

Temporary Agency Work in Australia and New Zealand: Out of Sight and Outside the Regulatory Net

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Abstract

Temporary agency work is an enigma – it is part of the romance of self-employment, flexibility and freedom, and it is also part of a process that undermines employment conditions, collectivism and rights. It is linked to new work and to the new economy, yet it is also linked to traditional areas of temping, such as seasonal work and replacement work. While there has been an extensive debate over the regulation of temporary agency employment in Europe, as well as regulatory proposals and adjustments, the situation is different in Australia and New Zealand: there has been limited debate, comprehensive research has been absent and temporary agency work largely remains outside of the regulatory framework governing employment. We outline recent trends in agency work – its extent, what drives its growth and the diverse experiences of agency workers. In particular, we underline the limited regulation associated with the Australasian model of agency employment.

Introduction: Temporary Agency Work, Complex and Confusing

Temporary agency working involves a triangular arrangement in which a TWA (temporary work agency) hires a worker for the purpose of placing him or her at the disposal of a third party, the user enterprise, for a temporary assignment (Bronstein, 1991: 292). Whereas temporary workers were once used primarily to fill in for sick or vacationing permanent employees, they are now frequently employed on an ongoing basis and are an essential component of the labour use process for many public and private business enterprises.

Temporary agency work can be placed within the context of contingent or non-standard work. There is also a need to distinguish between temporary agency work that involves a *triangular relationship* between the worker, the agency and the user firm, and temporary employment that involves a short-time direct hire of the worker by the employing organisation. The OECD (1996:7) notes that definitions of temporary work differ across countries according to relevant systems of employment regulation. There

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are distinctive working arrangements that can be regarded as being temporary. In this context temporary agency employment is a component of the broader classification of temporary work. Depending on national systems of regulation, a temporary worker may be an employee or may include the self-employed. That is, the legal status of employee does not necessarily preclude temporary employment arrangements and this is the case for employment in some industries such as housing and construction. The *overriding characteristics* of temporary agency employment are that the job is for limited duration (that is, it is insecure); the employment relationship involves three parties; and contemporaneous employment engagements (multiple job holding) may be associated with such employment.

According to Storrie (2002), temporary agency working is not included in the employment typology in many EU countries and many national authorities responsible for gathering labour market statistics have yet to include it in their national surveys. For example, retirees may be on the books of temp agencies and prepared to carry out the occasional short-term engagement since they possess specialist skills. The unemployed may sign on with temp agencies in order to obtain work experience, training and job placement under the umbrella of the Jobs Network in Australia. Indeed, in Australia it is the provision of labour services to the unemployed that has provided an indirect boost to TWAs. Short-term employment practices associated with labour hire may also be associated with clandestine activities such as the employment of illegal immigrants and, as such, there will be a degree of under reporting of total employment in the sector. The contracting organisation may itself be an intermediary, so the employment relationship can be further removed through subsequent sub-contracting. Multiple employer and multiple contracting arrangements serve to further complicate the employment relationship, the status of the agency worker and the responsibilities of the parties involved (Rubery et al, 2000). An individual agency worker may also shift between assignments across several agencies.

Temporary Agency Work in Australia and New Zealand

As with much of the data on temporary agency work there are some serious problems with even the most basic labour market statistics. However, there appears to be little doubt that temporary agency work was the most rapidly growing form of atypical employment in many OECD countries in the 1990s, *albeit from a low base*. Since 1992 temporary work doubled in most European Union (EU) member states whereas in Denmark, Spain, Italy and Sweden numbers increased five-fold (Storrie, 2002). In real terms this equates to between 1.8 and 2.1 million people working for temporary agencies in the EU (1.2 –1.4% of the total number employed). However, CIETT 2000 (cited in Storrie, 2002) put the daily average figure of temporary workers in the European Union at 2.2 million workers in 1998 with an average of 6 million persons employed at some time during the year through temp agencies.

In Australia, the estimates for temporary agency employment are problematic. It is

difficult to obtain reliable estimates through time. The ABS Employment Services Survey (Catalogue 8558.0) indicated that around 280 thousand workers were on-hired in 1999 by businesses providing employment services. Around 30 thousand of the labour hire workers were apprentices and trainees associated with group training arrangements. The ABS Forms of Employment Survey 2001 (Catalogue 6359.0) suggests that there were 162 thousand labour hire workers but that 721 thousand workers obtained their jobs through agencies and labour hire organisations. It seems that around 12 per cent of employees obtained jobs through agencies but that around 2-5 per cent of employees are agency workers, a minority of whom are paid directly by the agencies.

