing arrangements and strengthened the existing schemes. Most EU countries have introduced licensing schemes alongside the implementation of the EU Directive on Temporary Agency Workers, which seeks to guarantee those who work through employment agencies receive equal pay and conditions with the employees they work alongside. Countries including Japan, Singapore and South Korea have strengthened their existing licensing arrangements as the current systems were viewed as ineffective.⁵⁷

The International Labour Organisation (ILO) suggested that the 'starting point' for all regulation on labour hire is the determination of the legal status and conditions governing their operation. It states that the advantage of compulsory licensing is that it allows for pre-screening of applicants' capabilities and professional experience in the job agency market. It also helps create transparency and can be used as means to improve the functioning of the labour market.⁵⁸

The licensing system we propose should be viewed as a starting point for reducing the exploitation of labour hire workers by unfair and labour agencies.

RECOMMENDATION 2: THRESHOLD CAPITAL REQUIREMENT

The CFMEU recommends that proof of the financial capabilities of a labour hire firm should be given in the form of a specified minimum start-up capital requirement/threshold capital requirement. A license threshold for a minimum amount of required capital ensures that only agencies with sufficient assets and/or revenue would be able to obtain a license.⁵⁹

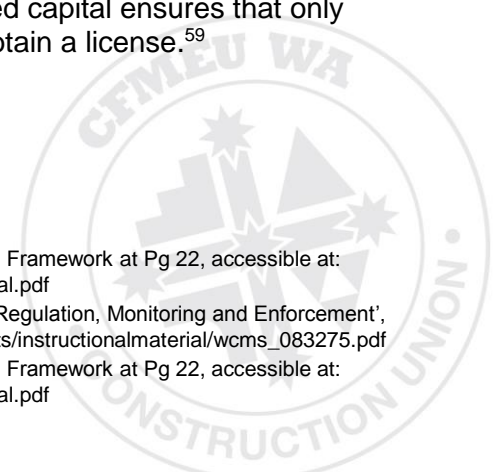
⁵⁵ Ibid at Pg 21

⁵⁶ Ibid at Pg 21

⁵⁷ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 22, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf

⁵⁸ International Labour Organization [ILO] [2007], 'Guide to private employment agencies: Regulation, Monitoring and Enforcement', accessible at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf

⁵⁹ CFMEU [2015], 'Labour Hire and Insecure Work: The need for a new and fairer Victorian Framework at Pg 22, accessible at: https://www.cfmeu.org.au/sites/cfmeuvc-7-x.com.au/files/uploads/CFMEU_Labourhire_Final.pdf



The threshold requirement would act as a barrier to entry for firms with insufficient capital to operate in the industry. This requirement would help minimise the problems associated with fraudulent phoenix activity.⁶⁰

As phoenix activity primarily occurs through the liquidation of a business with little or no assets, a capital requirement coupled with a licensing requirement would prevent a business structuring its operations to hold their assets in other business entities.⁶¹

RECOMMENDATION 3: LICENSING BOND AND ANNUAL LICENSE FEE

The CFMEU recommends that labour hire firms be required to put up a licensing bond in order to be licensed, to be put as security in the event of a labour hire firm failing to meet its obligations, particularly to workers, or for unpaid fines as a result of license provisions and regulation.

In addition to the bond, an annual licence fee should also be charge to cover the administrative costs association with the scheme.

RECOMMENDATION 4: COMPLIANCE UNIT

For a licensing scheme to be effective it needs to be properly enforced. Without enforcement, agencies can simply choose to ignore regulation. An effective compliance unit will approve licences, monitor licensees and conduct investigations of breach of licences and other laws with the ability to revoke or suspend licences. Penalties also need to adequately imposed so they act as an effective deterrent for bad behaviour and should involve significant fines and imprisonment in the case of intentional breaches. The compliance unit can be funded with the support of the administration of a licence fee.⁶²

RECOMMENDATION 5: INCREASED TRANSPARENCY

The compliance unit should also have the responsibility for establishing a public register of all licensed labour hire agencies. The register would facilitate the collection of information by the Western Australian Government in relation to the current environment of the labour hire industry, including information on various labour hire agencies as needed. It would also facilitate the ability for workers to determine if a labour hire firm is licensed.⁶³

RECOMMENDATION 6: INFORMING WORKERS OF THEIR ENTITLEMENTS OR RIGHTS

The CFMEU recommends licensees to be required to educate new labour hire workers about the nature of their employment as well as their entitlements and workplace rights. This would be best facilitated through an information sheet or approved training by a relevant trade union.

