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**Contracting-out and Regulating Labour Standards:**

**NSW Government School Cleaners**

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**A thesis submitted in**

**fulfilment of the requirements for the**

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## **Statement of Originality**

This is to certify that to the best of my knowledge, the content of this thesis is my own work. This thesis has not been submitted for any degree or other purposes.

I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.

Sasha Holley

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## List of Abbreviations

Australian Bureau of Statistics	ABS
Asset Management Unit	AMU
Australian Council of Trade Unions	ACTU
Australian Workplace Agreement	AWA
Better-Off-Overall Test	BOOT
Building Services Contractors Association of Australia	BSCAA
Competitive Tendering and Contracting	CTC
Consumer Price Index	CPI
Enterprise Bargaining Agreement/Enterprise Agreement	EBA
Fair Work Ombudsman	FWO
General Assistant (in NSW public schools)	GA
Government Cleaning Service	GCS
Individual Flexibility Agreement	IFA
Liquor, Hospitality and Miscellaneous Union	LHMU now known as United Voice
Occupational Health and Safety	OHS
National Employment Standards	NES
New South Wales	NSW
NSW Department of Treasury	Treasury
NSW Department of Finance and Services	DFS
NSW Department of Education and Communities	DEC
Regional Organising Committee	ROC
State Contracts Control Board	SCCB
United Nations	UN

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## **Abstract**

Over the last two decades governments have increasingly contracted-out the provision of public and human services to outside organisations. These contracts, which this thesis labels 'government contracts for services', or simply 'government contracts', were not designed to regulate the wages and other working conditions of the workers employed by the external organisation. There is increasing evidence that contracts for services are being used as a tool to regulate labour standards for workers, and the labour law provisions covering these workers' labour standards can be usurped or endangered. This presents a regulatory cross-road, with little known about how standards are regulated at the nexus between the labour law provisions and government contracts for services.

The central objective of this thesis is to analyse how labour standards are regulated through the combination of labour law and contracts for services when services are contracted-out. This is achieved by undertaking an in-depth case study of NSW government school cleaning contracts. These are amongst the largest contracts for services in the world, with more than 6,000 employees providing cleaning services in government schools, offices, court houses, police stations and other public sector agencies. The case study reveals that government contracts for services have taken a predominant role in how labour standards are negotiated, defined, monitored and enforced, while the employment contract underpinning labour law takes a secondary regulatory role. In practice, the cleaners' labour standards are poorly monitored and rarely enforced with minimal compliance with standards prescribed by labour law or by the contracts for services.

In order to understand the regulatory arena, this thesis utilises regulatory theory and in particular the concept of 'responsive regulation' to analyse the simultaneous regulation of cleaners' labour standards through labour law and governments' commercial contracts for services. Responsive regulation provides a powerful analytical framework for determining whether and how regulation can be adapted to suit different contexts, while effectively enforcing prescribed standards. The thesis analyses whether regulation of labour standards through labour law, contracts and the combination of both meet the adaptability and enforcement requirements of responsive regulation.

The findings of the analysis are significant for three reasons. First, there is a dearth of research to date that considers how labour is regulated through the combination of labour law and procurement contracts. This is particularly important given the prevalence of procurement in the public services arena, which has profoundly changed the employment relationship in ways that deserve more attention. Second, the thesis expands understandings of how labour standards for cleaners, as a subset of vulnerable workers, are regulated. This is a significant issue if contracting-out is used as a strategy to undermine labour standards for the most vulnerable workers. Third, the analysis highlights the problems of labour law becoming subservient to contracts in regulating labour standards.

# Chapter 1

## Introduction

### 1.1 Objectives and overview

Over the past three decades governments have increasingly leant towards using contracting-out as a central strategy of public policy (Sullivan, 1997:3). There has been a proliferation of contracting-out of government services through public procurement (Baldwin, Scott and Hood, 1998: 6-7; Freiberg, 2010: 23-24). This has changed the employment relationship for employees performing services that have been contracted-out in ways that deserve more attention (Fairbrother, Paddon and Teicher, 2002; Gahan and Brosnan, 2006; Howe, 2006a; Howe and Landau, 2009).

This thesis brings together two bodies of scholarship; that on labour law and that on commercial contracts for services to examine how labour standards are regulated when services are contracted-out by governments. For the purpose of this thesis, the term 'labour standards' describes the inflexible, codified rules that underpin work, such as wage rates and leave entitlements. Labour standards in Australia are attained through both collective bargaining and the setting of minimum standards, and contrast with the softer and more flexible conditions of employment or working conditions, such as working hours, which can vary from workplace to workplace (Murray, 2008: 132).

Rarely have understandings of labour law and contracts been combined in this way to explain the impact of contracting-out on the regulation of labour standards. The vehicle for exploring this issue is provided by the New South Wales (NSW) government contracts for cleaning services. Labour standards for cleaners employed by companies

holding NSW government cleaning services contracts are regulated through the combination of labour law and the contracts for services.

Public procurement occurs when governments purchase goods and services from external bodies (Arrowsmith, Linarelli and Wallace, 2000: 1). Total Australian government procurement constitutes approximately twenty per cent of gross domestic product (United Nations (UN), August 2008). Thus, the government has substantial purchasing power to influence the private sector (Arrowsmith *et al.*, 2000; Harland, Callender, Knight, Telgen, Thai and Walker, 2006; McCrudden, 2007; Freiberg, 2010). When public monies are being spent, there are ethical arguments that government has a duty to at least uphold minimum labour standards for workers providing contracted services (McCrudden, 2004; Howe, 2006a; Seddon, 2009; Hardy, 2012; Australian Government, January 2010). Governments can use their purchasing power as a policy tool by including specific provisions in the contracts that create incentives for the private sector to operate within defined parameters, such as ensuring specified labour standards are provided to workers (McCrudden, 2007; Howe and Landau, 2009).

Contracting-out services through public procurement can be seen as a mechanism to delegate the provision of public services, or it can be harnessed as a tool for regulation (Gahan and Brosnan, 2006; Howe, 2006a; McCrudden, 2007; Howe, 2008). Contract law can be considered a regulatory tool because it is influenced by policy objectives, and seeks to regulate business (Collins, 1999: 58-60). Some argue that governments have an obligation to use public procurement as a policy tool to promote enhanced labour standards (Morris, 1990; Bolton, 2006; McCrudden, 2007; Seddon, 2009). Nevertheless, more research is required to understand how contract law operates as a mechanism for government to regulate labour (Collins, 1999; Johnstone

and Mitchell, 2004: 103). Accordingly, the concept of public procurement as a regulatory tool is an emerging field of scholarly analysis, generating increasing interest in the last two decades (McCrudden, 1999; Bolton, 2006; Weiss and Thurbon, 2006; Arrowsmith and Kunzlik, 2009; Howe and Landau, 2009).

Labour standards for cleaners providing services to the NSW government are regulated through the combination of the terms of contracts for services on the one hand (procurement contracts), and industrial relations processes and mechanisms on the other. The industrial relations dimension encompasses labour law and the framework formally regulating the employment relationship (Kaufman, 1993: xiv; Lansbury, 1995: 1-2). There is little understanding of how employees are regulated through the dual mechanisms of contracting-out and labour law (Svensen and Teicher, 1998; Collins, 1999; Fairbrother *et al.*, 2002; Johnstone and Mitchell, 2004; Marshall, 2006; Nossar, 2006; Howe, 2006a; Howe and Landau, 2009) and this thesis seeks to improve understanding, guided by the research question:

**How are labour standards regulated through the combination of labour law and procurement contracts when services are contracted-out?**

In examining the regulation relating to NSW school cleaners, four exploratory questions were posed:

1. What are the minimum labour standards prescribed by the contractual and labour law regulatory mechanisms?
2. What are the mechanisms for enforcing labour standards for school cleaners?

3. Who is responsible for determining labour standards, and monitoring and enforcing those standards for school cleaners?
4. What are the actual (as opposed to specified legal minimum) labour standards of school cleaners?

Two more questions were derived from these exploratory questions to investigate the enforcement of prescribed labour standards:

5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?
6. How well does the regulation of labour standards for school cleaners meet the requirements of responsive regulation?

Regulatory theory provides the framework for understanding how school cleaners' labour standards are determined, implemented, monitored and enforced through the combined mechanisms of labour law and government contracts. This thesis adopts a mid-range definition of regulation, which incorporates wider conceptions of regulation, which do not necessitate intervention by regulators, but can also aid understanding of how to uphold labour standards for cleaners (see Baldwin *et al.*, 1998: 3; Black, 2002a: 11). Many regulatory theorists advocate what they call a responsive approach to understanding regulation and the enforcement of regulation (Ayres and Braithwaite, 1992; Bluff and Johnstone, 2003; Johnstone and Mitchell, 2004; Cooney, Howe and Murray, 2006; Howe, 2006b; Hardy, 2009; Howe and Landau, 2009; Maconachie and Goodwin, 2010b). The responsive regulation model (Ayres and Braithwaite, 1992) incorporates an array of less interventionist techniques, such as education, negotiation and persuasion by regulatory bodies. Enforcement techniques can be escalated to the most severe forms of prosecution, or penalties, as befit the



severity of the infringement (Ayres and Braithwaite, 1992; Freiberg, 2010). The threat of the 'big stick' is critical to the success of this regulatory approach (Ayres and Braithwaite, 1992: 19). This model works best if the regulators and regulatees have strong communication, and are actively engaged in the regulatory process (Ayres and Braithwaite, 1992; Hardy and Howe, 2009).