In New Zealand, recruitment and employment agencies have attracted a fair amount of media attention over the last couple of years. One gets the impression that there has been a rapid rise in the number of agencies and agency workers. Likewise, the constant focus on 'executive leasing' – particularly in the business newspapers – creates the impression that this is a growing and rather lucrative market for agencies. These impressions appear to be exaggerating the extent of agency work. When one starts looking at the available figures and trends, it *appears* that there are relatively few agency workers. There are no available figures for how many agency workers there are, how they fluctuate over time and how much they work during a year. The Recruitment and Consulting Association has estimated that its members would on a normal day 'employ' around 8,000 temporary employees and 1,500 contractors and the agencies would have on their books and databases around 32,500 people seeking temporary employment and 7,200 people seeking contract work (RSCA, 2000: 5). Clearly, these figures do not include all agency workers since many agencies are not a member of the Association. Still, even if there were more than 19,000 workers in total – twice the figure provided by the Association – this would represent just over one per cent of the workforce.

On the other hand, there appears to have been considerable growth in the number of agencies and agency workers over the last two decades. This has involved a significant internationalisation of agencies with many international agencies appearing in New Zealand or buying into New Zealand agencies. Additionally, agencies have expanded their range of services and developed new 'markets' in health, education and call centres. These trends have meant a constant growth pattern, though with some downturns in particular markets, and there appears to be little doubt that agencies are poised for further growth. The only clouds on the horizon are the current Government's adjustment to employment legislation which will impact on issues such as occupational safety and health, contracting out and employer responsibilities.

The employment status and 'employment patterns' of New Zealand agency workers appear to be rather fluid. Predominantly, agency workers are employees of the agency: 'The temp is legally employed by the agency, which invoices the client organisation for the hours she has worked, and pays her wages and other associated benefits as agreed.' (Alach and Inkson, 2003: 6). However, there are also many agency workers that have an

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independent contractor status or oscillate between the two types of employment roles. Thus, the Recruitment and Consulting Services Association makes a distinction between temporary employees and contractors: 'a worker who is either an independent contractor hired out by the member organisation to a client or an employee of the member placed on assignment with a client. The status of Temporary or Independent Contract worker is always one selected by the worker and usually follows the type of status they have just previously experienced and anticipate in the foreseeable future' (RCSA, 2000: 4). Additionally, agency workers can be self-employed or an employee at other times when they are not 'working' for an agency. It is also a well-known practice for agency workers to register with several agencies. This is clearly an attempt to 'play the market' and thereby secure continuous and lucrative employment as agencies are explicit that they do not promise on-going employment and assignments may be terminated abruptly (Alach, 2001; Alach and Inkson, 2002).

In both countries analysis is largely constrained through ignorance of the extent of agency employment. This is compounded by the restrictive typology of the labour force survey together with the over-riding characteristic of short-term engagements associated with the industry. We suspect also that there are many more temp agencies than the official estimates and the number of workers on the books of temp agencies will exceed the number of engagements at any one time. To compound the problems we also suspect that the degree of multiple job holding is high in the temp agency sector. In 2003 in Australia there were an estimated 550,000 multiple job holders, equal to 6 per cent of total employment (ABS Catalogue 6105.0). The very nature of temping will mean that stock estimates of employment will understate the high degree of turnover associated with this type of employment arrangement. For example, while temps may constitute less than 3 per cent of total employment they would account for a much higher share of additional jobs created during the year as a result of the limited duration and high turnover of jobs – it was suggested at the NSW Labour Hire Taskforce that the average job hire was for 6 weeks (NSW Taskforce, 2000: 24). Traditional labour force stock estimates miss the extensive churning associated with the temp agency sector.

What is Driving Agency Employment?

The temporary work sector is expanding across the OECD. An increasing number of multinational TWAs (such as Manpower, Randstat, Kelly and Drake) are developing an international model of labour brokerage providing labour matching services for job seekers and job providers. These TWAs provide services for employers that range from payroll administration to staff appraisal systems. As such, they intermediate between the purchasers and providers of labour and can also be used to blur regulatory responsibility, de-unionise workplaces and reduce wage rates (Peck and Theodore, 2001). In part the industry itself is promoting brokerage and other labour services to employers across all sectors. Consequently, TWAs offer the ultimate form of labour commodification, hiring strictly on a 'needs basis' with no attached obligation or commitment. Such services

provide employers with extensive numeric, functional and labour cost flexibility with respect to the deployment of labour. In some countries, such as Australia, the temp work industry has been assisted by the closure of the public employment service and the placement of job brokering and training for the unemployed to tender (Junankar, 2001).