RECOMMENDATION 7: ESTABLISH A STATUTORY MAXIMUM PERIOD FOR LABOUR HIRE ASSIGNMENTS WITH A HOST ORGANISATION

The purported benefit of labour hire is to provide flexibility for firms to meet fluctuations in workforce needs. This is not how it is being used. Labour hire firms are increasingly being used to replace a permanent workforce with a precarious one. In order to ensure labour hire is not used to undermine Western Australia's working conditions, a statutory maximum period for a labour hire assignment is required.⁶⁴

⁶⁰ Ibid at Pg 22

⁶¹ Ibid at 23

⁶² Ibid ar 2

⁶³ Ibid at 24

⁶⁴ Ibid at 24



TRADE LICENSING

1. In Australia, trade licensing and registration is largely a state issue. Different states and territories have different requirements for the licensing of trades people. However, across the board, many of Australia's core trades are generally unlicensed.
2. The regulation and licensing of trades has a range of benefits, not only does it improve health and safety standards by ensuring trades people are adequately trained (filtering out incompetent, unsafe and unskilled workers), it also benefits consumers through higher quality services by ensuring that the tradespeople they engage are skilled and experienced.⁶⁵
3. Licensing the trades means that only those that have adequate education and experience are able to work in a particular occupation. This prevents unskilled workers from engaging in work where they have no formal education.⁶⁶
4. With respect to occupational licensing, Kleiner and Krueger [2013] stated:

*"a simple theory of occupational licensing suggests that administrative procedures regulate the supply of labor in the market. The regulators screen entrants to the profession and bar those whose skills or character traits suggest a tendency toward low quality output. The regulators further monitor incumbents and discipline those whose performance is below standards, with punishments that may include revocation of the license needed to practice. Assuming that entry and ongoing performance are controlled in these ways, the quality of the profession would be expected to be raised by occupational licensing, but supply diminished"*⁶⁷

5. Licensing of trade occupations protects skilled workers by preventing the undercutting of wages and conditions of experienced qualified workers by unskilled labour.⁶⁸ As unskilled workers have not invested the time and effort in gaining formal qualifications, they do not require a skilled wage premium, undercutting the wages of costs of experienced tradespeople.
6. Research has also found that workers in occupations where licenses are required often earn higher wages often earn higher wages and have a higher probability of being employed.
7. Gittleman et al [2015] analysed United States Survey of Income and Program Participation data to find that workers with a license or certification earn approximately 6.5 per cent higher wages than those in non-licensed occupations.⁶⁹ The wage premium is due to the fact that licensing screens those attempting to enter an occupation to ensure that a required level of skill is met.⁷⁰
8. The CFMEU has found unqualified labour working in qualified job roles is rife in Western Australia, particularly in the construction industry, with many people working on site without the requisite knowledge or experience in a given field. In many cases, this is linked (in some part) to the use of labour hire, whose workers are largely unskilled as they are not afforded the requisite training or opportunity to upskill.

⁶⁵ CFMEU [2017], 'A Perfect Storm: the Decimation of Australia's Apprenticeship System at Pg 10, accessible at: <https://www.cfmeu.org.au/policy-research/perfect-storm-decimation-australias-apprenticeship-system>

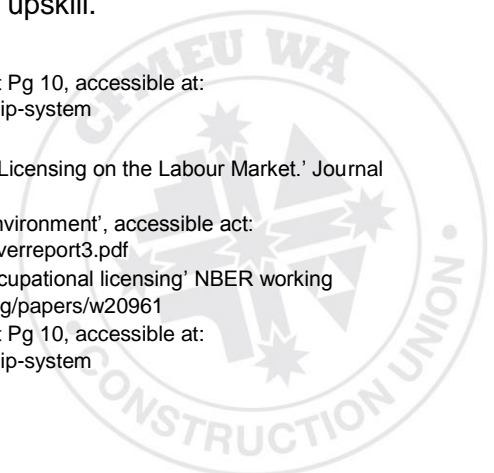
⁶⁶ Ibid at 10

⁶⁷ Kleiner, M. and Krueger, A., [2013]. 'Analysing the Extent and Influence of Occupational Licensing on the Labour Market.' Journal of Labor Economics, 31(2), pp 173 0- 202.

