

LABOUR HIRE

CAMPAIGN REPORT · JUNE 2020

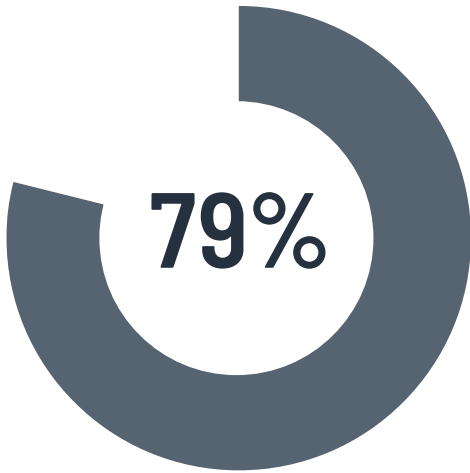


Australian Government

Australian Building and
Construction Commission

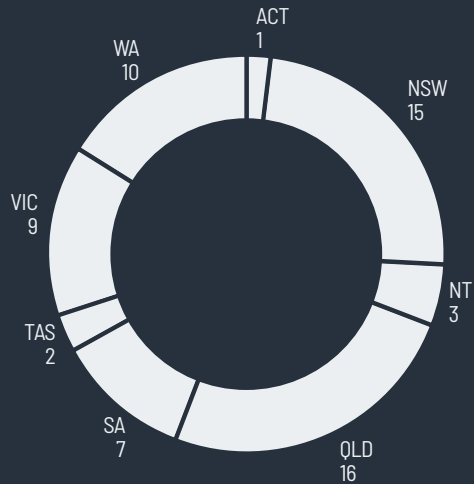


AT A GLANCE

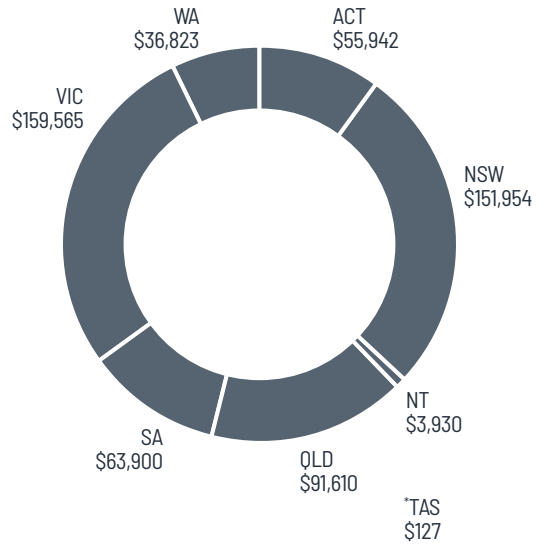


OF COMPANIES
AUDITED ARE
NOT COMPLYING
WITH AUSTRALIAN
WORKPLACE LAWS

63
LABOUR HIRE
COMPANIES
AUDITED



\$563,850
RECOVERED FOR
1337 WORKERS



12
COMPLIANT

30
NON-COMPLIANT,
BREACH RECTIFIED

20
NON-COMPLIANT,
EDUCATION

1
UPGRADED,
INVESTIGATION

BACKGROUND

The labour hire industry is a significant employer of building workers.

Labour hire arrangements involve a triangular relationship in which a labour hire business supplies a worker to a host employer for an agreed fee. This arrangement enables a flexible approach to the engagement of labour, without some of the constraints associated with engaging ongoing employees.

Numerous inquiries undertaken by all levels of government in the past few years have highlighted the vulnerability of labour hire employees. Several jurisdictions have introduced labour hire licensing schemes.

The precarious nature of labour hire employment means that workers are less likely to speak up about their working conditions.

During 2019, the Australian Building and Construction Commission (ABCC) engaged in an audit program targeting labour hire employers.

METHODOLOGY

ABC Inspectors carried out compliance audits on 63 labour hire employers in the building and construction industry. The focus of these audits was to ensure that employees were being correctly paid, including their base rate of pay, penalty rates, overtime rates and allowances. The audits also checked the employers' record keeping and pay slips.

The compliance audits only covered workers engaged in building work within the meaning of section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act).

Labour hire employers selected were located across Australia and employed a range of classification and employment types. Information received from industry led to an inclusion of a small number of specific employers.

ABC Inspectors assessed time and wages records for compliance with the *Fair Work Act 2009* (Fair Work Act), the Fair Work

Regulations 2009 and the modern award or enterprise agreement.