The rationale for hiring temporary workers tends to be the same as many other workplace initiatives – labour cost savings associated with downsizing, increased global competition, the introduction of new technology and the need to respond quickly to an ever-changing marketplace. The rise of the temporary agency sector can be interpreted as one manifestation of increased flexibility in which the restructuring of internal labour markets and lower internal labour costs ('headcount costs') are associated with organizations externally shifting recruitment, training and on-costs to the temporary agencies and temporary workers. Temporary agency employment not only offers flexibility and cost saving potential, it also potentially removes responsibility for the compliance with many employment regulations such as unfair dismissal, employment insurance, employment benefits and superannuation entitlements onto the TWA. In this context temping allows for shifting of the responsibilities and risks associated with direct employer responsibilities. There have been claims that organisations are shedding permanent jobs and hiring in agency workers (Telstra on Changes, 2003).

There are traditional reasons driving the temp sector, including labour shortages. This applies to the professions including IT, accounting, nursing and teaching. Short-term assignments are available for those with the requisite skills. For those with family caring responsibilities, semi-retirees, post-graduate students and those who do not require the commitment of a full-time and ongoing job, temping can satisfy life-style option and complement non-work activities. That is, the demand imperative for more just-in-time employment arrangements is being matched by the global growth of an industry that can facilitate this process. As already discussed, this particular employment arrangement is characterised by ambiguity in terms of employment status and in terms of employer responsibilities. For some occupations (for example nursing, teachers, IT programmers) the shortage of trained and available workers is driving the expansion of TWAs, but in many cases it is the possibility of lower labour costs and further labour flexibility that is providing employers with the incentive to replace permanent workers with agency workers. This, in turn, will place pressure on employment security and on the employment conditions of permanent workers.

The NSW Labour Hire Taskforce reported that 95 per cent of agency workers were casuals and, as such, they suffer from all the forms of benefit and protection exclusion attached to casual employment (Campbell and Burgess, 2001). In addition, the union submissions to the NSW Task force suggested a pattern of persistent under-award pay and very low rates of unionisation. Their pay rates were often below those of permanent workers who performed the same job (Hall, 2001). Without a clear designation of employer responsibility, agency workers are not covered for holidays, sickness or severance.

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Furthermore, there is an imperative for many temporary workers to maintain continuous assignments without a break for sickness or holidays, since their non-availability may mean they are relegated in the queue of available agency workers when assignments become available (Connell and Burgess, 2001). In between employment assignments temps are effectively unemployed. Unlike some EU countries, in Australia and New Zealand, temps are not paid by the agency between engagements. Also of concern (Hall, 2001) is that ambiguous employment arrangements can result in an absence of OH&S coverage and no insurance cover for rehabilitation and return to work in the case of work related injuries.

In New Zealand the growth of agencies and agency workers has been driven to some degree by demand. The radical and comprehensive reforms in the post-1984 period created larger markets in the central government sector, the newly corporatised and privatised firms, local government and in the health sector (Boston *et al.* 1996; Easton 1997; Spicer *et al.* 1996). The business cycle – especially the major downturns after the 1987 share market crash and after the 1996 Asian crisis – prompted private sector restructuring and further growth in agency work and agencies. On the other hand, new employment legislation and the turmoil following the 11 September 2001 event led to a downturn in the ‘temp’ market during 2000-2002, with the Auckland market for personnel and human resource management staff totally drying up for a while. Likewise, the market for IT specialists has also had significant up and downs, though with a constant market demand for particular skills.

However, across the various ‘temp’ markets there appears to have been a steady growth pattern regardless of business cycles. This growth has been fuelled by organisational restructuring, the emphasis on flexibility and lean staffing, as well as the small size of many New Zealand organisations. Agencies have themselves, tried to develop their markets through the promotion of agency work as a flexible and interesting option. There have also been continuous attempts to create closer relationship with employers (obtaining preferred supplier status) and becoming ‘strategic partners’ with their client companies. This has happened to some degree in banking, local government, law firms and hospitals where the ‘preferred supplier status’ has gone far in some cases and there are many smaller firms where agencies provide extensive consultative and advisory services (particular when there is no dedicated human resource management staff). This is clearly an area where agencies see further growth opportunities and in particular, they work hard to increase their ability to recruit and develop high quality staff in professional services (accounting, nursing, secretarial and administrative work).

Agency Workers: Flexibility, Independence and Choice?