⁶⁸ NCVET [2011], 'The apprenticeship and traineeship's relationships with the regulatory environment', accessible at: <https://www.australianapprenticeships.gov.au/sites/ausapps/files/publication-documents/ncverreport3.pdf>

⁶⁹ Gittleman, M., Klee, M., Kleiner, M., [2015], 'Analysing the labour market outcomes of occupational licensing' NBER working paper no. 20961, National Bureau of Economic Research, accessible at: <http://www.nber.org/papers/w20961>

⁷⁰ CFMEU [2017], 'A Perfect Storm: the Decimation of Australia's Apprenticeship System at Pg 10, accessible at: <https://www.cfmeu.org.au/policy-research/perfect-storm-decimation-australias-apprenticeship-system>



9. A direct example of this practice can be found on the recent Perth Children's Hospital Project (PCH Project). On the PCH Project, the CFMEU found that John Holland (in many instances) did not put in place a structure to ensure workers engaged on the PCH project had suitable industry experience or were trade qualified (in respect of trade work). Many of the sub-contractors who were awarded a particular contract, would then contract out their employment obligations to labour hire firms paying workers well below industry standards. The use of labour hire firms paying sub-industry rates and conditions attracted a transient workforce of largely foreign backpackers. There was no system of regulation put in place by the labour-hire firms, subcontractors or John Holland to ensure work was performed by qualified personnel. In our view, this undoubtedly contributed to the significant delays and failure to meet completion deadlines (an example the door fire sets were installed by unqualified workers at first instance and required replacement by a legitimate contractor using trade qualified workers), cost over-runs and poor workmanship on the PCH Project.
10. This problem is emphasised by the significant transformation that has occurred within the Western Australian construction industry. Where previously the industry was dominated by large construction companies with directly employed workers, we now see a highly complex "pyramid" of contractual relationships, otherwise known as a hierarchical system of contracting which involves a head contractor at the top and multiple layers of smaller subcontractors underneath.
11. Typically, management of a project is assigned to a head contractor, who has a direct contractual relationship with the developer but does not employ a significant workforce in its own right. On many commercial projects, the head contractor will likely engage large specialist contractors, who then engage smaller subcontractors to undertake specific portions of work. The direct consequence of such arrangements is that there is a contractual and legal disconnect between those that are performing the work, the head contractor and the State Government as the developer. In many instances, the State Government has no "line of sight" to the workers that are actually undertaking the bulk of the work on a given project. This is highly problematic and emphasises the need for quality assurance procedures to be undertaken by the relevant regulatory authority (in this case the Building Commission) and for a system of trade licensing to be implemented and enforced in Western Australia to ensure standards are maintained and the tax payers expectations are met.
12. The undermining of skilled wages and conditions has many negative implications, not only for the standard of work (generally), but also for Western Australia's apprenticeship system, with many potential apprentices unable to see the benefit of investing time, money and effort into an apprenticeship when they are unable to enter into the industry without any formal training or qualifications.⁷¹
13. The undermining of skilled wages also means there is little incentive in terms of future income as compared with simply entering the labour market as an unskilled labourer – diminishing education in Australia.⁷²
14. In order to ensure high levels of workmanship, health and safety in high risk industries, as well as to ensure adequate incentives and rewards for investing in vocational education, Western Australian trades need to be licensed.

RECOMMENDATION 8: TRADE LICENSING SYSTEM

The development and implementation of a licensing and registration requirement for all tradespersons working in the commercial construction sector in the following fields, but not limited to (with consideration to the classification in the relevant Award):

⁷¹ Ibid at 10

⁷² Ibid at 10



- a) Brickwork;
- b) Carpentry (including formwork);
- c) Tiling
- d) Window Fixing, Facades and Glazing;
- e) Wall and Ceiling Fixing;
- f) Painting; and
- g) Plastering.