To examine how labour standards are regulated through the combination of labour law and procurement contracts when services are contracted-out, this thesis focuses on NSW government contracts for cleaning services between 2010 and 2012. The cleaners who provide these services in NSW schools, TAFEs, police stations, court houses and other state government buildings are employed directly or indirectly through subcontracting, by profit seeking cleaning companies that have been awarded contracts with the NSW government. Ninety per cent of the cleaning takes place in NSW government schools and as such these cleaners are known in the industry as 'school cleaners' even though they do not all clean schools, nor does this group include those cleaning non-government schools (interview with trade union official, 2010).<sup>1</sup> For consistency, the terminology 'school cleaners' is used throughout this thesis.

This thesis focuses on the NSW school cleaners, in order to understand how employees fulfilling government contracts for services are regulated through a combination of labour law and contract law. The reasons for focusing on these cleaners are threefold. The first reason is that labour standards for contracted cleaners are important, because many scholars have shown that contracting-out has resulted in the degradation of labour standards (see Fraser, 1997; Underhill and Fernando, 1998; Johnstone, Mayhew and Quinlan, 2001; Walsh, 2004; Ryan and Herod, 2006; Campbell

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<sup>1</sup> The interviews conducted for this thesis will be explained in *Chapter 4*.

and Peeters, 2008; Gunasekara, 2011). These impacts are more acute for vulnerable workers because they work in difficult conditions where their fundamental rights are undermined (Cooper, 2010: 3; International Labor Organisation (ILO), 2010); they receive low wages, are offered little protection of their labour standards and their work is often temporary (Burgess and Campbell, 1998: 5; Boushey and Fremstad, 2008; Standing, 2009: 68). Low pay is an important indicator of vulnerability in the workplace because it demonstrates that workers' 'skills' are less valued, these jobs are of poor relative quality and, crucially, these workers lack power to assert their labour rights compared to higher paid workers (Campbell and Peeters, 2008; Pollert and Charwood, 2009: 344; Cooper, 2010: 3).

There has been much scholarly research on the ways in which government contracting-out strategies in Australia have impacted on vulnerable workers (see Kelly, 1995: 25; Quiggin, 1996: 49; Brosnan and Walsh, 1998: 24-25; Svensen and Teicher, 1998: 366-67; Underhill and Fernando, 1998: 44; Adams and Hess, 2000: 51-52; Johnstone *et al.*, 2001: 352; Quinlan, Mayhew and Bohle, 2001: 335; Ryan, Furneaux, Pink and Brown, 2005; Gunasekara, 2011). There is, however, limited research on how cleaners, as a subset of vulnerable workers, are impacted upon by outsourcing government cleaning services in Australia and internationally. Australian research on the impact of contracting-out on cleaners includes the work of Fraser (1997), Ryan *et al.*, (2005), Ryan and Herod (2006), Ryan (2007), Campbell and Peeters (2008) and Gunasekara (2011). International examples include Cope (1995) from the UK, Mayer-Ahuja (2004) from Germany and Herod and Aguiar (2006) from the UK and US.

There is growing evidence that the increase in contracting-out has changed the regime of regulation and enforcement for vulnerable workers, like NSW school cleaners,

but there is poor understanding of how the regime of regulation has changed. Pollert and Charlwood (2009: 344) provide evidence of polarisation of work in the UK, with rising proportions of poor quality jobs for vulnerable workers. Holley and Rainnie (2012) identify a growing gap between full-time cleaners' earnings and those of other full-time non-managerial employees in Australia between 1996 and 2010. Cleaners are a 'significant group' of vulnerable workers in Australia because they constitute a large number of workers who are treated relatively poorly in the workplace (Ryan, 2007b; Campbell and Peeters, 2008: 27; Baird, Cooper and Ellem, 2009). Many researchers (including Ascher, 1987; Cope, 1995; Quiggin, 1996; Small and Ranald, 1999; Ranald and Black, 2000; Johnstone *et al.*, 2001; Quinlan *et al.*, 2001; Quiggin, 2002; Nossar, 2006; Ryan and Herod, 2006; Campbell and Peeters, 2008; Peetz and Preston, 2009) go on to demonstrate ways in which contracting-out has been used as a strategy 'to evade or minimise statutory entitlements under labour law and diffuse, obfuscate or block the key decision-makers (usually at the top of the chain) from assuming any corresponding legal responsibility for the benefits they derive' (Quinlan, 2006: 24).

The second reason for NSW government school cleaners being selected for this research is that they constitute a large group of cleaners hired by private companies to fulfil government contracts. The concentration of school cleaners working as employees of contract cleaning companies fulfilling government contracts therefore presents an opportunity to explore how these workers are regulated through both labour law and contract law mechanisms. NSW school cleaners comprise between 15 and 25 per cent of all cleaners working in NSW.<sup>2</sup> (The high incidence of informal work in the cleaning industry (see Holley and Rainnie, 2012; and Campbell and Peeters, 2008) and the

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<sup>2</sup> This estimation is based on data from United Voice and IBISWorld, April 2010.

dearth of Australian Bureau of Statistics (ABS) data on the cleaning industry,<sup>3</sup> means that it is difficult to obtain accurate data for cleaners.) The contract cleaning industry is characterised by fragmentation as cleaners work in isolation across thousands of sites in NSW, with a large proportion of owner operators who work part-time and are likely to only earn \$5,000 per annum (IBISWorld, April 2010: 7). On the other hand, there is a preponderance (54.9 per cent) of employees working for a handful of large businesses (Ryan, 2001: 46).

The third reason for selecting the NSW government school cleaning contracts is that at the time of writing, these contracts were in their seventeenth year and third contract cycle, so this is a mature contracting industry (interview with contract cleaning company former manager). Typically, private sector cleaning contracts are offered on a monthly basis, or for six months at best and are subject to 30 days notice, while public sector contracts tend to be offered for three years at a time (Ryan and Herod, 2006). A study of the labour standards for NSW school cleaners was conducted by Fraser (1997) shortly after the NSW school cleaning services were contracted-out to cleaning companies. In that study Fraser highlighted the intensification of work and erosion of labour standards resulting from contracting-out. Since then the contracts have been refined and enhanced standards established (interviews with cleaning company manager and United Voice official). This thesis builds on Fraser's work by exploring how the labour standards that have been prescribed by the contracts and the labour law are regulated.

Research on the regulation of labour standards for NSW school cleaners constitutes a single case study, which forms the basis of this thesis. The single case

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<sup>3</sup> The only recent, comprehensive data set available for the cleaning industry is the ABS Cleaning Services Industry report 1997–98, published 2000.

study approach is most appropriate because this is a first-time comprehensive exploration (O'Leary, 2005) of a phenomenon that is difficult to distinguish from the context (Yin, 1994: 13). Labour standards were explored in depth through a series of detailed, qualitative interviews with school cleaners and other participants in the NSW government contracted cleaning industry. This data was supplemented by analysis of publicly available documents, particularly the NSW government cleaning contracts, the code of practice, enterprise bargaining agreements, industry journals and Fair Work Ombudsman reports. A brief review of the regulatory context highlights why it is important to understand how labour is regulated through dual regulatory mechanisms and why regulatory theory provides a useful framework to conduct this research.

## **1.2 Australian regulatory context**

Historically, a system of compulsory conciliation and arbitration in Australia meant that industrial tribunals determined minimum labour standards, which were sanctioned by the state in the form of awards and agreements (McCallum, 2011: 10). Minimum labour standards refers to 'state-regulated social protection specifically addressed to setting an irreducible floor for working conditions' (Quinlan and Sheldon, 2011: 5). There was a high level of trade union involvement and minimum standards could be enhanced through collective bargaining (Cooper and Ellem, 2008: 535). It was the longstanding practice, custom or 'norm' that labour was regulated predominantly through public law, that is, by government agencies and institutions overseeing labour law and industrial relations (Johnstone and Mitchell, 2004; Cooney *et al.*, 2006: 216). Accordingly, scholarship of both labour law and industrial relations was the dominant source for understanding the regulation of labour.

'Labour law' conventionally describes 'the forms of legal regulation of work relations which are found in market economies' (Deakin and Wilkinson, 2005: 1). More recently, there have been broader conceptions of labour law, which consider other aspects of the construction and governance of labour markets that impact labour market structure and participation (see Deakin and Wilkinson, 2005: 1; Gahan and Brosnan, 2006; Howe, Johnstone and Mitchell, 2006; Mitchell and Arup, 2006; Quinlan, 2006; Wheelwright, 2006). A primary function of labour law is to regulate the employment relationship (Deakin and Wilkinson, 2000: 31; Wheelwright, 2006: 86) and to formulate and define the terms and conditions of employment, or labour standards (Mitchell and Arup, 2006: 13).

