

Chiselling Away: The Role of Employment Agencies in the Erosion of the Australian National Model of Employment

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Paper presented to the 26th Conference of the International Working Paper on Labour Market Segmentation, Berlin, 8-11th September 2005.

Introduction

In the late 1800s private sector employment agencies were viewed as destabilising labour market operations and contributing to excessive frictional unemployment. But as public sector agencies emerged and eventually monopolised the field, private sector agencies all but disappeared. Their services became more specialised, and their impact on labour market structures more benign. Towards the end of the last century, new forms of employment agencies emerged which again threatened the stability of labour markets. Known as labour hire agencies, these agencies employ their own workers and place them on temporary assignments with hosts. Their rate of growth, and their potential for undermining employment standards and stable labour markets first drew the attention of the ILO in the late 1960s (ILO, 1994). Over the next 25 years, a continual before the ILO on the question of whether they should be regulated separately from traditional employment agencies illustrates the controversy and uncertainty which accompanied their role (ILO, 1994). This controversy continues. They are viewed by some as highly effective intermediaries enhancing labour market flexibility and promoting labour market mobility. Others view them as undermining accepted employment standards and contributing to the destabilisation of the labour market. An international labour standard on labour hire agencies was eventually approved by the ILO in 1997 (ILO, 1997). The standard allows a role for temporary employment agencies, conditional on the application of accepted international employment standards. The Australian government has not ratified this standard, nor has it been willing to accept a differentiated role for labour hire agencies compared to traditional employment agencies. Instead, it has promoted the unconstrained expansion of labour hire agencies notwithstanding their potential to produce labour market outcomes similar to those evident a century earlier.

This paper examines the changing role of employment agencies in Australia. It commences with an account of the early forms of unregulated employment agencies, and subsequent public policy initiatives to limit the extent of their harmful impact on the labour market. Overseas and Australian evidence is drawn upon to illustrate both the nature of the problems and common solutions found. In the next section the role of Australia's pseudo-monopoly public sector employment agency (the Commonwealth Employment Service, hereafter referred to as CES) is discussed, especially its decline in the latter decades of the last century. Private sector employment agencies benefited from this decline. The reasons for their growth are also discussed. Labour hire agencies also emerged during this period. But their role differs from traditional agencies in important respects, particularly in relation to their impact upon employment and the labour market. These differences are explained, and the regulatory response of the ILO to the

international emergence of these agencies is described. In the late 1990s, a substantial shift occurred in public policy towards the role of public sector employment agencies. What began as an outsourcing of job matching functions, primarily for the unemployed, developed into a more widespread subsidisation of private sector employment agencies. Section three outlines these changes, and details the accompanying agency licensing system. In section four, the success of this program and its impact upon labour hire agencies and the labour market are tentatively assessed. The recency of these changes limits such an evaluation; however, overseas evidence on the role of temporary agency work as a labour market stepping stone provides pointers on what may eventuate in Australia. The conclusion highlights the consistency between the federal government's approach to subsidising labour hire agencies and its other priorities in relation to labour hire agencies and freeing up labour market regulation. By dismantling collective regulation of agencies, whilst simultaneously promoting agencies through other regulatory means, the government has allowed employment agencies to increasingly destabilise employment practices and labour market structures.

The role of employment agencies in the 1800s and early 1900s

Employment agencies in the late 1800s and early 1900s were private for-profit small businesses, and non-profit seeking bureaus run by unions, charities and, to varying degrees, State and local governments (or their equivalent, such as colonies in Australia) (O'Donnell & Mitchell, 2001). They operated in local labour markets, and charged a fee to workers for job placements. At the time, the potential of different occupational agencies to contribute to labour market inefficiencies by segmenting multiple reserves of unemployed, and to exploit unemployed workers was well recognised by researchers and policy makers alike. In the United States, Commons wrote in 1913 of the problems of multiple markets for labour. "Each has its reserve labor force ready to work when needed. Many markets tend to increase the number of unemployed." (Commons, 1913:359). The "ideal organization of the labor market" (p.359) he wrote, could only be achieved through one unified national labour exchange. Lescohier (1919) also argued in favour of replacing small, local agencies with a single public monopoly. "At present...the employer who wants a certain kind of man frequently places his order in one office whilst the employee who seeks that kind of work files his application in another. The two fail to meet. With a single co-ordinated system of offices, the two will come together in every instance...we should not then have men leaving Chicago to fill jobs in St.Louis at the same time that men are leaving St.Louis to fill the same kinds of jobs in Chicago" (p.161-62). In the United Kingdom, private employment agencies were less common, and local government funded agencies had not succeeded like their American public and private sector counterparts (Beveridge, 1912). Nevertheless, Beveridge wrote of the inefficiencies of other forms of multiple reserves of unemployed, notably hawking labour outside the factory gate. "The employer has to wait for men though just the men he wants are out of work and looking for it elsewhere...men lose earning time which they cannot replace, simply because they have sought their market in the wrong direction." (p.199). In Australia, the inefficiencies of multiple reserves of labour were discussed also, when

the debates on the merits of a centrally co-ordinated labour exchange first emerged in the 1920s (O'Donnell, 2003).

Concerns over the role of private sector employment agencies were not, however, limited to inefficient labour market outcomes. Early writers focused more upon the extensive exploitation of workers which often characterised agency practices. Lescohier (1919) identified the conflicting interests of the agencies compared to their worker customers. "The profits of the employment agent come at so much per head. The more heads, the more dollars. The greater the turnover, the larger the profits. The interests of the labourer demand a steady job. The interests of the employment agent are exactly the opposite: the more men he sends out, the greater the number of fees..."(p.162). It was not unknown for agencies and foreman to collude on the termination of workers to increase turnover. Beveridge (1912:256) spoke of the same practice in the UK. There, agencies often charged the worker applicant a percentage of 12 months salary for a position. The employer would dismiss the employee after only a few weeks, and the agency would retain their entire fee.

Prior to the development of the welfare state, with only limited access to other sources of job vacancy information, unemployed workers were vulnerable to exploitation by for-profit employment agencies. Workers paid fees to agencies prior to being sent to non-existent jobs (O'Donnell & Mitchell, 2001); agencies charged workers excessive transportation fees to be sent to jobs they did not want or were misled about (such as sending single young females to remote, isolated locations) (Kennedy); and at least in the US, took advantage of intoxicated workers who were ignorant of their rights (Lescohier, 1919). To enlist workers, agencies often hired 'runners' who would "not let the workers in the district know that they are employees of the employment agency, but in saloons, boarding houses, pool rooms, and other places where workingmen congregate they casually get into a conversation, tell them about 'a fine job' that such and such an agency has listed, and suggest, 'let's all go out on that job to-night'. They show up with the rest of the crew, go down to the train and then, either in the depot or after they have actually boarded the trains, they slip away to do the same kind of work the next day" (Lescohier, 1919:157). Whilst regulation of private employment agencies had been introduced in some states of the US before the turn of the twentieth century (Lescohier, 1919) and in Australia within decades (O'Donnell & Mitchell, 2001), its effectiveness in protecting workers appears to have been universally weak.