An enterprise agreement predominantly covered 41 per cent of workers. A modern award covered the remaining 59 per cent. The most common award was the Building and Construction General On-Site Award 2010.


ABC Inspectors provided education to labour hire employers to help them understand their obligations. Where potential underpayments were identified the ABC Inspector worked with each employer to rectify any issues identified and ensured evidence was obtained of all back payments.

Where there were deficiencies in record keeping or pay slips the ABC Inspector assisted the company to improve their practices and sought evidence of ongoing compliance.

KEY FINDINGS

Fifty of the sixty-three employers audited were non-compliant with Australian workplace laws.

The rate of non-compliance between employers that were covered by a modern award compared to those using an enterprise agreement was statistically insignificant.



Record keeping within the labour hire sector was poor.

Record Keeping

Forty eight per cent of non-compliant employers (24) contravened the record keeping and/or pay slip provisions of the Fair Work Act.

The ABCC identified non-compliance issues including:

- failure to keep a record of overtime hours worked by an employee
- incorrect ABN/employer name on the pay slip
- pay slip not recording the pay period for which the payment related
- pay slip not recording the date the payment was made.

Monetary Entitlements

Sixty four per cent of non-compliant employers (32) had failed to pay the correct:

- base rate for ordinary hours
- allowances
- overtime or
- penalties.

Errors occurred where an employer used an industrial instrument that did not apply to the workers or when they were operating with limited knowledge of their obligations.





CASE STUDIES

TRAVEL ALLOWANCE

A labour hire employer in regional New South Wales did not pay the fares and travel pattern allowance as required in clause 25.2 of the Building and Construction General On-site Award 2010 (the Award).

The labour hire employer argued that because workers do not use vehicles to travel to the construction site (workers used public transport), they were not required to pay the allowance. This is inconsistent with the Award provision.

The audit further identified that the employer did not pay the meal allowance provided for in clause 20 of the Award to employees who had worked more than one and a half hours of overtime.

This resulted in back payments totalling \$7,164 to 12 employees. The process also provided the ABCC with the opportunity to educate the labour hire employer on their workplace obligations.

MINIMUM ENGAGEMENT FOR CASUALS

The WA branch of a national labour hire employer was not complying with the minimum engagement time for casual employees as provided under the applicable industrial instrument.

According to clause 14.4 of the Building and Construction General On-site Award 2010, casual employees are entitled to be paid for a minimum of four hours work per engagement. Where casual employees are required to attend work, they are to be paid for at least four hours of work. This entitlement exists even if they are not required or do not work for all four hours.

The ABCC educated the WA labour hire employer and requested it rectify the above for all affected casual employees. As a result, the WA labour hire employer back paid \$4,913 to 53 employees.

MINIMUM RATE OF PAY FOR APPRENTICES

A labour hire employer in Queensland specialising in the placement of apprentices in the commercial construction industry was found to be underpaying the minimum rate of pay, overtime and allowances for its apprentices.

The issues related to the employer not updating its rates from the previous minimum wage increase, therefore the flow on effect meant their penalty and overtime rates were incorrect as well. The employer had also failed to increase the travel allowance owed to employees from their progression in years of their apprenticeships.

The employer paid back a total of \$21,601 to their seven apprentices, including one payment of more than \$5,000. The ABCC also educated the labour hire employer on their rights and obligations.



MORE DETAIL ABOUT THE LABOUR HIRE INDUSTRY

Labour hire arrangements involve a triangular relationship in which a labour hire business supplies a worker to a host employer for an agreed fee. This arrangement enables a flexible approach to the engagement of labour, without some of the constraints associated with engaging ongoing employees.

The labour hire employer is responsible for ensuring the employee is correctly paid. The industrial instrument that applies to the worker is the award or enterprise agreement that applies to the labour hire business.

The labour hire industry is a significant employer of workers. However, there is a lack of disaggregated information to ascertain how many labour hire workers are engaged in the building and construction industry or fall within the jurisdiction of the ABCC.

In 2015, the Productivity Commission estimated that labour hire accounts for around 1.8 per cent of the labour market or 212,400 employed persons.¹

A 2018 APH research paper² stated that:

- Labour hire employees are much more likely to be employed on a casual basis and have a greater expectation of leaving their employment in 12 months.
- Almost four in five (78.8 per cent) labour hire employees in August 2018 were employed on a casual basis compared with the average for all employees of 24.6 per cent.