Prescribing minimum labour standards is a first step in providing workers with the protection they require because the employment relationship is an inherently unequal one, with employers having more bargaining power than employees (Kahn-Freund, 1972; Hancock, 2008; McCallum, 2008: 21). Therefore, protecting workers' rights and 'social protection' as it applies to conserving the human aspects of working (Polanyi, 2001 (1944): 138), have been enduring objectives of labour law (Deakin and Wilkinson, 2000: 31; Johnstone and Mitchell, 2004: 102). Broadly, social protection encompasses all the institutions that seek to protect workers (Polanyi, 2001 (1944): 138-139; Ramia and Wailes, 2006: 52), while protective objectives of labour law have included empowering the labour force and redistributing wealth (Mitchell and Arup, 2006: 10). This is achieved by limiting the scope for employer-employee bargaining by prescribing terms and conditions of employment, such as minimum wages, leisure and rest times and maximum working hours (McCallum, 2011: 6). Social protection had its 'heyday' as a core objective of labour law during the post-war years (Johnstone and

Mitchell, 2004: 102; Mitchell and Arup, 2006: 11; Standing, 2009). Trade unions played an integral role in social protection during this period, with union membership density at all-time highs in the early 1950s (Lee, 2006; Cooper and Ellem, 2008; Bray, Waring and Cooper, 2009: 210; Hardy and Howe, 2009).

As part of a central push for more individually and less collectively based employment relationships, contracting-out came to prominence in Australia in the 1980s and 90s (Dabscheck, 2001; Fairbrother *et al.*, 2002; Lee, 2006; Bray and Macneil, 2011; Cooper and Ellem, 2011). Since then many non-core services, such as cleaning, have been outsourced by governments (Sullivan, 1997; Yeatman, 1997; Ranald and Black, 2000; Young, 2007). One way in which governments can provide economic incentives to induce companies to protect vulnerable workers is by including labour standards clauses in procurement contracts for services (Howse, 1993; McCrudden, 2007; Arrowsmith and Kunzlik, 2009; Brammer and Walker, 2009; Howe and Landau, 2009; Howe, 2010). This is because companies can be motivated by the potential for profits to comply with labour standards provisions in order to win contracts. Companies wishing to bid for government contracts have a strong incentive to abide by such clauses, because these contracts are large and lucrative sources of business (Howe, 2008: 47; Freiberg, 2010: 186; Howe, 2010).

In this thesis, regulatory theory provides the framework for analysing the use of procurement as a regulatory tool. Definitions of 'regulation' range from broad sweeping views that include all sources or mechanisms of control or influence, whether intentional or accidental, (Baldwin *et al.*, 1998: 4; Freiberg, 2010: 3), to narrow definitions, typically adopted by governments, that mainly take into account legal tools, like legislation (Gahan and Brosnan, 2006: 131; Freiberg, 2010: 3). For the purpose of

this thesis, 'regulation' is taken to include all government and trade union activities that have the intention of shaping or steering behaviour (Baldwin *et al.*, 1998: 3). As such, this thesis does not consider forms of self-regulation, nor does it consider regulation by management unless it is relevant to understanding how cleaners' labour standards are regulated through the combination of contracts and labour law. As with the broadening of conceptions of labour law to include the labour market structure and participation (Deakin and Wilkinson, 2005), government activities to regulate are now more expansive than previously conceived. Scholarly understandings of government regulation have been shaped by Hood's (1983) assertions that the tools of government are broad and extend beyond simply making and enforcing rules (Freiberg, 2010: vii).

Even if a narrow view of state-based regulation is applied, governments are now combining the traditional 'command and control' regulatory approach with 'light touch' methods of persuasion and incentives (Gahan and Brosnan, 2006: 131-141; Nossar, 2006: 202; Standing, 2009: 93; Freiberg, 2010: 186). Many regulatory theory scholars argue that labour in Australia is regulated through a combination of 'light' and 'hard' approaches to regulation (see Gunningham, Sinclair and Grabosky, 1998: 6-7; McCrudden, 1999; Hardy, 2009; Howe, 2010). This is consistent with the 'responsive regulation' approach first introduced by Ayres and Braithwaite (1992). 'Light touch' approaches to regulation are tools that individuals or bodies, including governments, can use to guide behaviour without formally creating, monitoring and enforcing rules through orders and sanctions (Howe, 2010). These 'light touch' approaches are implemented through influence and incentives, rather than enforced legally (Howe, 2008: 47; Freiberg, 2010: 186). By contrast 'hard law' or 'command and control'



regulation involves mandatory compliance with legally binding rules (Gahan and Brosnan, 2006: 141; Howe, 2008: 47).

An understanding of contract law as a form of regulation is broader than the traditionally accepted purpose and form of contract law (Collins, 1999: 58), but is becoming increasingly widely accepted (Daintith, 1994; Howe, 2006a; McCrudden, 2007; Howe and Landau, 2009). Government procurement has come to be regarded as a 'light touch' regulatory tool in its own right, which can be used to support a range of complementary industrial relations regulatory regimes (see Fraser, 1997; Lobel, 2005; McCrudden, 2007; Howe and Landau, 2009; Howe, 2010). This constitutes a broadening of perceptions of labour regulation (Arup, Gahan, Howe, Johnstone, Mitchell and O'Donnell, 2006; Cooney *et al.*, 2006; Howe and Landau, 2009; Maconachie and Goodwin, 2010b).

### **1.3 Findings and contribution**

Studies of growing proportions of vulnerable workers (Pollert and Charlwood, 2009: 344; Holley and Rainnie, 2012) have 'exposed the ineffectiveness of [the labour law] legal structure and the need for a more integrated approach to labour standards' (Quinlan, 2006: 23). The effectiveness of regulation is often assessed by the degree of compliance (Hardy and Howe, 2009: 323; Freiberg, 2010: 260). Scholars advocate a broadening of labour law theory and approaches to consider labour market regulation, and take account of the wider variety of employment and working relationships that have resulted from policies promoting managerial prerogative, 'labour market flexibility' and contracting-out (Lobel, 2005; Mitchell and Arup, 2006; Weil, 2009b). This thesis gives a greater understanding of, and voice to, a group of vulnerable workers experiencing adverse changes from contracting-out practices.

The enforcement of labour standards through labour law instruments has been the subject of scholarly research in recent years (Goodwin, 2004; see Gahan, 2006; Riley, 2008b; Hardy and Howe, 2009; Maconachie and Goodwin, 2010a; Brown, 2011; McCallum, 2011; Quinlan and Sheldon, 2011; Weil, 2011; Catanzariti and Kane, 2012; McCrystal and Orchiston, 2012). There is also an emerging body of research about how labour standards are enforced through contractual mechanisms (see Collins, 1999; Bolton, 2006; Gahan and Brosnan, 2006; Nossar, 2006; Howe, 2006a; Howe and Landau, 2009; Seddon, 2009). While there is a move to explore wider conceptions of the regulation of labour (see the collection of research in Arup *et al.*, 2006; and Howe, 2010), there has not yet been any research to understand how contracts and labour law instruments combine to regulate and enforce labour standards for workers being regulated through both mechanisms.

The central argument of this thesis is that by contracting-out services, the employment relationship is changed: cleaners' labour standards are now regulated through the combination of traditional labour law mechanisms and lesser understood contract law mechanisms. This has changed the regime of regulation and enforcement of labour standards. Other scholars have examined the impacts of contracting-out strategies on trade unions (refer to Dunleavy, 1986: 16; Dabscheck, 2001; the collection of studies in Fairbrother *et al.*, 2002; and Teicher, van Gramberg and Holland, 2006), on human resource management practices (for example, Young, 2007) and on the degradation of labour standards for vulnerable workers (see Quiggin, 1996; Fraser, 1997; Underhill and Fernando, 1998; Johnstone *et al.*, 2001; Walsh, 2004; Ryan *et al.*, 2005; Ryan and Herod, 2006; Campbell and Peeters, 2008; Gunasekara, 2011). However, this research is unique because, with the exception of Howe and Landau's

brief study of Victorian government cleaning services in 2009, there has been little or no research to understand specifically *how* labour standards are regulated through both labour law and contracts for services.

This thesis finds that commercial contracts between government and employers have become more important than the contract of employment with the cleaners themselves in regulating cleaners' labour standards. This finding advances upon Dabscheck's (2001) assertion that contracts have become the dominant paradigm by looking more specifically at how the labour standards are regulated. Further, if Ayres and Braithwaite's (1992) model of responsive regulation posits the ideal requirements for regulating labour standards, then the combination of labour law and contracts fail to meet those requirements. Rather than the two regulatory mechanisms combining to reinforce each other the labour law becomes subservient to contracting. The result is that cleaners' labour standards are regulated predominantly through the contracts for services: a commercial tool which is poorly designed to protect labour standards. This leaves a significant group of vulnerable workers being poorly protected as their labour standards are inadequately enforced.