It was in this context that the ILO proscribed private sector fee-charging employment agencies through the Fee-Charging Employment Agencies Convention (34) of 1933. Such agencies, it was argued, were inconsistent with the Treaty of Versailles which affirmed that labour is not a commodity. "Placing workers cannot be a commercial transaction...It follows that providing information and access to employment, namely placement, is the responsibility of the public service. Private firms of individuals should not be allowed for profit financially or prevent public access to their information on job vacancies." (ILO, 1994:7) Few countries ratified this convention, and in 1949 it was revised to allow for the regulation of for-profit employment agencies (Fee-charging

Employment Agencies Convention (96) of 1949 (revised)) through government issued annual licences, and approved fees and expenses.¹

The alternative to private employment agencies was public funded, often national, employment exchanges. There were seen as a means of simultaneously overcoming the inefficiencies of multiple reserves of workers, whilst providing a free service which would eliminate the need for private fee-charging agencies. But public exchanges were also seen as a means of stabilising the labour market. In the US, Tannenbaum had earlier written of the demoralising impact of contemporary employment instability and insecurity. “So many workers are drifting constantly, so many others have their regular habits and customary existence undermined by unemployment and layoffs that even those who remain stationary are infected with the restlessness characteristic of the less stable...constant friction, constant danger, constant upsetting of old standards and the increasing difficulty of creating new ones” (Tannenbaum, cited in Douglas, Hitchcock, & Atkins, 1925:393). Public labour exchanges were promoted in the US as means of overcoming this instability. “Our system must be able to keep every workman employed with the maximum steadiness; must be able to sift and classify the laborers, so that individuals who have a tendency to degenerate into casuals may be spotted and if possible held to steady employment (Lescotier, 1919:160). When the United Kingdom first established a national exchange in 1910, its introduction was preceded by a debate about the need to de-casualise employment relations by promoting regular, permanent employment. A labour exchange would enable a distinction to be drawn between those regularly employed, and those either malingering or unable to find jobs due to inadequate demand for labour (O’Donnell, 2003). Separate exchanges were subsequently developed for stable employment and for industries where casual employment was regarded as unavoidable (Beveridge, 1912: 299).

In Australia, attention had been drawn to the difficulties of distinguishing employed from unemployed when employment was often casual and sporadic at the turn of the century. But by 1946, when a national publicly funded employment agency was finally developed (the CES), permanent employment was more widespread, and the rationale for an exchange was based solely on direct economic benefits. Labour mobility could be enhanced, frictional unemployment reduced, and ex-service personnel and workers displaced from World War II wartime employment quickly returned to the labour market through a national labour exchange (O’Donnell, 2003). In addition to job broking, the national exchange was also responsible for the administration of unemployment benefits and other welfare relief for unemployed workers. These two functions dovetailed well. The entitlement to unemployment benefits was conditional on passing a ‘work test’, and this test was best applied by the agency which also responsible for job placements. According to O’Donnell (2003) the development of the Australian national employment exchange and associated work-tests illustrates the way in which government policy gave a new meaning to the concept of unemployed. Work tests distinguished unemployment from employment which was regarded as full-time and regular.

The changing role of the CES

Over the next thirty years, the CES's primary function was to serve as a clearing house for job vacancies and job seekers. From the early 1970s onwards, with stagnating demand for labour, its role expanded incrementally to become the major government provider of new labour market activities such as retraining schemes, providing specialist support for aboriginal unemployed, and managing the allocation of job subsidies (Niland, 1975; Steele, 1994). Towards the end of the 1980s, however, a number of changes combined to challenge the capacity of the CES to serve the multiple and often contradictory interests of being a job broker, the implementer of labour market policy, and the overseer of unemployment benefits. Widespread industry restructuring impacted heavily upon those occupational groups traditionally serviced by the CES (blue-collar, and low-skill white collar), contributing to a rapid growth in unemployment. The broad-banding of jobs, a shift in employer preferences towards more selective recruitment to meet new production quality priorities, and the growth in demand for non-standard employment all coincided with the CES's introduction of a computerised vacancy circulation system which impeded rather than enhanced flexibility in job matching (Steele, 1994). By the late 1980s, the CES's capacity to service employers' hiring needs was severely hampered. Employers turned to other job matching mechanisms. In the face of declining employer support, a review of the CES was undertaken in 1988. According to the review, "To many employers' way of thinking...the CES are providing a service which they do not really want/need" (SRG, 1989 cited in Steel, 1994:63).

In attempt to regain lost ground, the CES introduced a suite of fee-for-service activities which would promote a more employer orientated service. They began to compete with private sector agencies (Boreham, Roan, & Whitehouse, 1994; Steele, 1994). But a major recession in the early 1990s produced record levels of unemployment, and long term unemployment ballooned. The Federal Government refocused the CES's primary activities back to servicing job seekers, especially the long-term unemployed. CES resources were redirected towards those who had been unemployed for more than 12 months, at the expense of the more job-ready (Boreham et al, 1994; Steele, 1994). The CES met this objective, in part, by repeatedly directing long term unemployed to job interviews. At a time of high unemployment, when vacancies could easily be filled through word-of-mouth and newspapers advertisements, the CES was providing employers with job applicants whom employers regarded as least suitable (Steele, 1994). At the same time, the government also contracted with private sector agencies (primarily not-for-profit) to service the needs of long-term unemployed, through placements into training programs or employment (Considine, 2001:119). This was the first of a series of government policies adopted to integrate private sector providers into the broader job brokering field.

Tensions inevitably arise when public employment agencies are charged with meeting the needs of both employers and the long-term unemployed. Servicing the needs of long-term and disadvantaged unemployed workers at the expense of meeting employer needs for experienced, skilled workers eventually becomes counter-productive. Criticisms of the CES's failure to accommodate employers in the late 1980s and early 1990s reflected this tension (Steele, 1994). Employers continued to turn elsewhere for their recruitment needs, and job ready unemployed workers increasingly gained jobs through other

channels. One measure of this shift was the extent to which publicly advertised vacancies were attributable to the CES. In the mid-1980s, the CES held 40% of these vacancies. By 1993, their share had fallen to 18.4% (Steele, 1994:44). A second indicator is the process workers use to find jobs. In 1986, 12.1% of successful job searchers found their job through the CES; by 1998 only 6.4% did so (Webster & Harding, 2000:18). In the mid-1990s a major overhaul of the CES was proposed, including more extensive services for long-term unemployed, again coupled with greater attention to the needs of employers through dedicated employer servicing units (Steele, 1994). But these changes were to be relatively short-lived. In 1998, following a change of government two years earlier, the CES was abolished and replaced by private sector providers. Unemployed workers now register with a new government agency, known as Centrelink, for unemployment benefits. Centrelink classifies their level of disadvantage, and directs them to private sector agencies, known as Job Network Members, for job search support (Considine, 2001).

As the CES languished, private sector employment agencies increasingly filled the gap. Whilst aggregate data suggests private sector employment agencies maintained a steady market share of around 1.5% of successful placements throughout the 1980s and early 1990s (ABS, 1998, 2000), other research points to an increasingly segmented recruitment market which favoured private sector agencies. Boreham et al (1994), in a limited survey of employers in 1992/93, found that newspaper advertisements were the main source of recruitment for clerical and administrative staff, but 42% of employers drew upon private sector agencies compared to only 36% who used the CES (Boreham et al, 1994:551). Similarly, Wooden and Harding (1998), in a national survey of all non-government businesses recruiting in 1995, found employers were much more likely to use private sector agencies for skilled white-collar vacancies, and limited their use of the CES to skilled blue collar and semi/unskilled placements. By 2000, private sector agencies had more than doubled their share of successful placements to 3.3%, surpassing the 2.8% attributable to Centrelink (ABS, 2000). Unemployed workers also recognised the growing importance of private sector agencies to successful job placements. By 2002, 36% of unemployed workers had registered with a private sector agency. This is just over half the proportion who had registered with 'quasi-public' Job Network Members (ABS, 2002: responses were not exclusive).

The changing role of private sector employment agencies

Two forms of private sector employment agencies expanded in Australia during the 1980s. The first was recruitment agencies. These are job brokers. They screen potential job applicants on behalf of a client who then selects the appropriate person, and enters into a contract of employment with them. Some agencies extend their services to include internal selection and promotion processes. For most of the second half of the 1990s recruitment agencies complemented rather than competed with the CES. They specialised in highly skilled occupations whilst the CES supplied broader job matching services. This changed around the mid-1980s when recruitment agencies expanded into the lower skilled, predominantly white-collar, job placement market. The second form of employment agency to establish a foothold in the 1980s was labour hire agencies. These

agencies employ workers and place them, or on-hire them, usually on a temporary basis, with host employers. The agency remains the employer. A small number place contractors rather than employees. Whilst a small number of recruitment agencies traditionally also supplied workers on a temporary basis, companies specialising in offering only temporary workers emerged in the 1980s and flourished throughout the 1990s.