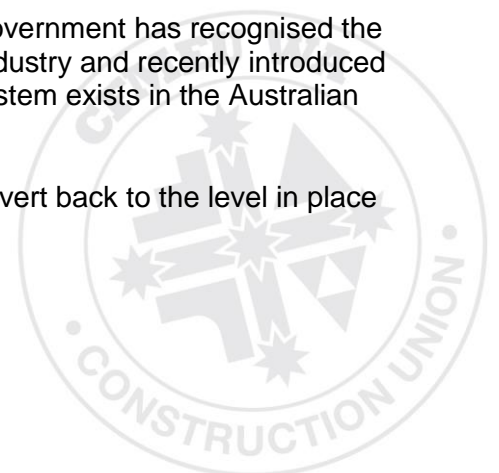
The licensing and registration requirement will prohibit workers who are not trade qualified or have not obtained a Recognition of Prior Learning Assessment and Verification of Competency as determined by WA TAFE, to work on construction sites.

RECOMMENDATION 9: QUALITY ASSURANCE

The Building Commission, as the relevant State Government authority must undertake proactive quality assurance on construction projects to ensure that trade qualified workers are undertaking construction work in the construction sector.

HIGH RISK WORK LICENSES (HRWL)

1. Prior to the resources boom in Western Australia, if an individual was either required to obtain our sought to obtain further training via a HRWL, as a prerequisite for that license, that individual would be required to undergo a period of practical training within their chosen discipline (as an example Rigging). At this time, the process of obtaining a HRWL would broadly involve the following:
 - a) The individual would be required, as part of that training, to work with a crew and complete a log book. Typically this would be over a 12 month period;
 - b) The individual would then be required to attend TAFE to undertake a written theory component and subsequently complete an exam;
 - c) On passing the exam the individual would then be assessed by a WorkSafe inspector; and
 - d) If the individual passed the appraisal, the individual would be issued with a HRWL.
2. Currently, all that is required is to obtain a HRWL is to undertake a week long training course which covers both the practical and theory based components. No experience is required.
3. The change in qualifying procedure was brought about as a result the resources industry effectively lobbying the State Government that there was a shortage of qualified HRWL holders. The CFMEU submits that this has had a dramatic effect on the skill level and safety standards within the construction industry and led to the rise of dishonest and unsafe Registered Training Organisations (RTO), the streamlining of training services and the rise of so-called “tick and flick” organisations. All of these issues have contributed to a reduction in skill and safety standards as there little or no emphasis or importance on increasing or maintaining skills to an appropriate level.
4. This issue is not new. As an example, the New Zealand Government has recognised the level of skill and training required within the construction industry and recently introduced an apprenticeship type system for scaffolders. No such system exists in the Australian context.
5. The CFMEU have previously suggested that the training revert back to the level in place prior to the resources boom.



RECOMMENDATION 10: INCREASE TRAINING REQUIREMENTS FOR HRWLS

The CFMEU recommends that the training regime associated with HRWLs revert back to the level in place prior to the resources boom. As mentioned, the previous system in Western Australia worked well and consisted of a significant practical component. This practical component should be incorporated into HRWL once again. Further, auditing protocols should be dramatically increased to ensure RTO's provide training of sufficient standard.

CONSTRUCTION SAFETY CARDS OR WHITE CARDS

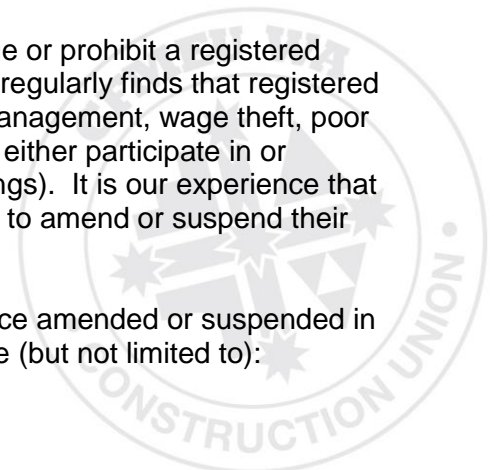
1. The Construction Induction White Card system has undergone significant regulatory changes in recent years, which we believe should be revisited and reevaluated. Prior to 2009, the requirement for those wishing to maintain their accreditation was to attend a refresher course every three years. In our view, this was the ideal situation, as we believe that continued evaluation of an individual's ability to work safely in the construction industry can only result in better safety overall.
2. However, in 2009, then-Treasurer and Minister for Commerce Troy Buswell changed the requirement to the current situation whereby an individual's White Card is essentially for-life, and does not require renewal. This was done to bring WA in line with the rest of Australia, where renewals were not required for induction cards. The move was opposed at the time by the CFMEU and other construction unions, as well as the WA Master Builders Association. That the move was opposed from both from the employees and employers perspective within the industry and should speak to its ill-conceived nature.