#### **1.4 Structure of the thesis and chapter outline**

Regulatory theory and the model of responsive regulation, including why and how these constitute the theoretical framework for this thesis are explored in *Chapter 2*. The prescribed labour standards for school cleaners and how they have come to be regulated through contractual and labour law regulatory mechanisms are set out in *Chapter 3*. The methodological approach of the thesis is outlined in *Chapter 4*, which outlines the research questions and justifies the use of the qualitative case study approach. *Chapter 4* also includes details of the 38 school cleaners and 14 stakeholders

who participated in the case study. It explores how the group of school cleaners who participated in the case study mirror the broader population of cleaners working on NSW government school cleaning contracts, as well as cleaners across the industry.

The roles of each of the regulating stakeholders in the NSW government school cleaning contracts are examined in *Chapter 5*. The third research question is addressed in *Chapter 5*: which bodies are responsible for setting labour standards for the school cleaners and, crucially, which bodies are responsible for monitoring and enforcement of those labour standards? Profiles of the cleaning industry, cleaners and NSW school cleaners are set out in *Chapter 6*. The results of the case study interviews are presented in *Chapters 7 and 8*. Compliance with labour standards regulations prescribed by labour law and the contracts is explored in *Chapter 7*. Ways in which the regulation of contract conditions impact upon labour standards are examined in *Chapter 8*. Analyses in these chapters reveal the actual labour standards of school cleaners, answering research question four. These chapters also provide answers to the fifth research question: does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards? A comparison of the regulation of school cleaning with the responsive regulation model and identification of the primary sources of regulation are included in *Chapter 9* to answer the sixth research question. Areas for further research and the limitations of this research are highlighted in the conclusion, in *Chapter 10*.

## **Chapter 2**

### **The Devolution of ‘Command and Control’ Regulation**

#### **Introduction**

The primary focus of this thesis is to understand how NSW government school cleaners’ labour standards are affected when ‘labour standards’ clauses are included in government contracts for services. Traditionally, labour law provided the basis for the regulation of cleaners’ labour standards. With the rise of contracting-out standards are now determined by both labour law and the contracts for services. The ‘responsive regulation’ model (Ayres and Braithwaite, 1992) provides the framework for this thesis. This model establishes a sturdy framework to analyse the adaptability and suitability of regulation for enforcing prescribed standards. For this reason responsive regulation aids understanding of how cleaners’ labour standards are regulated through both labour law and contracts for services. This model is useful because it can encompass a broad array of regulatory strategies from various interested parties and it prioritises compliance through strong deterrence mechanisms (Freiberg, 2010).

Section 2.1 contains a review of the regulatory theory literature and finds definitions of labour standards and regulation that will facilitate understanding how labour standards are regulated through the dual mechanisms of labour law and contracts for services. There is also an explanation of how the responsive regulation model can be applied to understand the regulation of labour standards in this section. It will be demonstrated that the responsive regulation enforcement pyramid can be applied to the regulation of labour standards through both labour law and contracts.

The enforcement measures available under contracts compare unfavourably with the wide array of measures available for enforcing labour standards through labour law.

In Section 2.2 there is an exploration of the context and application of contracting-out by Australian governments. Then Section 2.3 sets out the historical context of how government procurement has come to be used as a regulatory tool. This section also includes previous analyses of the effectiveness of utilising government procurement to regulate labour standards. In this chapter it will be demonstrated that government contracts for services have become a significant factor in the regulation of labour standards for government contracted workers. Given the pervasiveness of governments contracting-out services, there has been limited research, until now, to understand how labour standards are being regulated when government services are contracted-out.

## **2.1 A theoretical framework for understanding the regulation of labour standards**

### **2.1.1 Defining labour standards and regulation**

Regulation of the employment relationship can be dated back to the establishment of rights and duties of employees and employers with the English Ordinance of Labourers (1349) and the Statute of Labourers (1351). Then with the rise of industrial society two distinct classes came to the fore: the capitalist or entrepreneur and the labourer or wage earner (Webb and Webb, 1907: 11), or as Marx defined them: the bourgeoisie and proletariat (Marx and Engels, 1848: 336). Thus the historical exploitation of slaves, plebeians and serfs had progressed to the exploitation of the wage earner in capitalist society. This manifested in the enactment of inherently inequitable master and servant legislation in favour of the employer, from as early as

the second half of the 16<sup>th</sup> century in England (Johnstone, McCrystal, Nossar, Quinlan, Rawling and Riley, 2012: 5).

With the establishment of industrial capitalism came a middle class movement to insulate workers from the excesses of exploitation; in England factory laws and social legislation were enacted (Polanyi, 2001 (1944): 87). This signalled a rising consciousness about labour standards for workers, which centred on wage negotiation through collective labour law systems and debates about health and safety standards (Goodwin, 2004: 3). The adverse health impacts of low wages, excessive hours of work (including the need for leave arrangements) and work intensity were of concern, as was occupational health and safety more broadly (Johnstone *et al.*, 2012: 9). Child labour and widespread job insecurity also came to be understood to be problems, albeit poorly addressed ones (Johnstone *et al.*, 2012: 9).

Debates over the best ways to uphold or improve labour standards have continued to this day. With the increasing prevalence of globalised chains of production since the 1980s debates have ignited, centring on ILO defined 'core' labour standards that are commensurate with basic human rights (Weil, 2008). The ILO defines international labour standards as the 'legal instruments drawn up by the ILO's constituents (governments, employers and workers)' and include legally binding international treaties, called conventions (ILO, 2013). There are eight ILO conventions that address fundamental principles and rights at work, covering freedom of association and collective bargaining rights, and the elimination of forced labour, child labour and discrimination. Although the broader debate on labour standards and human rights is interesting, problems persist with the regulation of basic statutory labour standards for low-paid and vulnerable workers in Australia (Goodwin, 2004: 3).

The phrase 'labour standards' is used in this thesis to describe the state sanctioned, inflexible, codified rules that underpin work, such as wage rates and leave entitlements. These are 'legislated standards' that have been given 'force of law because they have been enacted into law by parliaments' (McCallum, 2011: 6). These laws are necessary to defend the human rights of low-paid and vulnerable workers in particular. Legislated standards institute minimum terms and conditions of employment. As McCallum (2011: 6) puts it, legislated standards are enacted 'to limit the scope of bargaining between employees and their employers by providing that the costs of hiring labour cannot fall below a specified minimum wage and set of minimum terms and conditions of labour including maximum weekly hours of work and appropriate periods of rest and for leisure.'

Labour standards in Australia are attained through both collective bargaining and the setting of minimum standards, and contrast with the softer and more flexible conditions of employment or working conditions, such as working hours, which can vary from workplace to workplace (Murray, 2008: 132). Therefore this thesis examines the regulation of labour standards for NSW school cleaners, as a subset of low-paid, vulnerable workers. These minimum labour standards in Australia are underpinned by the *Fair Work Act 2009*. Minimum labour standards refers to 'state-regulated social protection specifically addressed to setting an irreducible floor for working conditions' (Quinlan and Sheldon, 2011: 5).

The Fair Work Act incorporates the minimum labour standards endorsed by the state in the forms of National Employment Standards (NES), Modern Awards and enterprise-based collective bargaining agreements (EBAs) (McCallum, 2011: 10). Thus, there are three levels of federal regulation (Riley, 2008a). The base level consists of ten



National Employment Standards (NES), which provide a legislated safety net, covering basic entitlements such as working hours and rights to leave (McCallum, 2011). The second level is the modern award, a revised and simplified version of the traditional award system. The third level is enterprise-based collective bargaining agreements (EBAs) and Individual Flexibility Agreements (IFAs), with workplace agreements subject to a 'better off overall test' (BOOT) since 2010 (Riley, 2008a). The Act includes General Provisions, which cover freedom of association and protection against discrimination and other wrongful treatment (Fenwick and Howe, 2009: 192).

The instruments that directly regulate the labour standards for the cleaners who are the subject of this research are the EBAs between the contracted cleaning companies and their trade union, United Voice. EBAs are the primary instrument for upholding and upgrading labour standards for these cleaners. These EBAs are underpinned by the relevant modern award - the Cleaning Services Award 2010 (Cleaning Award). A more general safety net is provided by the National Employment Standards legislation. There is little variation between the EBAs for each contracted cleaning company. The EBAs prescribe pay rates, leave entitlements and other employment conditions, such as provisions for clothing, and protective equipment requirements. The EBAs also cover OHS, discrimination, and grievance procedures. The EBAs refer OHS regulation to the *NSW Occupational Health and Safety Act, 2000* and its amendments. This NSW State specific legislation also extends to bullying and harassment in the workplace. The labour standards for NSW cleaners are monitored and enforced by the federal inspectorate agency, the Fair Work Ombudsman (FWO), and the trade union.