The expansion of private sector recruitment agencies

The expansion of private sector recruitment agencies during the 1990s can be attributed in part to the CES's declining capacity to meet the needs of employers. Two other factors were also relevant. The first was the employer orientation of recruitment agencies. Private sector agencies are regulated through state legislation governing businesses in general, such as fair trading, and through industry specific regulation which centres upon controlling fees charged to job seekers (O'Donnell & Mitchell, 2001). Agencies appear to have responded to this constraint on fees by directing their services to employers, for whom the fee was unregulated, rather than offering a general labour bureau service. Their clients are employers, not job seekers. They charge a once-off fee, usually a percentage of the annual salary of the placed worker, and often provide a guarantee on the quality of the placement, such as the return of the fee or a free replacement service. Their level of fees, at least until the mid-1990s, deterred many employers, and confirmed their place as providers of a niche service distinguishable from the CES (Boreham et al., 1994; Wooden & Harding, 1998). They serviced the upper end of the job market, where employers were willing to pay for their specialised services (Steele, 1994).

Recruitment agencies offered a highly personalised service to their clients. A single consultant would attend to the client's recruitment needs, follow up the success of placements with clients, develop an understanding of the client's particular needs, and be extremely well-placed to fill the client's further vacancies as they arose. By comparison, the CES was an 'impersonal office' rather than a personalised service. The CES may have captured some of this market in the early 1990s through their more specialised fee-for-service activities. But continuity of a sufficiently high level of service to match private agencies was dependent upon further allocation of public resources at a time when resources were being redirected to long-term unemployed (Steele, 1994). An ingrained culture of CES staff towards viewing the job seekers' needs as uppermost, rather than the employer, was also an impediment ((Boreham et al., 1994; Steele, 1994). Recruitment agencies, on the other hand, were well placed to expand their niche markets in response to shifting employer recruitment priorities.

Boreham et al's (1994) study illustrates how private sector agencies were more widely accepted for lower level white-collar occupations by the mid-1990s. Employers in their study preferred the more tailored services received from private sector employment agencies, particularly their ability to supply workers based upon criteria which CES officers would refuse on discriminatory grounds. Boreham et al (1994) also note the strong reluctance of employers to hire unemployed workers, when workers seeking to change jobs were available. A number of recruitment agencies in their study would not

consider applications from unemployed job seekers, thereby assuring employers of their preferred type of job seekers.

The second factor contributing to the expansion of recruitment agencies was the strong growth in outsourcing more generally which spread to the outsourcing of human resource functions, including recruitment (Dasborough & Sue-Chan, 2002). With increased economies of scale, private sector agencies could offer multiple batteries of selection tests, and manage the recruitment process through to preliminary interviewing of candidates, thereby freeing up employer resources to focus on core activities. These two factors point to an emerging service industry which not only filled the gap left open by the CES, but fulfilled a growing emphasis by employers on more sophisticated recruitment and selection processes.

Differentiating private sector labour hire agencies from recruitment agencies

Regulatory approaches to employment agencies in Australia do not distinguish labour hire agencies from contemporary models of private sector recruitment agencies, nor traditional models of labour exchanges, yet the nature of their services and consequent labour market outcomes is distinctly different. This section explains these differences. Recruitment agencies and labour exchanges facilitate a job placement, and once the placement is fulfilled to the satisfaction of the client, the transaction is complete. Similarly, labour exchanges act as clearing house between job seekers and job vacancies; their role is limited to the exchange transaction. Labour hire agencies, on the other hand, place their own employees with a client. They maintain a commercial relationship with the client and an employment relationship with their employee for the duration of the placement. The agency is the employer throughout the transaction. The agency retains responsibility for all employer obligations towards their employee whilst placed with a host, just as they would were they employed at the agency's workplace. The host, on the other hand, controls the work activities of the agency employee, but bears no employer responsibilities towards the agency worker. The host has some responsibilities to the agency worker with respect to occupational health and safety and protection from discriminatory practices. But these statutory responsibilities which the host bears towards all (such as occupational health and safety (OHS) responsibilities towards customers); they do not arise from an employment relationship (Johnstone, 1999).

The fee structure of labour hire agencies differs markedly from recruitment agencies. They do not receive a one-off placement fee, they receive a fee for every hour their employees are placed with a host, based upon a percentage of the hourly rate of pay of the employee. Anecdotal evidence suggests these range from 20-50 per cent of the hourly wage. If the host decides to employ the agency worker directly, the agency charges a one-off fee to the host which can be as much as 50% of the workers annual wage. To minimise the likelihood of this occurring, some agencies include a clause in their employment contracts forbidding their employees from becoming employees of the host within a specified period of the placement (AMWU, 2005).

Recruitment agencies have little influence over the employment status and legal protection of applicants whom they place with a client. These are determined by the relevant employment legislation applying to the client. Public labour exchanges, on the other hand, traditionally ensured job seekers were not hired under pay and conditions less favourable than those of the existing workforce (O'Donnell, 2003). They are also obliged to ensure they place workers without discrimination. Labour hire agencies, on the other hand, are extremely well placed to unilaterally determine employment conditions of their employees, subject only to legislated minimum standards. They use this to their advantage. They hire workers under conditions which constrain their prerogative least, and enhance their capacity to compete in an industry where price is sovereign. Hence, the majority of labour hire employees are hired on a casual basis, and paid only for the hours placed with a host. Placements vary from a few hours duration through to many years with the one host, yet the duration of the placement bears little relationship to employment status of the workers (as permanent or casual), nor to the regularity or predictability of their working hours (such as advance notice of rosters). The combination of casual employment coupled with unpredictability of working hours contributes to an acute sense of insecurity amongst labour hire employees. Their placement with can end with neither notice nor explanation, and as casual employees, they have little protection against neither unfair dismissal nor discrimination. Their host may simply not require further labour. But placements are also terminated when workers raise concerns over working conditions and health and safety issues, or take an interest in union activities (Underhill, 2005a). There is an implicit assumption that employment exchanges match workers with an employer with whom they freely agree to work (subject to overall labour market conditions and access to welfare). Labour hire workers feel compelled to accept placements with every host they are directed to, irrespective of agreeableness, or risk no further placements (Underhill, 2005b). These constraints impact upon the pay and employment conditions of labour hire workers. Reaching collective agreements is problematic, and a high level of dependence upon award rates of pay (lower than those paid to the host workforce performing similar or identical tasks) is common. Labour hire employees also have a higher incidence of occupational injury, and a much lower likelihood of returning to work post injury (Underhill, 2002, 2004, 2005c). Not surprisingly, labour hire workers have the lowest level of job satisfaction across the Australian workforce (Wooden & Warren, 2004).

The scope of labour hire agencies' placements have developed into a myriad of forms. They provide temporary workers to cover short-term absences of permanent workers, and seasonal workers across industries. But they also provide entire host workforces in sectors such as call centres and meat processing; the majority of host's workforce in industries such as warehousing and distribution; and the on-going provision of outsourced functions such as in maintenance work (Underhill, 2004). They enable host employers to replace their workforce with workers whom they control, yet for whom they have no employer responsibilities. They only have a commercial contract with the agency. The workforce becomes a 'just-in-time' production input. Easily purchased, and easily replaced.