To the industry temping offers lifestyle and workplace choices, allows a high degree of independence and leads to varied and interesting work experiences (Aley, 1995). For some workers these attributes are appealing, and some workers with skills in high

demand can exercise control over when they work and for whom they work. While the industry promotes an image of choice, new economy jobs and “entrepreneurial” careers, the bulk of jobs are low paid and semi-skilled and therefore place most temporary agency workers in a cycle of insecure and short-term employment, with very low and unpredictable earnings. The ACTU submission to the NSW Labour Hire Task Force (2000: 23) suggested that 54 per cent of labour hire workers were female and employed predominantly as ‘advanced’ clerical workers in the business and property services, and finance and insurance sectors. The average duration of labour hire was six weeks, with a quarter of workers estimated to have been on labour hire contracts for more than two years.

In Australia the casual employment arrangements associated with temping means that many temps are excluded from training programs and career path progression (Connell and Burgess, 2001). Hall (2001) reporting on a survey from the Australian Centre for Industrial Relations, Research and Training suggests that temporary agency workers receive less training than those working alongside them in permanent positions.

In New Zealand, the lack of obligation to provide on-going employment has often led to concerns over exploitation and insecurity of agency workers. This has some foundation since the agency workers are often not entitled to certain employment benefits (for example, paid parental leave demands a certain level and length of employment with a particular employer) and they will not benefit from the recent expansion of legislative support for collective bargaining (Deeks and Rasmussen 2002). In fact, their employability is often increased for exactly this reason as employers try to circumvent the costs associated with standard employment. A *strong bifurcation* amongst agency workers and generally amongst self-employed has also been found (Dept. of Labour 1999: 22). Besides the high-paid, sought after ‘leased executive’, specialist or temp, there is a low-paid, continuously job changing, highly stressful side to agency work (Rasmussen *et al.* 1996; Alach and Inkson 2003). In the latter case, the question arises whether agency work is voluntary or involuntary. The whole question of whether people are ‘pulled or pushed’ into self-employment and/or agency work is a rather vexed one, with the various ‘pull and push factors’ impacting differently on individuals (Bururu, Irwin and Melville 1998; Firkin 2003; Perera 2003).

At the other end of the spectrum recent New Zealand research has found that many agency workers are often quite satisfied with their status (Alach 2001; Casey and Alach 2002). The temporariness can have advantages, dependent on the family situation and perception of the agency workers. Also, some agencies are setting high standards in their employment practices and it is noticeable that there have seldom been employment court cases involving agencies. In fact, many ‘temps’ prefer to deal with agencies because they take care of ‘all the hassles’ associated with employment. While anecdotal evidence has unveiled a few examples of substandard employment practices, this involved only smaller, ‘fringe’ agencies.

The Australasian Model of Regulation of Agency Work

The Australasian model of temporary agency employment regulation is straightforward: there is hardly any regulation. This is a characteristic shared with the temp industry in the USA and the UK (Storrie, 2002; Peck and Theodore, 2001). Regulations can apply at a number of different areas and levels: direct regulation of the agencies, regulation of the contract of employment for agency workers, regulation of employment conditions associated with agency employment and regulation of the work undertaken by agency workers.

In Australia and New Zealand, there is no national regulation of temporary work agencies. Those regulations that do exist are confined to the State jurisdiction in Australia. Employment agents must be licensed in all states and territories except Victoria, Northern Territory and Tasmania. Licensing involves an application for licensing; that is, filling in a form and paying an application fee. Without the caveats and limitations on operations found in much of the EU, Australian non-regulation of temporary work agencies stands alongside Sweden, the UK and the USA.

In Australia and New Zealand there has been an absence of regulation, there is confusion over employment status within the temporary work sector and there are no exclusions with respect to temporary agency employment arrangements. Queensland was the first state to attempt to set out the nature of the employment relationship between the labour hire company, hiring organisation and the worker (Queensland Industrial Relations Act, 1999). The Queensland Act establishes the temporary agency as the employer and the labour hire worker as the employee. Similar legislation was introduced in Victoria in 2000. The NSW Taskforce on Labour Hire (2000) recommended that the employment relationship involved in labour hire arrangements should be clearly established through legislation. While there has been debate and discussion of the NSW Labour Hire Taskforce recommendations to date there has been very little legislative action, despite media pressure (Hepworth, 2002). Unlike the EU there is no social directive or no national policy that attempts to clearly set out the rights associated with labour hire employment.

In New Zealand, anyone can set up a recruitment and/or agency business, with no registration or licensing being in place and with no need to provide proof of skills or experience. The so-called 'Davy case' where a recruitment company placed a fraudster – the person had falsified his employment and education record - as a senior manager created major headlines and resulted in the demise of the recruitment company (Rasmussen and McIntosh, 2002). This case also led to a debate regarding the possible regulation of the industry but so far there has been no move in that direction. The Recruitment and Consulting Services Association is attempting to provide a focal point for the professionalisation of industry but the regulatory problem has less to do with the major, well-established companies (many of these firms are members of the Association).