To understand how these concrete labour standards are regulated for NSW school cleaners, definitions of regulation must also be explored to decide which definition best suits this objective. Perceptions of regulation from the 1900s were derived largely from Max Weber's analysis that rules were predominantly unilaterally determined in a formal legal system to ensure uniformity and stability (Weber, 1947: 124-125; Teubner, 1983: 243; Daintith, 1994: 210; Teubner, 1998: 400). Approaches to regulation centred on state-based actions to 'command and control' societies and economies through centralised, bureaucratic, prescriptive rules supported by punishments or sanctions (Weber, 1968; Baldwin *et al.*, 1998; Gunningham *et al.*, 1998: 6; Hardy and Howe, 2009: 309-310; Freiberg, 2010: 21). For the regulation of labour this meant understandings of regulation were mainly limited to traditional laws enacted by governments that, 'place[d] restrictions on the labour market for terms and conditions of employment' (McCallum, 2011: 6). In the Australian labour law context this type of regulation was most evident during the nineteenth century when various forms of Masters and Servants Legislation shaped labour market operations by protecting labour supply and supporting the subordination of labour by the employer (Webb and Webb, 1907: 232; Deakin and Wilkinson, 2005: 14). This practice of 'regulation' revolved around a set of 'command and control' binding rules, which were designed to be monitored and enforced by a state agency or inspectorate (refer to ILO Convention No 81, see also Arup *et al.*, 2006; Howe, 2008; Hardy and Howe, 2009: 309-310). By the 1980s there was 'increasing disenchantment with the goals, structures, and performance of the regulatory state' (Teubner, 1983: 239).

More recently, regulatory theory has broadened the scope of what we understand to be regulation (Collins, 2000: 3-4). Regulatory theory has illuminated the

shortcomings of analyses of regulation that centre on 'command and control' (Black, 1997; Black, 2002a: 2-3; Black, 2002b; Job, 2008; Howe, 2010). Indeed, 'command and control' has come to be used derogatorily, as a term to discredit purely state-based regulation (Baldwin *et al.*, 1998: 9; Black, 2002a: 2). Scholars have identified that, when used in isolation, 'command and control' is susceptible to avoidance, leading to unintended consequences or even regulatory failure (Ayres and Braithwaite, 1992: 47-51; Gunningham *et al.*, 1998: 6-7; McCrudden, 1999; Cooney *et al.*, 2006: 223; Howe, 2010: 334).

Broader understandings of regulation are emerging, in which traditional law is only one of the regulatory tools (Baldwin *et al.*, 1998; Black, 2002a; Arup *et al.*, 2006; Gahan, 2006: 262; Howe, 2008). Government regulatory mechanisms are now enacted through a much wider range of organisations and institutions, using varied approaches from the traditional command and control approach to 'light touch' methods of persuasion and incentives (Gahan, 2006; Gahan and Brosnan, 2006: 131). Similarly, understandings of the regulation of labour now cast a wider net to consider labour market participation and the structure of the labour market; social security law and all other areas of the law that impact on families and businesses; as well as housing policy and other non-legal phenomena which shape markets and civil society (Daintith, 1994; Deakin and Wilkinson, 2005: 2; Carney, Ramia and Chapman, 2006: 383; Mitchell and Arup, 2006).

These changes to perceptions of regulation have reflected an ideological shift that commenced in the 1980s. Friedman and Friedman (1980) argued that any level of state involvement in the market was commensurate with command economies and was inefficient and undesirable. At this time proponents of 'Live Free or Die' (originally

credited to General John Stark (1808) quoted in Ayres and Braithwaite, 1992: 3) emerged and advocated for 'deregulation' of government regulatory practices. Prior to that, there had been a general expectation that regulation would be state-centred (Baldwin *et al.*, 1998: 5; Freiberg, 2010: 23).

The drive for 'deregulation' was about minimising government involvement in all economic spheres, including regulation. Many scholars proved this to be paradoxical (see Ayres and Braithwaite, 1992: 3-4; Baldwin *et al.*, 1998; Howe, 2006b; Freiberg, 2010), demonstrating instead that in the name of deregulation more and more regulations were being put in place during this period to counteract increasingly privatised ownership. Terminological debates notwithstanding, the ascendance of neoliberal philosophies promoting minimal government 'intervention' in the market has meant that government regulation through purely 'command and control' measures has become less politically palatable (Howe, 2010: 334). The ascending neoliberal philosophies were manifested, in part, in a proliferation of government strategies to contract-out services, such as the privatisation of the NSW Government Cleaning Service, which is the subject of this research. (The rise of government privatisation and contracting-out strategies will be discussed in detail in the following section 2.2.)

Importantly for this thesis, approaches to regulation have been broadened to reflect the drive to minimise government involvement in economic activities. This has been evidenced in assertions that government should guide rather than participate in the market, hence the notion that government should 'steer rather than row' (Sullivan, 1997; Ranald and Black, 2000; Gahan and Brosnan, 2006; Howe, 2010). This notion that governments can 'steer' by regulating through contractual mechanisms, rather than 'row' by deploying direct measures of command and control is a central area for

examination in this thesis. Arguments that government contracts for services can be a mechanism for regulating labour standards will be explored in depth in section 2.3. This emergent approach to regulation assumes that the more politically palatable and less direct forms of regulation, such as regulating labour standards through contracts for services, will be valid (Collins, 1999; Johnstone and Mitchell, 2004: 103). There is limited understanding of how governments regulate labour standards through contracts (Svensen and Teicher, 1998; Collins, 1999; Fairbrother *et al.*, 2002; Johnstone and Mitchell, 2004; Marshall, 2006; Nossar, 2006; Howe, 2006a; Howe and Landau, 2009); this thesis endeavours to fill that gap in understanding.

Yet before an understanding of how labour standards are regulated can be brought to light, a definition of regulation that is appropriate to government contracts for services, labour law and labour standards is required. Indeed, the aforementioned changes to perceptions of regulation and increasingly ubiquitous practices of regulating make it difficult to understand what regulation is (Standing, 2009; Standing, 2011: 39-40). Firstly, broader definitions of regulation are considered, then a specific definition that is suitable for the objectives of this thesis is elicited.

Wide reaching conceptions define regulation 'generally as an intentional activity to bring about desired behaviour' (Freiberg, 2010: 258). This includes 'all mechanisms of social control', ranging from targeted rules to influence particular activities and unintentional ways in which behaviour is shaped (Baldwin *et al.*, 1998: 4). Behaviour can be influenced or shaped by any entity and is not restricted to state activities (Collins, 1999: 7). More expansive definitions of regulation coincide with scholars' observations that regulation has become increasingly 'decentred' and more 'diffused throughout society' (Black, 2002b: 2; Job, 2008: 156). Some go so far as to consider 'self-

regulation' as a particular feature of regulation (Daintith, 1994; Ogus, 1998; Black, 2002b: 104). Governments have increasingly come to rely on self-regulation from industry associations and professional bodies, as a substitute for legislated regulations (Ayres and Braithwaite, 1992; Daintith, 1994: 227; Scott, 2002; Job, 2008: 155). Voluntary or self-regulation has the particular benefit that costs of monitoring and enforcement are minimised, although there are obvious difficulties with ensuring compliance (Ogus, 1998: 374-375).

The most useful definition for the purpose of this thesis is a mid-range definition, which incorporates wider conceptions of regulation, while assisting the understanding of how labour standards for school cleaners can best be upheld (Baldwin and Black, 2008: 59). A broad conception of regulation, which incorporates all measures of social control, would lack focus and provide only limited scope for assessing the effectiveness of government policies (Black, 2002a). A narrower definition, focusing on government regulation alone, will help us understand what governments are doing and how they can improve labour standards for school cleaners. Wider conceptions of government regulation that go beyond purely command and control efforts to deliver laws and sanction breaches will help us understand all the ways in which governments regulate labour standards. Regulation of school cleaners' labour standards by government takes place through both promotion and enforcement. Promotion can encompass incentives, education, persuasion and other 'light touch' approaches. Enforcement, 'is the taking of some coercive action when voluntary means have failed' (Freiberg, 2010: 205). For example, the awarding of contract payments to companies that are complying with labour standards is a way of promoting labour standards. On the other hand, traditional

labour law penalties, like the imposition of fines if there is non-compliance with labour standards, can be a form of enforcement.

A mid-range definition of regulation provided by regulatory theorists includes all efforts by institutions of the state to shape and steer society and the economy (see Baldwin *et al.*, 1998: 3; Black, 2002a: 11). This incorporates targeted rules exacted by a body that is in a position of authority, and sanctions for non-compliance imposed through the legal system. It also considers other government activities that have the intention to shape or steer behaviour, such as government contracting, taxation, licensing, registrations, collective bargaining, information campaigns and other types of business standards or guidelines (Baldwin *et al.*, 1998:3; Gahan and Brosnan, 2006: 133; Freiberg, 2010: vii-viii). Collective bargaining is included because it has been entrenched in the Australian constitution since 1901 (Treuren, 2000:75). This definition excludes private forms of regulation, such as self-regulation by industry associations. Business standards or guidelines that are state sanctioned, but then self-enforced, are included for consideration in this thesis' definition of regulation.

Thus regulatory tools that would be considered under this mid-range definition of regulation include combinations of 'direct government and public sector management; command and control regulation; economic instruments and market facilitation; cooperative regulation; and communication' with government bodies (Howe, 2008: 31). Government regulation of labour standards for school cleaners can take in a wide array of regulatory instruments ranging from labour law to immigration law, collective bargaining to the role of enforcement bodies, and from departmental policies in schools to government training schemes for cleaners. Regulation through contracts can incorporate defining, monitoring and enforcing contract terms that are

both directly and indirectly related to labour standards, but which impact upon the work of the school cleaners. The use of contracts is thus a regulatory technique in which acceptable norms are established through the incentive of being awarded and retaining contracts with government bodies (Daintith, 1994). By regulating through contracts, governments can hold contracted parties accountable by threatening contract termination if they are acting outside these permissible norms (Scott, 2001). Howe (2010: 332) states that government procurement is used as a regulatory technique for employment practices when government purchases are 'conditional upon contractors and supply chains observing desired labour practices linked to job criteria'. When contracts for services are used in this manner there are legal constraints to the extent to which they can 'regulate' labour standards (Howe, 2006a; Seddon, 2009: 44).