In some sectors, it could be argued that labour hire agencies offer a service more akin to a labour exchange placing casual workers. In industries where seasonal work is common, such as agriculture, hospitality, and food processing, labour hire agencies compete directly with employment agencies in the placement of casual, temporary workers. Here, the employment relationship is inherently for a predetermined fixed time – the duration of the season. The labour hire agency could be said to act as a job broker, except they continue to be the employer. Also, they offer distinct advantages to host employers over a labour exchange. They screen the workforce, directly employ the workers, are responsible for all administrative on-costs including workers' compensation premiums and claims, and manage employee grievances, including unfair dismissals – all with minimal involvement of the host employer. The hourly cost to the host for the workforce may be more or less than hiring directly, dependent upon savings accruing from payroll tax, reduced workers' compensation premiums and the like, but the administrative simplicity for an employer is overwhelmingly attractive.

In other sectors, however, the comparison is much weaker. Labour hire agencies do not simply fill vacancies, but replace the existing workforces with their own. The service provided by labour hire agencies is more aptly described as providing a production input to hosts rather than an employment agency. Only if one accepts that the role of an employment agency is to supply labour, not broker employment between a job seeker and an employer, can labour hire agencies be regarded as akin to employment agencies.

Regulation of recruitment and labour hire agencies in the 1990s.

Entry into the private sector employment agency industry in Australia has always been easy. Most States have regulated the industry through licensing arrangements, but as Steele (1994) notes, these regulatory provisions are weak. In the early 1990s, the then national employer association for employment agencies (the National Association of Personnel Consultants, now the Recruitment and Consulting Services Association, hereafter RCSA) established a code of practice for members, but association membership is voluntary and at least one major labour hire agency has chosen to remain outside of the RCSA (Manpower, 2005). When private sector agencies catered for the upper end of the labour market, and the CES catered for the majority of job seekers, there was little need for prescriptive regulation. Dissatisfaction with agency services would simply result in the agency losing market share. Labour hire agencies grew alongside recruitment agencies (and are also represented by the RCSA), and some agencies continue to offer both recruitment and labour hire services. But for most, their main service is one of supplying an ongoing workforce which threatens existing employment standards. Loss of market share through client dissatisfaction no longer protects those most affected by their activities.

Two state governments have acknowledged these differences, but have yet to regulate labour hire agencies in a way which protects employees. At the international level, however, regulation has begun to tackle this form of employment. In 1997 the ILO passed the Private Employment Agencies Convention (C181). The preamble to this convention notes how the environment has changed since the earlier conventions which

promoted a public monopoly of employment agencies, and acknowledges a role for private employment agencies in a 'well-functioning labour market'. The convention allows the operation of for-profit employment agencies, including temporary work agencies, and specifies the protections necessary for workers employed by private employment agencies. These protections include, inter alia, the right of freedom of association, to collectively bargain, to receive minimum wages, to protect their occupational health and safety and workers' compensation, and to have access to training. For on-hired workers, the protections apply to treatment by both the agency and the host with whom the worker is placed. Governments which ratify this convention maintain discretion over how they regulate employment agencies as businesses, but must introduce these safeguards to protect the interests of workers and international conventions on labour standards (ILO, 1997). The Australian government has not ratified this Convention. The failure of the Australian government to recognise the distinction between recruitment agencies and labour hire agencies, nor the distinction between labour hire agencies and more traditional forms of direct employment, has substantial implications for the structure and regulation of labour markets.

The changing role of public funded employment agencies in Australia

The federal government introduced radical change to the concept of a national public employment agency in 1998. It dismantled the CES and contracted out job placement services to a number of private sector agencies (known as Job Network providers) most of whom were church-based or not-for-profit organisations. A new government agency, CentreLink, was established to administer all welfare payments. Unemployed workers register with Centrelink which then arranges welfare payments, classifies the job seeker according to level of disadvantage (measured in part by duration of unemployment) and refers the job seeker to a Job Network provider. Employers notify the Job Network provider of job vacancies, who also actively canvasses employers for jobs. The Job Network provider places all known vacancies into a national job vacancy database.

Three classifications of job seekers were initially developed. The first, highly employable job seekers, were directed by Centrelink to a job matching service. The second, those unemployed for at least three months, were offered more extensive job search skills such as personal counselling and interview techniques. The third group, long-term unemployed (unemployed for 12 months, or at risk of 12 months unemployment) received more intensive training and vocational support, potentially extending to wage subsidies. Job Network providers contracted to provide a specified maximum number of placements for each of these groups of job seekers. Governed by 'mutual obligation' concepts, unemployed workers in receipt of unemployment benefits are required to participate in a Job Network program. This purchaser-provider was intended to drive the quality of service delivery by making payments to providers contingent on the employment outcomes of their unemployed clients (Productivity Commission, 2002).

A review of the new model was undertaken by the Productivity Commission in 2002. Their Report endorsed the 'purchaser-provider' approach. Its impact on job seekers'

chances of gaining employment were only modest, but this was counter-balanced by the much lower cost to the government compared to the CES. Of most relevance to this study was the Productivity Commission's finding that the Job Network encountered a new version of the same dilemma which had beset the CES back in the early 1990s. Job Network providers offered both simple labour exchange services to the job ready, and more extensive and intensive services to disadvantaged unemployed. Job ready applicants were easiest to place, offered a quick financial return to the provider, and their share of placements had increased from 24% in September 1999 to 30% twelve months later (Productivity Commission, 2002:7.6). Job Network members had a financial incentive to place job ready workers at the expense of resources being applied to more difficult placements. The employment prospects of the long-term unemployed had not improved. According to the Productivity Commission, the job matching function was "poorly targeted because so many non-disadvantaged job seekers (those with small risks of prolonged unemployment) were able to access these services" (Productivity Commission, 2002:xxxix). Job Network members were competing unfairly with private sector employment agencies. "Subsidised job matching services allow employers to obtain free screening services, thus distorting the broader recruitment market in which agencies are paid by employers to find and screen job applicants" (Productivity Commission, 2002:xxxix). Yet if Job Network providers focused too heavily on disadvantaged unemployed, employers would not provide job vacancies to the Network. They would turn away from the Job Network, just as they had discarded the CES in the 1990s.

The solution to the problem of market distortion for the private sector recruitment agencies was found in subsidising private sector agencies to provide job matching services. The solution to the relatively poor outcomes for long-term unemployed was to require those same private sector agencies to extend their services beyond job ready workers to more disadvantaged job seekers. According to the Productivity Commission (1992), the benefits of private sector agency's applicant screening expertise could then be applied more widely. A licensing system was recommended for private sector employment agencies choosing to join the system.

Substantial changes to the Job Network system were subsequently introduced in 2003. The first condensed the categories of job seekers from three into two. The first, known as a 'Job Search Support Only Job Seeker' (JSSO), includes unemployed job seekers working less than 15 hours per week, registered for Job Network services (either with Centrelink or a Job Network Member) and receiving assistance to develop a Vocational Profile and resume. They are generally not receiving unemployment benefits, nor can they be full-time students. The second is the 'Fully Job Network Eligible Job Seeker' (FJNE). These are job seekers on unemployment benefits or some other form of welfare. They are eligible for the full range of Job Network Services (DEWR, 2002c)

The second change introduced licensing and government funding of private employment agencies. Both recruitment agencies and labour hire agencies were invited to register as a Job Placement Organisation (JPO). JPOs are required to match, screen and refer suitable job seekers to vacancies or assignments. In return, they receive a lump-sum

payment for worker placed in the direct employment of a client, and on-hired to a host organisation. Licensed agencies are expected to be “strongly employer focused. They will secure an increased number of vacancies for inclusion on the JobSearch Database...will actively canvass employers for vacancies and refer suitable job seekers.” (DEWR, 2002b:7).