- Just under a quarter (24.4 per cent) of labour hire employees did not expect to be working for the same employer in 12 months—more than double the estimate for all employees (at 9.9 per cent).

Numerous inquiries undertaken by all levels of government in the past few years have highlighted the vulnerability of labour hire employees. These reports include:

- South Australia Parliament House of Assembly Economic and Finance Committee, *Inquiry into the labour hire industry: final report*, October 2016
- Victorian Inquiry into Labour Hire Industry and Insecure Work, *Victorian Inquiry into the Labour Hire Industry and Insecure Work: final report*, August 2016
- Australia Parliament Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016
- Queensland Legislative Assembly Finance and Administration Committee, *Inquiry into the practices of the labour hire industry in Queensland*, June 2016

Several jurisdictions have introduced labour hire licensing schemes, including:

- *Labour Hire Licensing Act 2017 (Qld)*
- *Labour Hire Licensing Act 2018 (Vic)*
- *Labour Hire Licensing Act 2017 (SA)*

1 Productivity Commission, Workplace Relations Framework: Productivity Commission Inquiry Report, vol. 2, PC, Melbourne, 2015, p. 1092.

2 Trends in use of non-standard forms of employment (10 December 2018) APH Research Paper, Geoff Gilfillan, Statistics and Mapping Section (Sources: 2001, 2008 and 2001—ABS, Forms of Employment, cat. no. 6359.0; 2014, 2016 and 2018—ABS, Characteristics of Employment, cat. no. 6333.0, Table 13.3)

ABOUT THE ABCC

The ABCC is an independent statutory agency established under the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act). The ABCC commenced operations on 2 December 2016 and replaced its predecessor agency, Fair Work Building & Construction (FWBC).

Section 16 of the BCIIP Act provides that the ABCC's statutory functions include:

- promoting the main object of the BCIIP Act;
- monitoring and promoting appropriate standards of conduct by building industry participants, including by:
 - monitoring and promoting compliance with this Act, designated building laws (including the Fair Work Act and fair work instruments) and the Building Code (Building Laws) by building industry participants; and
 - referring matters to other relevant agencies and bodies;
- investigating suspected contraventions by building industry participants of Building Laws;
- ensuring building employers and building contractors comply with their obligations under Building Laws;
- instituting, or intervening in, proceedings in accordance with the BCIIP Act;
- providing assistance and advice to building industry participants regarding their rights and obligations under Building Laws;
- providing representation to a building industry participant who is, or might become, a party to a proceeding under Building Laws, if the ABC Commissioner considers that providing the representation would promote the enforcement of the relevant Building Law; and
- disseminating information about Building Laws, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants.

THE ABCC'S JURISDICTION

The ABCC's jurisdiction covers building industry participants as defined in the BCIIIP Act.

Building industry participants include:

- A building employee
- A building employer
- A building contractor
- A person who enters into a contract with a building contractor where building work is carried out or arranged
- A building association (for example, union or employer association)
- An officer, delegate or other representative of a building association.

For the ABCC to have jurisdiction there must also be a connection to building work. That is the particular activity in which the workplace parties are engaged constitutes building work as defined by the BCIIIP Act.

DEFINITION OF BUILDING WORK

Section 6 of the BCIIIP Act defines 'Building Work'.

Broadly the definition captures civil, commercial and multi-dwelling residential building and construction activities but does not include: the drilling for oil or natural gas; the extraction of minerals; or, the construction of less than five single dwelling-houses.




CONCLUSION

The ABCC was disappointed to discover such a high level of non-compliance in a sector established to provide labour to the construction industry.

Employers that profit from a business model designed to relieve others of their lawful obligations should be beyond reproach.

All labour hire employers found not complying with their lawful obligations rectified the alleged contraventions to the satisfaction of the ABCC, including by repaying workers in full.

Host employers need to be aware that in contracting out labour obligations without significant oversight they may expose themselves to risks of liability.

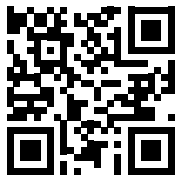


Ensuring the correct wages and entitlements are paid to vulnerable labour hire workers is essential given the precarious nature of their employment.

The findings of this compliance activity will inform the ABCC's future proactive programs.

The ABCC encourages individuals with concerns about labour hire engagement within the commercial building sector to report it to us. People can anonymously report using this form: <https://www.abcc.gov.au/contact/anonymous-reporting-form>

**GET THE ABCC
ON SITE APP**



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INDUSTRY UPDATE AT**

abcc.gov.au/update