### **2.1.2 'Light touch' regulation**

Contracts for services are considered a light touch regulatory mechanism: companies are persuaded or even motivated to accept labour related conditions attached to contracts by the economic incentives of contract payments (Howe, 2006a: 170). Light touch measures favour negotiation, cooperation and conciliation over punitive measures, like fines or sanctions (Hardy, 2009: 85). Analyses of light touch law measures, like regulation through contracts, are becoming increasingly prominent in comparison with traditional command and control analyses of regulation (Black, 1997: 5-6; Gahan and Brosnan, 2006: 141; Nossar, 2006: 202; Howe, 2006a; Standing, 2009: 93; Freiberg, 2010: 186). In spite of the popularity of outsourcing the public provision of goods and services, 'the inherent limitations of contract as a tool for achieving public outcomes is [sic] not well understood' (Seddon, 2009: 6). The use of contracts for services as a light touch regulatory tool to add to the regulatory toolkit is an emerging



area of study (McCrudden, 1999; Bolton, 2006; Weiss and Thurbon, 2006; Arrowsmith and Kunzlik, 2009; Howe and Landau, 2009). Whether governments favour light touch regulation like public procurement because it is deemed to be more effective, or whether there are other motivations, such as ideological or constitutional limitations, remains to be seen (Howe, 2006a: 183).

Indeed, little work has been done to evaluate the extent to which theoretical arguments in favour of utilising public procurement as a policy tool are effective in practice (McCrudden, 2007; Howe and Landau, 2009). When governments outsource to the private sector they place faith in the private sector to supply goods and services on behalf of the government, in the manner in which the government would expect them to be delivered, while at the same time being inherently motivated to maximise profits (Seddon, 2009). One disadvantage of light touch law is that it may not be as 'robust in its ability to constrain behaviour through credible threats of enforcement' (Dorbeck-Jung and van Ameron 2007: 134 in Freiberg, 2010: 188). As a light touch regulatory mechanism, contracts for services have limitations for ensuring compliance with labour standards (Howe, 2006a: 171; Freiberg, 2010: 134). Critics argue that by attempting to regulate labour standards through contracts there is an implicit assumption that parties agreeing to the contractual terms will be self-regulating (Hindess, 1997:15). While self-regulation can be efficient, creating opportunities for cooperation and therefore compliance (Ayres and Braithwaite, 1992), there can be problems of conflicts of interest and inadequate enforcement mechanisms when breaches occur (Gunningham *et al.*, 1998: 52-53; Freiberg, 2010: 29-31).

### 2.1.3 Responsive regulation

Nonetheless, the shortcomings of light touch law measures, like self-regulation, have been outweighed by the limitations of command and control, which was considered to be rigid, unsophisticated, often inappropriate and an insufficient motivation for compliance (Black, 2002b: 106). By the 1980s governments around the developed world were transitioning from formal command and control systems, of statutory rules backed by legal sanctions, to broader approaches that incorporated light touch law measures (Teubner, 1983; Black, 1997). From the late 1990s, even the Australian Taxation Office (ATO), previously thought to be a bastion of command and control style regulation, relaxed its regulatory approach, adopting a variety of regulatory tools including light touch measures, to suit the situation (Job, 2008: 157). By way of example, the ATO will now give taxpayers the opportunity to rectify discrepancies for isolated infringements, whereas previously they would have imposed penalties for every infringement regardless of the circumstances (Ayres and Braithwaite (1992) discuss the implications of these two approaches to regulating taxation in Chapter 2 'The Benign Big Gun').

In this context theorists struggled to come to terms with the changing nature of regulation and settle on a definition of the new regulatory paradigm (Black, 1997). This prompted authors to write of a 'regulatory crisis' (Teubner, 1983: 241; Baldwin *et al.*, 1998: 6; Gahan and Brosnan, 2006: 129). Theoretical approaches emerged, ranging from considerations of the 'deregulation' to the 'rematerialization' of law, as well as analyses of 'reflexive' regulation (Teubner, 1983; Baldwin *et al.*, 1998: 7; Deakin and Wilkinson, 2005). This increasingly broad array of regulatory tools impelled analysis of equally expansive approaches to enforcement. Then in 1992, Ayres and Braithwaite

introduced what was to become a widely accepted model of 'responsive regulation', which demonstrated how enforcement could be adapted to complex and changing circumstances (Lobel, 2005; Cooney *et al.*, 2006; McCrudden, 2007; Howe and Landau, 2009; Freiberg, 2010).

The concept of responsive regulation is based on the notion that regulations and their enforcement should be responsive to the regulatory context and stakeholders' interests (Ayres and Braithwaite, 1992). This is a collaborative, transparent and democratic approach to regulation in which various parties participate in the regulatory process (Ayres and Braithwaite, 1992: chapter 3; Cooney *et al.*, 2006: 223-224; Howe, 2008: 53; Hardy, 2012: 118). Responsive regulation advocates that an institutional design which creates a climate of compliance is most likely to be an effective approach to enforcement. Responsive regulation takes a unique view of regulation by considering that there is a sliding scale of enforcement options starting with 'light touch' approaches that can be escalated to more command and control style options (Ayres and Braithwaite, 1992). These can be applied as appropriate to the severity of the breach, or history of non-compliance. The success of responsive regulation is contingent on the ability to escalate responses to non-compliance, with an option to enlist a 'big stick' style punishment if other enforcement strategies are not successful. Without at least the threat of a 'big stick', the regulation is considered worthless (Ayres and Braithwaite, 1992; Freiberg, 2010; Goodwin and Maconachie, 2011).

The responsive model of regulation is an established and widely accepted element of regulation theory, which seeks to find the most effective (and responsive) approach to regulation. It is not an explicit public policy approach to implementing enforcement, instead it is a model that scholars use to assess the effectiveness of

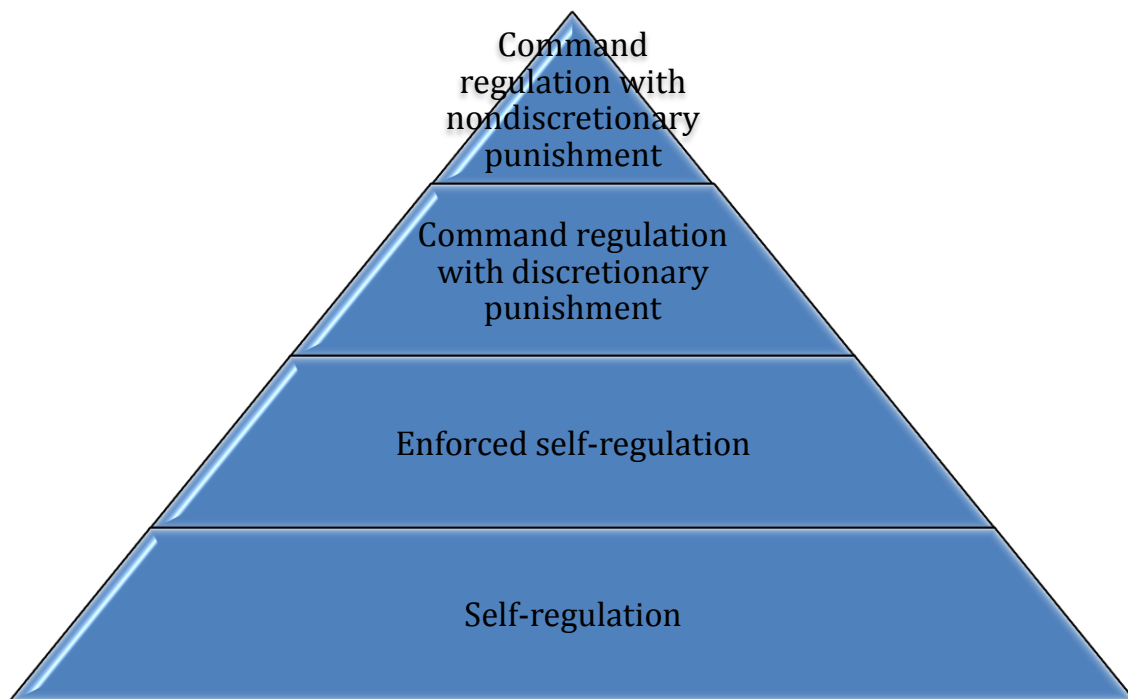
existing regulations (see for example the following studies of the regulation of labour standards: Cooney *et al.*, 2006; Hardy, 2009; Howe and Landau, 2009; Howe, 2010; Hardy, 2012). Thus the responsive regulation model can be used to better understand the application and effectiveness of the regulation and enforcement of labour standards when governments contract-out services. This thesis emulates the approach taken in previous academic research (by Cooney *et al.*, 2006; Hardy, 2009; Howe and Landau, 2009; Howe, 2010; Hardy, 2012), using the responsive model of regulation as a standard against which to test the effectiveness of the regulation of labour standards. Therefore this thesis does not attempt to contribute innovative theoretical approaches to the regulation of labour standards; the contribution of this thesis is to use insights from regulatory theory to build a rare understanding of how labour standards are actually being regulated when services are contracted-out.