The licensing arrangements serve multiple purposes. The first is to limit funding to agencies with credible operations. Licences are limited to agencies with an established track record and a professional image. They must have operated for at least 12 months, and their site must not be hazardous, must comply with OHS requirements, and be maintained to a high standard and presented in a manner which ‘upholds and maintains the good reputation of Job Placement Services’ (DEWR, 2002a:Clause 3.5).ⁱⁱ Small agencies are not prevented from receiving a licence. Agencies expecting to make less than 50 placements per annum, or place less than 200 vacancies on the Australian Job Search website are not be excluded, but are assessed less favourably. Second, the licensing system promotes the maximum number of job vacancies being advertised through the publicly funded national job vacancy website (known as “JobSearch”). Licensed agencies are required to canvass employers and/or hosts for vacancies and/or assignments, and lodge these vacancies on JobSearch. Third, the licensing requirements ensure agencies can comply with the technological specifications of a national web-based job vacancy database (an internet connection is required). Fourth, they require agencies comply with all other relevant legislative requirements including state agency registration systems. Fifth, they ensure agencies do not just focus on easily placed job-seekers. A placement ratio of 30% JSSOs (job-ready) and 70% FJNEs (welfare recipients), and a minimum 70% of placements in non-related organisations must be met. Other licensing conditions are designed to limit agencies abuse of the system by specifying the types of placements eligible for funding (DEWR, 2002a, 2002c). These include a prohibition on splitting a single vacancy into multiple placements and funding the same vacancy once only. The placement of the same worker with the same host will be funded only four times per annum; and initially, twelve times per annum when the worker is placed with multiple hosts. This latter provision was modified to 4 times per annum with multiple hosts seven months after the scheme was first introduced (DEWR, 2005c). These conditions require a high level of detail on job vacancies to be enforced. Whether the government monitoring system maintains sufficient detail to enforce this requirement is yet to be assessed.

The licensing arrangements extend to protections for job seekers and employers through a Code of Conduct. This requires ethical and professional behaviour, the provision of accurate information about vacancies, treating job seekers fairly and with respect, and encouraging feedback from job seekers and clients. But the Code is worded very broadly. The need to comply with all relevant Australian laws is specified, but the examples given do not include employment related legislation beyond anti-discrimination laws. Instead, they are directed to laws impacting upon commercial practices, such as fair trading. Unlike the ILO convention on employment agencies, the Code of Conduct does not recognise the relationship between the agency and the host, nor the role of the

host in the treatment of agency workers. Its focus is primarily upon the job brokering transaction (DEWR, 2002a).

Once licensed, a JPO receives a placement fee for the initial placement, and a bonus fee dependent upon the length of the placement and the status of the person placed. Up to 400,000 placements can be funded per annum. The fee structure is summarised in Tables 1 and 2 (DEWR, 2002a).

Table 1 Minimum length of placement required for payment of placement fee

Placement Type	Minimum length of placement & type of job seeker		
	Registered Job Seeker	Restricted Work Capacity / Job Seeker with disability	Job seeker receiving a parenting allowance
Other entity payment	15 hours paid employment within 5 consecutive working days	8 hours paid employment within 5 consecutive working days	10 hours paid employment within 5 consecutive working days
Related entity placement*	50 hours paid employment within 10 consecutive working days	16 hours paid employment within 10 consecutive working days	20 hours paid employment within 10 consecutive working days

* placement with an organisation related to the agencyⁱⁱⁱ

Table 2 Placement and bonus fee by type of person placed

Job Seeker Type	Placement/Bonus Fee
Employed less than 15 hours in previous week, registered with JobNetwork but not receiving welfare benefits nor full-time student (Job Search Support Only 'JSSO')	\$165
Welfare recipient (Fully Job Network Eligible 'FJNE')	\$275
FJNE & unemployed more than 12 months, or highly disadvantaged	\$385
FJNE placed for minimum 50 hours paid employment within 10 consecutive working days, within 28 days of the placement	\$165

These fees are not insubstantial. An agency could place an 18 year old unemployed worker for 15 hours work as a storeperson, based on the minimum wage (Gross \$167.70),

and receive a larger income from the government (\$275.00) than it pays out in wages. When coupled with the commission received from the client, the agency's profit rate is extraordinary. These fees are also not without cost to the government (and therefore taxpayers). If the placement does not continue and the 18 year old earns no income the following week, the reduction in the means-tested welfare benefit (reduced by \$57.50 to \$341.80) is far exceeded by the subsidy paid to the agency (\$275.00).^{iv} In other words, there is a net cost to the government. As long as the licensing requirements are met, the only placements which are not funded are those which are discriminatory in nature, involve illegal activity, nudity, work in the sex industry or contravene other legislation. An audit process checks for such non-fundable placements.

The success of the 'Job Placement Only' licence scheme

Initially, a large number of agencies successfully applied for licenses. By the end of April 2005, 22 months after the scheme had commenced, 569 organisations had received a licence. Of these, 458 are licensed to provide job placement services only (JPLOs), and the balance (111) provide additional services (such as counselling etc.) as Job Network Members. The licensing arrangements do not appear onerous. Yet almost 30% of licencees were classified as inactive after 22 months, having either never made a placement, or having not done so within the financial year leading up to April 2005. This excludes JPLOs which had already handed back their licenses after not using them. Only 407 active licencees now remain (DEWR, 2005c:3).

The overriding objective of the licensing program is said to be a reduction in the number of unemployed workers by increasing the "range and number of job vacancies available to job seekers through JobSearch" (DEWR, 2002b:2), the publicly funded national website of job vacancies. The government's objective was coined in terms of number of jobs, yet the program does not create jobs, only placements into jobs. Nor do the programme's objectives encompass job quality. The long term trend of expanding casual employment, for example, which the scheme actively promotes through funding labour hire placements, was not of concern. From the government's perspective "casual work opportunities are valuable stepping stones to more permanent, full time and fulsome work for many unemployed" (Brough, 2004:2).

One measure of the program's success is the increase in number of job vacancies placed on the national JobSearch website. The government is seeking 600,000 extra vacancies from JPLOs between 2003-2006 (DEWR, 2005c:8). JPLOs had lodged 243,203, or 16% of the total job vacancies over the period, increasing to 21% by the end of April (DEWR, 2005c:5). This is only 66% of the pro rata target (DEWR, 2005c:8). Nevertheless, politically, this is an important increase in recorded vacancies for which the government has claimed credit (DEWR, 2005b). Yet this is a spurious claim. Vacancies which agencies would have filled through their normal business activities have simply been included in the government's count of job vacancies. In other words, the government has claimed credit for drawing the vacancies off the private books of agencies into the public sphere. The subsidisation scheme may have enabled agencies to reduce their placement prices, possibly increasing their volume of business (or vacancies) with clients, but there

is no evidence to support this. It is equally plausible that the subsidised price has enabled agencies to expand their businesses by displacing existing, now relatively more expensive, direct hire jobs – with lower priced placements. In this case, the vacancy does not reflect an increase in available jobs, simply the same job being repriced at a lower rate. Also likely is multiple counting of the same vacancy. The licensing provisions disallow a subsidy for more than one placement into the same vacancy. Yet how does an agency which regularly places 200 casual workers in a distribution centre determine when a vacancy is for a previously filled position, a vacancy for a slightly reconfigured but essentially the same job, or a vacancy for a new position? It is highly likely that the 243,203 job vacancies include double-counting, but politically, this is irrelevant. The government has repeatedly boasted successive record levels of job vacancies under its stewardship (for example, DEWR, 2005b; Bailey, 2004).