RECOMMENDATION 11: RETURN TO 2009 LEVEL OF TRAINING TO IMPROVE SAFETY OUTCOMES

The CFMEU's recommendation is that the scheme should be returned to its pre-2009 structure. Furthermore, we believe that tighter regulation should be brought in around face-to-face requirements in the delivery of the course. It is currently far too easy to obtain a White Card online, with no actual contact between the participant and the RTO, and we believe this is not acceptable. The standard of training is not high enough, and when combined with the lack of requirements for renewal, ultimately leads to a workforce that is largely unprepared for the practical elements of workplace safety from the beginning.

REGULATION OF BUILDING LICENSES

1. The CFMEU submits that there should be more stringent regulation of Building Licenses in Western Australia.
2. Currently, within the Western Australian jurisdiction, s 26 of the *Building Services (Registration) Act 2011* allows the Board discretion to amend or suspend a building licence upon the Boards request, whilst s 53 allows disciplinary matters to be considered by the Board.
3. We consider this function too broad to effectively discourage or prohibit a registered builder engaged in unlawful practices. In fact, the CFMEU regularly finds that registered builders engage in poor OHS standards, poor document management, wage theft, poor industrial relations, poor quality assurance procedures and either participate in or condone sham contracting arrangements (among other things). It is our experience that builders engage in these practices with little or no recourse to amend or suspend their building licence.
4. We believe that a registered builder should have their licence amended or suspended in circumstances where the registered builder is found to have (but not limited to):



- a) breached OHS laws;
 - b) not rectified defective works;
 - c) poor document management;
 - d) poor financial records or limited asset backing;
 - e) poor industrial relations;
 - f) limited or out of date insurance;
 - g) not paid workers entitlements or failed to pay a judgement debt;
 - h) poor quality assurance procedures;
 - i) participated in or condone sham contracting; and
 - j) not met any other legislative requirements.
5. The CFMEU submits that a demerit point system should be introduced into the Western Australian jurisdiction, much like Queensland. Demerit points would be issued according to the specific contravention. The accumulation of those demerit points would potentially lead to a prohibition or potential disqualification of the building licence.
6. Finally, we would suggest that the demerit system would also apply for the purposes of tendering for State Government work. We submit, that if a builder accumulates a certain amount of demerit points, that builder should not be entitled to be accepted as a worthy participant in State Government procurement processes.

RECOMMENDATION 12: REGULATION OF BUILDING LICENCES

The CFMEU recommends that a registered builder should have their licence suspended for certain breaches of the law, including OHS and industrial relations legislation.

The State Government should implement a demerit point system. Accumulation of demerit points should result in the prohibition or disqualification of a building license and have the effect of limiting the registered builder's ability to tender for State Government work.



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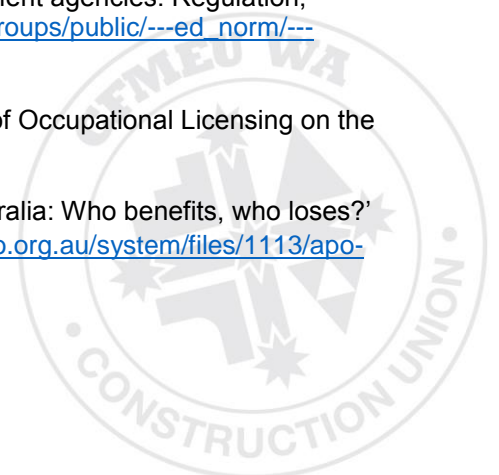
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