These firms – often with overseas owners or business links – market themselves as having high quality recruitment, HRM and business practices. The issue is rather what the standards are in the many small firms that inhabit the industry. This is a moot point as there has been limited research of these firms and there appears to be a considerable turnover amongst the smaller firms.

Thus, New Zealand has an unregulated ‘wild west’ approach to agencies and agency work. For example, agencies can start up without any public quality control and conditions of agency workers are, to some degree, a private matter between the contracting parties. Recent research indicates that there is considerable interplay between various forms of atypical employment, that many agency workers co-register and shift amongst agencies and that many agency workers are quite content, depending on their work situations, labour market position and the current state of job opportunities (Alach and Inkson 2003; Rasmussen and Deeks 1998).

In both Australia and New Zealand there are no reporting obligations, financial bonds do not have to be posted by the agencies and there are no limitations on the occupations/industries that can be covered through agency employment arrangements. There is also an absence of regulation with respect to the contract of employment and of the employment status of agency workers.

The relatively small size of the temporary employment sector in Australia and New Zealand would suggest that its non regulation or its ability to operate outside of a regulatory framework should not be an issue of public concern. However, there is considerable public concern over several negative aspects often associated with agency employment: large corporations restructuring their workforce through the replacement of permanent workers with labour hire workers (Telestra on Charges, 2003), for the potential for labour hire workers to be subject to greater risk from workplace accidents (Underhill, 2003), for labour hire workers to be without many rights and protections associated with employee status (Hall, 2001) and for labour hire in itself to undermine any strategy to enhance formal and informal forms of on the job training and skills acquisition (Connell and Burgess, 2001).

In both Australia and New Zealand labour hire represents a gap that can potentially be exploited and lead to nefarious practices which, in the end, could undermine the credibility of the industry and impose a cost on the public sector. The ambiguous employment status has potentially adverse implications for labour rights, taxation status and access to employment benefits and workers compensation. In turn there is scope to use labour hire practices to de-unionise the workplace, undermine employment conditions and avoid statutory obligations linked to taxation and workers compensation. At one end of the spectrum labour hire organisations are linked to clandestine activities including illegal immigration and tax evasion. The NSW Inquiry revealed that the reputable end of the industry were after more extensive registration and regulatory requirements for operators

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in the industry.

In Australia there is a move towards the regulation of the employment contract where the engagement exceeds 6 months. Beyond this threshold the conditions that apply to permanent employees should apply to labour hire workers (ACTU, 2003). However, the regulation of the conditions of employment is only one component of the panoply of regulations that could be applied to the industry. A six-month threshold test may only lead to more short-term engagements or more engagements of independent contractors.

Conclusion

In principle there is a three party relationship between the TWA, agency workers and user firms. This process of intermediation blurs the employment relationship, blurs the employment status of the agency worker and the responsibilities of the three principal parties. In other words, the relationship is not transparent, it is not linear and indeed it may involve more than three parties. This makes it a difficult area to research and even more difficult to regulate. However, as we have shown, agency employment involves a continuous tension between flexibility and protection which makes it necessary to incorporate a public policy dimension in the debate. Although agency workers only constitute a minor proportion of the total workforce, the high churning of temporary jobs, the high growth rates, the impact on 'standard' employment situations and the negative aspects sometimes associated with agency employment underline its public policy importance.

In line with the UK and the USA, there is a surprising lack of regulation surrounding agencies and agency work in Australia and New Zealand. This implies that there are several unanswered public policy issues associated with agency work. For example, what is the 'proper' level of public regulation of agencies and agency work and how can efficient, low cost regulations be implemented and policed? In light of the discussion of the 'knowledge society', it is also important to discuss how vocational education and training can be enhanced and whether there are certain mechanisms and training systems that are better than others? The commercial, media and academic interest in agency work has so far not been match by a similar interest in the public policy dimension.

Finally, it is important to see agency work in both a wider theoretical and contextual perspective and provide more specificity about agency work. The wider theoretical and contextual perspective is necessary because there is considerable fluidity across countries, local labour markets, industries, occupations and individual people. The impact of context creates a variety of trends which raises a number of questions about people's choices and the consequences of these choices. It also raises issues about so-called work-life issues and what the role of non-work factors is in relationship to choices about work and working time. Thus, the complexity of the interplay between situational factors and individual choices needs to be further explored through wider perspectives and more

sensitivity towards individual circumstances and choices.

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