A second measure of success is the number of eligible placements achieved. JPLOs were responsible for 26% (149,738) of all eligible placements (DEWR, 2005c:8), with 62% of all vacancies on the JobSearch website leading to a funded placement. The remaining vacancies (38%) were either not filled, or were filled in manner which did not meet the licensing arrangements (such as the vacancy being placed on JobSearch after the position had been filled by a jobseeker specifically requested by a host). The labour hire share of placements has grown rapidly over the period. Whilst just under half of all placements (48%) by JPLOs were labour hire placements in the first 12 months of the scheme, their share had increased to 62% in the second 10 months of the scheme. Just over 100,000 placements have been for on-hired positions (84,000 by JPLOs, 17,500 by Job Network Members) (DEWR, 2005c). The reason for the increased share of placements by labour hire agencies can only be speculated upon. It may indicate that labour hire employment has expanded disproportionately, or alternatively, that recruitment agencies are withdrawing from the JobNetwork system and returning to their traditional recruitment services.

The placement rate has been judged by the Government as an endorsement of their decision to bring private sector recruitment companies into the JobNetwork scheme. Yet the same qualifications apply to the number of placements as to the number of vacancies placed on the JobSearch Website. Furthermore, an important consideration is not only the number of placements, but the length of placements. Churning new job seekers through a series of short placements (such as the minimum 15 hours per week) – thereby increasing the number count – will only produce a long term reduction in welfare recipients and unemployment when those placements result in more substantial employment.

The third measure of success is thus the extent to which welfare recipients have been placed in employment through the agencies. Here, JPLOs have underperformed relative to JobNetwork Members offering a fuller range of support services for disadvantaged workers. Sixty-seven percent (67%) of placements by JPLOs involved welfare recipients compared to 76% of placements by other Job Network members (DEWR, 2005c:9). At first glance, this might suggest the scheme has been effective in moving welfare recipients off welfare into employment. However, many of these placements were in

part-time positions. Only 46% of welfare recipients were placed in jobs offering more than 50 hours work over 10 days (DEWR, 2005c:10). The majority have been placed in jobs which offer insufficient hours of work to sustain a minimum standard of living. Whether their earnings remove them from welfare benefits depends upon their hourly rate of pay.

The impact of the scheme on labour hire agencies

Labour hire and recruitment agencies have received substantial financial benefit from the scheme. Nine JPOs each received over one million, but less than ten million dollars, over the first 22 months of the program (DEWR, 2005c:4). Further detailed expenditure data has not been released by the government, however an estimated minimum \$24 million in subsidies has been paid for labour hire placements based upon the base payment rate. If labour hire placements reached the minimum bonus period of 50 hours employment over 10 days, at the same ratio as all placements by JPOs (45.8%), then a further \$5 million has been paid. These calculations do not include additional payments for placing FJNE job seekers who have been unemployed for more than 12 months^v.

Compared to total revenue in the labour hire industry, the subsidy is insubstantial, amounting to approximately 0.35% of the total industry revenue (based on 2001-02 revenue date) (ABS, 2003a). However profit margins in the industry are low, and the subsidy adds an additional 10% profits to the total recruitment and labour hire industry (based on operating profits of 2001-02, and excluding additional costs from licensing). Also, the recruitment costs for licensed agencies are reduced under this scheme. The pool of potential job applicants is expanded to Australia-wide through the JobSearch website (minimising the need for other costly media), and job seekers apply online (reducing the need for routine administration work).

Most of these gains, however, may only accrue to larger labour hire agencies who require a broad range of applicants. In an industry where 80% of agencies employ fewer than 10 people (ABS, 2003a), the subsidy is unlikely to be shared amongst the majority of agencies. The continuance of this scheme thus raises the question of whether it could ultimately reshape the labour hire industry. The JobSearch website can enable larger agencies to access more job seekers, potentially fill placements faster, reduce their operating costs, whilst simultaneously receiving a subsidy. In an industry where price competition is supreme, the threat of undercutting by smaller agencies could be met by lower prices, potentially driving smaller operators out of the industry. In other words, monopoly capitalism amongst labour hire agencies may emerge. A shift in job search patterns of jobseekers is already becoming evident. In 2002, before the licensing system was introduced, 35.7% of unemployed job seekers registered with an employment agency as part of their job search activities (ABS, 2003b). By 2004, only 24.3% registered with a non-licensed agency (ABS, 2005). This drop is disproportionate to the number of agencies who remain outside of the licensing system. Smaller fringe, labour hire agencies are alleged to offer less than minimum wage rates, be least likely to participate in collective negotiations, and offer neither training nor low OHS risk placements.

Concentrating the industry structure could potentially produce better pay and conditions for agency workers.

Alternatively, when the subsidies are passed directly onto clients through reduced fees, labour hire placements will become more attractive to hosts, and the replacement of permanent employees with labour hire employees will gain further momentum. Until regulation changes to address the employment problems associated with labour hire employment, this scenario will lead to a further degradation and destabilisation of employment.

Impact on labour market structures

A long-standing function of employment agencies has been to facilitate labour market adjustments. Public monopoly employment agencies have centralised information on job seekers and job vacancies, facilitating job matching. Private sector recruitment agencies have facilitated labour market adjustments in part by developing expertise in specific occupational labour markets, but also through providing a filter to large numbers of job seekers in times of high unemployment, and actively searching for suitable applicants in tight labour markets. Labour hire agencies play a different role. They act as intermediaries in the supply of temporary workers to cover short-term, absences, but increasingly provide a means for employers to replace their existing workforce with a more flexible and less costly alternative. What then, are the implications of a government policy which subsidises labour hire placements?

First, the government believes casual, temporary jobs are a stepping stone to more fulfilling permanent jobs. Temporary placements give unemployed workers the opportunity to gain valuable work experience, and provide evidence to potential employers of their capacity to sustain positive work behaviour patterns. Hence labour market outcomes of temporary placements could facilitate greater access to stable employment for unemployed and disadvantaged workers.

Temporary agency workers have two possible 'stepping stones' to longer term, permanent employment. They can be hired by the host with whom they are placed (thereby reducing the screening costs to hosts), or they can use their agency work experience to find employment in the broader job market. Longitudinal studies of the stepping stone experience of agency workers in Australia have yet to be undertaken. Nevertheless, snap shot data, and institutionalised practices, enable an outline of the picture to be drawn. First the RCSA, the association representing labour hire companies, conducted a survey of 223 members in 2003, and found the majority (54%) experienced between 1% and 15% of their employees becoming direct hire employees of the host. A further 26% of members experienced between 16-30% of employees moving over to the host's employment (Brennan, Valos, & Hindle, 2003:55). The practice was less common amongst labour hire companies who were not members of the RCSA. This suggests a route into more stable employment exists for some. However, interpreting this data in a meaningful way is impossible without further information on the survey respondents, particular the size of the agency's workforce. If the Manpower agency for example

(which claims to place 6,500 employees each week) (Manpower, 2005) experienced 30% of its workforce becoming direct employees of the host, then the prospect of stepping from agency work into direct hire employment may be high. But if only small agencies (who make up the majority of agencies) experience such a movement, the stepping stone prospects for the majority of labour hire employees would be poor. Agencies can place workers on a formal probationary basis with hosts, further enhancing the step from agency to direct hire employment. But a survey of 140 Victorian labour hire employees conducted in 2003 (employed by a diverse range of labour hire agencies) found that only 5.7% of respondents were placed with hosts on a probationary basis (Underhill, 2005a).

Both these snap shot datum indicate some agency work leads to employment with a host. But the practice is not widespread, and institutionalised practices of labour hire agencies impede such movement. These practices include the fees imposed on hosts for directly hiring an agency worker, and employment contracts which restrain an agency employee from moving immediately into the employ of the host.

The second path to more secure employment for agency workers is through enhanced employability, based on temporary work experience, in the wider labour market. But two labour hire agency practices mitigate against this. First, the labour hire industry is highly competitive and secretive, especially concerning disclosure of information about clients. Some agency employment contracts forbid the disclosure of information on whom the employee has been placed with, and the work they performed in that placement. If such contracts were to be enforced, an agency worker's curriculum vitae would disclose little useful information to a potential employer. Secondly, focus groups of labour hire employees conducted in 2003 revealed a dilemma for agency workers (Underhill, 2003). On the one hand, they would prefer direct hire employment, but on the other hand, applying for direct hire jobs elsewhere is difficult. The absence of predictable working hours prevented them from scheduling job interviews during future downtimes, and taking time off for a job interview could result in no further job placements. Whilst employees with leave entitlements can attend job interviews on paid leave, without threat to their employment, labour hire employees risk refusing a placement (and therefore their employment) and can only attend interviews on unpaid time (which is also costly).

A wide range of overseas studies have also addressed the question of whether labour hire employment creates a stepping stone to permanent employment. Notwithstanding labour market institutional differences amongst their samples, the findings of these studies are similar, and can inform on the likely outcomes of promoting agency work as a path to permanent employment. In the United States of America, a number of states have incorporated temporary agency work into their welfare systems as a bridge to more stable employment (Heinrich, Mueser, & Troske, 2005). US studies have questioned this role, following detailed longitudinal studies of welfare recipients entering temporary agency work. Heinrich et al's (2005) study, based on 1997-99 data, found that two years after first moving from welfare to temporary agency work, at least one third of females were still in temporary employment and another 30% had returned to unemployment. Outcomes for females who entered into direct employment varied according to their welfare status. Those most disadvantaged had around the same return to unemployment

rate as agency workers (approximately 34%), whilst the least disadvantaged fared much better than agency workers. For males, approximately 20% of the temporary workers had remained in temporary employment, and 36% returned to unemployment. Males who initially entered into direct hire employment were better off, experiencing a much lower unemployment rate (approx. 27%). Lane et al's (2003) study, based on data from the early 1990s, also found unemployed workers who obtained traditional rather than temporary agency employment had a better chance of being employed one year later. But Lane et al (2003) do not address the question of transition into permanent employment, only the possibility of being employed or unemployed. Other US studies have produced conflicting results. Segal and Sullivan (1997), for example, found approximately 40% of agency workers moved into traditional jobs, whilst Pawasarat (1997) found a much lower rate of 6%.

The Hienrich et al (2005) study also compares earnings levels of temporary workers two years on, with the earnings of those who either used temporary employment as a stepping stone to traditional employment, or did not enter temporary employment at all. They found those workers who remained in temporary employment, irrespective of gender, earned substantially less than those who moved on to another sector, or had not entered temporary agency work in the first place. Heinrich et al caution policy makers that "The key to labor market success via the path of a temporary help services firm is through a subsequent transition to a job in another sector. If policymakers choose to explore a greater role for temporary help services firms in helping those seeking employment assistance to find and advance in jobs, tracking these firms' success in facilitating placements of workers into permanent jobs in other sectors might be important in evaluating the policy's effectiveness." (2005: p.22)

The findings of European studies are less optimistic. D'Addis and Rosholm (2004) tracked employment outcomes annually from 1994-1999 for 18,000 temporary workers across the European Union. They found that the chances of males moving from temporary to permanent employment improved after two years of temporary employment but fell significantly after three years, after which time it was more likely to lead to unemployment. A very short time in temporary employment was also strongly associated with a movement into unemployment rather than permanent employment. Female temporary workers fared better, but also suffered under short bouts of temporary employment. Longer term temporary employment (more than 3 years) increased their likelihood of moving to permanent employment. D'Addis and Rosholm (2004) conclude that the common perception that employment necessarily leads to economic inclusion appears misplaced. Instead, temporary employment "is likely to keep those individuals in lasting and uninterrupted instability paths in and out of the labour market." (p.14).

The overseas studies suggest that policies which encourage temporary placements without further interventions to facilitate the movement from temporary work into permanent employment are unlikely to produce positive employment outcomes for temporary workers. Also, the prospects for temporary agency workers in Australia moving into permanent employment are arguably much lower than these overseas might suggest. Institutionalised practices deter such movement. Further, with a much higher

rate of casual employment across the Australian workforce, far fewer permanent positions are on offer to the workforce in general, let alone those with an unstable employment history.

If the likelihood of moving into permanent employment is relatively low, what then, are the prospects for Australian workers gaining employment through an agency as a result of the extended JobNetwork scheme? First, placements may be for shorter periods. The subsidy is paid for placements of only 15 hours within 5 days, creating a financial incentive for continual turnover of very short placements. An agency gains by continually hiring new workers and placing them for short periods in the same, but redefined, position. An agency with multiple clients could simply move their employees from one host to another (up to 4 times per year) providing their employees meet the JSSO criteria of not working more than 15 hours in the week immediately preceding the placement, and placement vacancies are carefully redefined. This potential churning of agency workers, coupled with persistent short working time can result in extremely low and unstable earnings for agency workers. An agency worker on low hourly wage rates, with continual short hours, may remain eligible for unemployment benefits, or find their employment benefits turning on and off from week to week. Alternatively, multiple job holdings (already a common characteristic of agency employees) may increase as workers seek employment with more than one agency in order to earn a sustainable wage.

Such a pattern of employment instability may seem far fetched. Yet as Table 3 shows, of those who looked for work within the previous 12 months, the proportion with multiple spells of unemployment increased throughout the second half of the 1990s, and has remained around that level, notwithstanding the falling rate of unemployment.

Table 3: Number of Spells of looking for work during the 12 months ended February each year (excluding those who had no spells of looking for work)

Number of Spells of looking for work during the 12 months until Feb. (excluding those who had no spells of looking for work)						
Year	One Spell	Two spells	Three spells	Four or more spells	Total	Average unemployment, preceding 12 months
1989	80.2	8.6	4.4	6.8	100%	6.8%
1991	80.0	9.6	4.5	5.8	100%	7.1%
1993	77.0	9.4	4.9	8.7	100%	10.6%
1995	74.0	11.2	5.6	9.2	100%	9.2%
1997	74.6	11.3	5.4	8.7	100%	8.3%
1999	74.7	10.8	5.3	9.1	100%	7.6%
2001	72.2	11.2	5.9	10.6	100%	6.3%
2003	74.1	9.8	6.6	9.5	100%	6.3%
2005	73.3	11.1	5.2	10.4	100%	5.4%

Source: ABS (1989-2005a; 1989-2005b).

Prime facie, temporary workers are already the most vulnerable to job churning. Table 4 gives the share of job losers (lost their job involuntarily) who were temporary or seasonal workers, since 1998, compared with the unemployment rate. Their share of job losses has increased each year, accounting for 45% of all job losers in the year ended February 2004. In part, their increasing share reflects the declining number of job redundancies since 2000. But it is also indicative of the vulnerability of temporary workers to job termination relative to those in permanent employment who experience greater protection from dismissals.

Table 4 Proportion of Job Losers who were temporary or seasonal

Year	Number of Job Losers who were temporary or seasonal ('000)	Proportion of Job Losers who were temporary or seasonal	Average unemployment rate, preceding 12 months
1998	223.2	31.6%	8.2%
2000	236.9	33.9%	6.8%
2002	327.1	40.8%	6.9%
2004	296.3	45.1%	6.0%

Source: ABS, (1998-2004; 1989-2005b). Note: the data includes all casual workers and is not restricted to labour hire agency workers.

Further evidence of workers churning between different employers is provided in Table 5. The proportion of the workforce with more than one employer in the previous 12 months has increased steadily over the past 15 years. The marked increase in those with two employers since 2003 may be due to employees taking advantage of labour shortages. Nevertheless, the share of those with three or more employers has not tapered off at a time when employers might normally be expected to seek to retain employees rather than risk additional hiring costs during a labour shortage.

Table 5: Number of employers/businesses during the year, excluding those who did not work all year

Year	Number of employers/businesses in preceding 12 months				Average unemployment, preceding 12 months
	One	Two	Three	Four or more	
1989	80.2	14.7	3.1	2.0	6.8%
1991	86.8	9.9	2.2	1.1	7.1%
1993	88.5	8.7	1.9	0.9	10.6%
1995	85.7	10.6	2.6	1.2	9.2%
1997	86.1	10.2	2.5	1.2	8.3%
1999	85.4	10.8	2.7	1.1	7.6%

2001	84.4	11.6	2.7	1.3	6.3%
2003	77.8	17.3	3.4	1.6	6.3%
2005	77.3	17.7	3.5	1.4	5.4%

Source: ABS, Labour Force Experience, February each year, cat. No. 6206.0; and Labour Force, Australia, Spreadsheets, 6202.0.55.001

A constant pattern of employment instability has major ramifications for workers caught in this trap. First, these workers are likely to remain in low paid jobs with poorer working conditions, greater OHS risks, and minimal training opportunities to provide a pathway into better employment. A lack of workplace voice will contribute further to the degradation of their pay and employment conditions (Underhill, 2005a). Second, their capacity to plan for the short and long-term future, both with respect to family and social interactions, and financial commitments will be severely constrained. Impediments to participating in normal social activities, such as family holidays have been previously identified for agency workers (Underhill, 2005b); and a recent State government enquiry recommended the development mechanisms to enable such workers to access long-term loans (Economic Development Committee, 2005). Taking concurrent multiple jobs to overcome low income levels may simply compound day-to-day scheduling difficulties. Third, they will be unable to accrue entitlements associated with employment tenure. These include a wide range of leave entitlements, such as sick leave, annual leave, maternity and paternity leave, and long service leave. This will prevent them receiving an income when they fall ill or take time off for child-bearing. Fourth, their incapacity to save for the future has ramifications for their quality of work, and family life. Financial pressures to avoid taking time off work when injured will increase, potentially contributing to more severe injuries and subsequent financial losses (Underhill, 2002). They will also be caught between financial pressures to accept any placements available (irrespective of hours and OHS risks) and family pressures to participate in family activities, such as family holidays. These pressures will contribute to a lower level of overall health and wellbeing (Scott, 2004). Finally, with a pension system heavily dependent upon employee life-time contributions, these workers will remain dependent upon the lower, government funded pension once they retire. Escaping welfare dependency, and therefore a government sanctioned level of income, throughout their working and post-working life may simply not be possible.

Conclusion

This bleak portrayal of the future assumes the growth in agency work will continue unconstrained and their conditions of employment will remain poorly regulated. How realistic is this assumption? To date, the growth in labour hire employment has been constrained by two forces. One is employer preferences. Some employers prefer to maintain their own workforce. They invest in their skills, and can shape the culture of the organisation to support their competitive advantage. The second constraint is the collective will of the workforce expressed through union agreements which limit the extent of labour hire employment at an organisational level, and impose minimum employment standards for agency workers placed with the organisation. Both these forces are threatened by current government policy.

The Federal government believes that “there should be no restriction on business’s choices on workforce arrangements” (DEWR, 2005a:29). This encompasses removing all restrictions on the use of labour hire agencies. The government’s discussion paper on Independent Contractors and Labour Hire Employment proposes to amend the Workplace Relations Act to prohibit collective agreements from containing clauses which restrict engaging labour hire workers or impose conditions on their engagement. The Federal government has also regularly intervened, with mixed success, in disputes before the full bench of the Australian Industrial Relations Commission when those disputes concerned constraints on labour hire usage (see for example, AIRC, 2005). The failure to prevent constraints through the application of existing legislation may now be overcome by legislative fiat.

The Federal government’s discussion paper also asks whether the labour hire industry should be regulated to ensure high standards are met by all. This could readily be achieved through an expansion of the new licensing system (including drawing all agencies into the system). A more recent parliamentary enquiry has instead recommended a voluntary code of practice (House of Representatives Standing Committee on Employment Workplace Relations and Workforce Participation, 2005). Finally, the government has suggested arrangements allowing agencies to hire independent contractors rather than employees could be recognised as a legitimate and protected form of independent contracting. These arrangements would combine the disadvantage of independent contracting with those of labour hire employment, encouraging a form of hiring with no floor to employment standards.

The government’s proposals are clearly intended to remove collective constraints on the use of labour hire employment. Other policy initiatives to reduce the collective bargaining power of unions will further strengthen the government’s capacity to achieve this objective. In so doing, they will also reduce the freedom of employers who choose to maintain their own skilled workforce. Without a floor to labour costs, the competitive advantage of these organisations will increasingly be undermined.

Other researchers (O’Donnell and Tham, 2000) have previously identified the potential for the Australian welfare system to “transform basic income support payments into a new form of in-work benefit, *over time*, for portions of the labour force with undervalued skills...”. With the lower hourly rates of pay associated with labour hire employment, and their limited access to secure employment, it is conceivable that a class of labour hire workers will emerge who are simultaneously on welfare benefits whilst receiving placements with labour hire agencies. They will sit on the boundary between employment and unemployment, and their access to benefits may change from week to week as their placement duration varies. The current subsidy system does not offer incentives to labour hire agencies to find permanent or direct employment for these workers. It only rewards agencies for placing workers in temporary positions. The schemes’ objectives do not include the provision of secure jobs to enhance economic self-sufficiency. The scheme simply enables workers to receive some income, and to officially be classified as ‘employed’. Whether they continue to receive welfare benefits appears inconsequential to the scheme’s objectives.

The early forms of publicly funded employment agencies sought, in part, to reduce employment instability and casual employment. The Australian system of publicly funded employment agencies now promotes instability and casualisation of the workforce. Early schemes also sought to reduce unemployment through eliminating the multiple pools of unemployed attached to private sector agencies. The Australian scheme, with the use of internet technology, may have achieved this objective whilst simultaneously promoting private sector employment agencies. Finally, early forms of employment agencies were criticised for their promotion of job turnover and exploitation of workers. The licensing system in Australia is intended to limit job turnover otherwise encouraged by fee for placement systems. Whether it achieves this objective has not yet been comprehensively assessed. The code of practice included in the licensing system is intended to reduce exploitation of workers, but it only captures the exchange relationship and not the on-going placement relationship.

The licensing scheme for labour hire agencies could be amended to encourage stepping stones for workers into the direct employment of the host. It could also be amended to discourage multiple placements of the same worker, and impose employment conditions and entitlements similar to those encapsulated in the ILO convention of 1997. But none of these alternatives appear to have been considered. Instead, the current arrangements may well produce labour market outcomes resembling those so condemned a century ago.

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Endnotes

ⁱ The Australian government did not ratify this convention.

ⁱⁱ Fly by night operators, and operations limited to a mobile phone and a car boot office were therefore excluded.

ⁱⁱⁱ Payment varies according to whether the placement is with a related or unrelated entity. Hence, if JPO X places the job seeker with labour hire operator Y, who then places the job seeker with host Z, who is owned or influenced by JPO X, a related placement has occurred. A related placement also occurs if a JPO labour hire agency places the worker with a host which is a related organisation. Only 30% of funded placements can involve this kind of arrangement. On the other hand, if JPO A places a job seeker into labour hire B, which is owned or influenced by JPO A, and B then places the job seeker with host C, who is unrelated to either A or B, the placement is with an unrelated entity.

^{iv} Calculations based on minimum wage specified in the Transport and Storage Industry Sector Victorian Minimum Wage Order current at June 2005; calculations on the means-tested welfare payment are based on information from <http://www.centrelink.gov.au/internet/internet.nsf/payments/chartd.htm>, accessed 28th June 2005.

^v The calculations are based on a total of 101495 placements. 33,493 JSSO placements (33%) at \$165 = \$5,526,345; 68,002 FJNE placements (67%) at \$275 = \$18,700,550; If 45.8% of FJNE receive a bonus for placement being 50 hours or more over 10 days (the average for all JPLOs), then 31,145 placements @ \$165 = 5,138,925.