Cooney *et al.* (2006) assert that the adaptability and flexibility of the responsive regulation model can assist regulators to assess whether they are meeting vital public policy goals such as social protection, fairness and the public interest. Social protection is an enduring objective of labour law (Deakin and Wilkinson, 2000; Johnstone and Mitchell, 2004; Quinlan and Sheldon, 2011) as well as other areas of government regulation (Baldwin *et al.*, 1998: 5). Proponents of utilising contracts for services as a regulatory tool have argued that social protection can be best enforced by combining a range of policy tools, such as contracts and labour law (McCrudden, 1999; Lobel, 2005; Howe and Landau, 2009; Howe, 2010). By this rationale, a regulatory approach that enlists all the regulatory tools of both contracts for services and labour law has the potential to respond to the protection requirements of vulnerable workers, such as the cleaners. This theory has only been tested once in research conducted by Howe and

Landau (2009), who concluded that more research was required before conclusions could be drawn. In this thesis, the case study of NSW school cleaners will be used to determine if, in fact, school cleaners are better protected because they are regulated through both contracts for services and labour law.

A feature of responsive regulation, often perceived in pyramidal form (Figure 2.1), is the availability of a range of enforcement options which allow alternative interventions depending on circumstances. The pyramid shape highlights the emphasis on co-operative and persuasive measures, with the use of severe interventions as a last resort (Freiberg, 2010: 97). The responsive regulation model describes how governments seek to shape and steer individuals' behaviour rather than demanding change through purely 'command and control' measures.

**Figure 2.1 Types of regulation in a pyramid of enforcement**



Source: Ayres and Braithwaite, 1992: 39

Analysis of the regulation of labour in the responsive regulation framework considers whether the regulation is dynamic enough to convert broad public policy objectives into standard patterns of behaviour within firms. Cooney *et al.* (2006: 225) argue that the regulation of labour needs to be responsive for firms to be internally motivated, rather than externally driven to comply. To achieve this, the regulator and regulatee must have regular and effective communication to reach mutual understandings (Ayres and Braithwaite, 1992). Ideally, there must also be a small number of operators so regulators and regulatees can effectively communicate (Black, 1997: 42). Indeed, the ideal system of regulation must be 'participative, transparent and democratically sound' for standards to be identified, implemented, monitored and enforced (Cooney *et al.*, 2006: 224). The complexities of the real world can weaken or obfuscate the regulator-regulatee relationship; regulators are unlikely to have the time, expertise and information required for this model to work (Black, 1997: 42-43; Baldwin and Black, 2008: 61; Freiberg, 2010: 100). Such a collaborative approach to regulation, where regulators, regulatees and third parties, such as trade unions, cooperate to regulate, while being the ideal scenario, is actually rare in most policy areas (Hardy, 2012: 118).

The inclusion of stakeholders, like trade unions, in the regulation process, as well as the array of 'light touch' measures like education, communication and persuasion addresses the conciliatory requirements of responsive regulation (Ayres and Braithwaite, 1992). The conciliatory approach has been called 'compliance' enforcement, as opposed to 'deterrence' enforcement, using terms originally identified by Reiss (1983). The exclusive use of 'light touch' measures would constitute a strategy of compliance enforcement, whereby infringements are treated as opportunities to

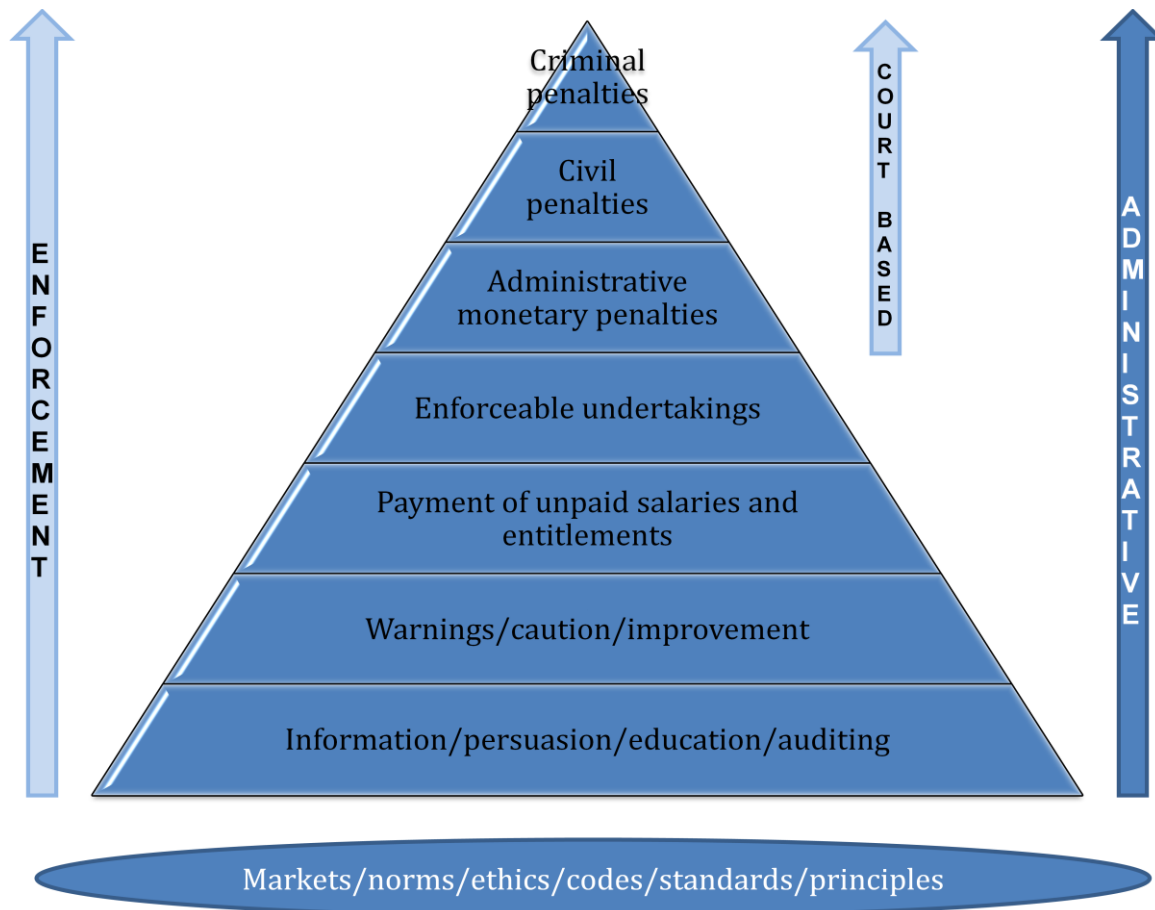
educate rather than impose sanctions (Hardy, 2009: 85; Maconachie and Goodwin, 2010b: 371). Conversely a deterrence strategy of enforcement is one where all infringements are penalised (Black, 1997: 41). The deterrence value of regulation is dependent on the likelihood of detection and the credibility of the 'big stick' being carried by the regulator. Deterrence will be less effective if the benefits from not complying exceed the combined likelihood of detection and severity of punishment (Freiberg, 2010: 212). Both compliance and deterrence enforcement strategies, with many others in between, are needed, otherwise the deterrent value of responsive regulation is lost (Ayres and Braithwaite, 1992: 41; Maconachie and Goodwin, 2010b).

#### **2.1.4 Responsive regulation and enforcement of labour standards**

This thesis explores the range of enforcement strategies used to regulate labour standards for NSW school cleaners. Since the work of these cleaners is regulated through dual regulatory mechanisms, the responsive regulation model can be applied to the enforcement of both labour law and contracts for services. In practice labour standards will be enforced through both these mechanisms in interconnected and co-dependent ways, so an enforcement pyramid depicting this regulation should include both the labour law and contractual mechanisms. It is precisely the interconnectedness between the labour law and contractual regulation of labour standards that this thesis seeks to understand. However, before delving into the complexities of the enforcement of labour standards in the latter parts of this thesis, it is important to understand each component that makes up the interconnected regulation of labour standards. This section considers the two enforcement pyramids, as if they were independent of each other. This way it will be possible to see which enforcement mechanisms are absent

once the pyramids are combined in *Chapter 9*. Figure 2.2 illustrates how the responsive regulation model applies to labour law in Australia:

**Figure 2.2 Labour law pyramid of enforcement**



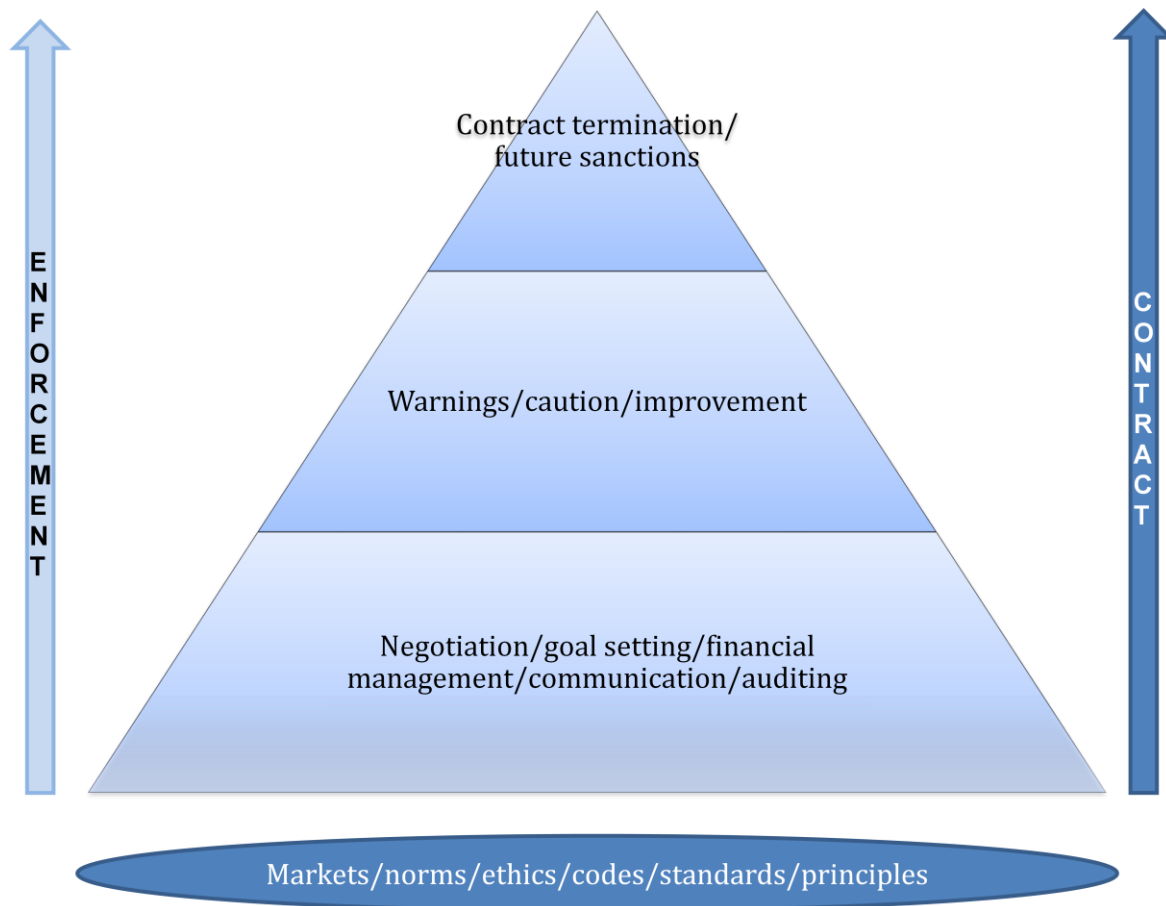
Source: Adapted from enforcement pyramids by Ayres and Braithwaite, 1992: 39 and Freiberg, 2010: 98 and from descriptions of penalties in Australian Law Reform Commission, 2002 and Freiberg, 2010.

This model considers how labour standards are enforced through labour law mechanisms only. These measures for enforcing labour standards are administered by Fair Work Australia, the Fair Work Ombudsman or the relevant Federal or Federal Magistrates Courts. Accordingly this model does not consider broader conceptions of industrial relations regulation, which would also encompass bargaining and sanctions that come through that stream.



By way of contrast, Figure 2.3 demonstrates the comparatively limited range of enforcement strategies that are available through contracts for services. This enforcement pyramid depicts only three levels of measures available for upholding school cleaners' labour standards through contracts for services.

**Figure 2.3 Contract pyramid of enforcement**



Source: Adapted from enforcement pyramids by Ayres and Braithwaite, 1992: 39 and Freiberg, 2010: 98 and from descriptions of penalties in Freiberg 2010.

This pyramid highlights what Collins (1999: 90) describes as the 'poverty of sanctions' available when contract terms are breached. Contract law limits sanctions for breaches to contract termination and remedies payable to compensate financial losses incurred. The onus of proof lies with the victim in the transaction. With contracts for

services it is difficult to prove there has been a violation of service standards, unusual for this violation to justify contract termination and even more unlikely that financial losses can be calculated for compensation (Collins, 1999; Seddon, 2009). Clauses in contracts for services pertaining to labour standards for workers are regarded as 'extraneous' and therefore the sanctions previously mentioned are even more difficult to apply (Seddon, 2009: 18). Therefore, contracts for services, as a solitary regulatory tool, do not meet the requirements of the responsive regulation model:

*Private law lacks a mechanism for the escalation of sanctions that is designed to provide a credible threat against systematic or persistent deviation from its standards. (Collins, 1999: 91)*

## **2.2 Labour regulation and contracts**

The focus of this thesis is on the contractual relationship that arises when services are contracted-out to a third party.

*The term 'contracting-out describes the situation where one organisation contracts with another for the provision of a particular good or service. It is essentially a form of procurement, in the sense that contractors may be considered 'suppliers', but in common usage it has come to refer more specifically to the purchase of an end product which could otherwise be provided 'in-house' by the purchaser himself. (Ascher, 1987: 7-8)*

One of the main forms of privatisation is when governments first contract services, they once provided, to an outside body (Dunleavy, 1986: 13; Cope, 1995: 29; Fairbrother *et al.*, 2002: 4). Thereafter the ongoing contracts for services can be referred to as public procurement (Arrowsmith *et al.*, 2000; McCrudden, 2007).

This thesis looks specifically at how the labour standards of cleaners are regulated when an Australian government body contracts-out these cleaning services. Since Australian government bodies expanded their policies of contracting-out in the 1990s, there has only been a handful of scholarly research to understand the impact of

contracting-out on cleaners' labour standards. Fraser (1997) examined the impact of contracting-out the NSW government cleaning services on female workers from non-English speaking backgrounds (NESB). Shaun Ryan completed doctoral research in 2007 on the employment relations and workplace organisation of cleaners who were contracted-out by the NSW private sector (see also Ryan (2001) and Ryan and Herod (2006)). Campbell and Peeters (2008) conducted research into the labour standards and working conditions of cleaners who were contracted-out by the private sector in Victoria. A case study of occupational health and safety standards of NESB cleaners working for a large contracted cleaning company in NSW was conducted by Alcorso (2002). Meanwhile, Howe and Landau (2009) contributed a case study of the regulation of labour standards under the Victorian government school cleaning contracts.

A brief understanding of the context in which the proliferation of contracting-out strategies by Australian government bodies came to be, is provided in the next sub-section. The background to policies of contracting-out and competitive tendering in Australia that arose during the 1990s are then examined in Sub-section 2.2.2. An understanding of how scholars have viewed public procurement as a regulatory tool for enforcing labour standards is given in Sub-sections 2.3.1 and 2.3.2. The final sub-section includes an explanation of how responsive regulation applies to the enforcement of labour standards through public procurement. By offering an understanding of how government procurement can be used to regulate labour standards, the contractual aspects of the second research question are addressed in these sub-sections:

2. What are the [contractual] mechanisms for enforcing labour standards for school cleaners?

### **2.2.1 The context in which contracting-out came to the fore**

Since the mid-1970s there has been an emergence of ideology supporting the use of privatisation and contracting-out strategies across Anglo-speaking countries (Dunleavy, 1986; Sullivan, 1997; Murray, 2001; Fairbrother *et al.*, 2002; Quiggin, 2002; Young, 2007; Pollitt and Bouckaert, 2011). This has gone hand-in-hand with ideologically driven efforts to reduce state-centred, command and control style regulation with the intention that governments should perform more strategic and less operational functions (Garofalo, 2011: 19; Pollitt and Bouckaert, 2011: 9-10). This view was further consolidated by two American management consultants, Osborne and Gaebler (1992), who popularised the idea that governments should do less 'rowing' and more 'steering'. (Baldwin *et al.*, 1998; Freiberg, 2010: 23; Pollitt and Bouckaert, 2011: 5-11).

Pro-individualist theorists, such as Hayek and Friedman, had long been advocating the benefits of legal contracts in minimising the role of the state and supporting individual autonomy (Ramia, 2002: 51). Yet these theorists had been unable to break through the primacy of the Keynesian model of welfare-state capitalism until the early 1970s when the economic foundations of the welfare state became unstable. Until that time men aged between 16 and 65 years of age were the foremost beneficiaries of the welfare state in the post-war boom years, enjoying secure, full-time (and often unionised) employment for their working years (Standing, 2009: 37). However, the onset of the 1973 oil crisis, coupled with the previously inconceivable phenomenon of stagflation and government budget deficits undermined the credibility of the welfare state (Carney and Ramia, 2002: 2-3). This perceived 'fiscal crisis of the state' prompted a reassessment amongst policy makers and academics of the required

level of government involvement in the economy, in favour of minimising the public provision of services (Carney and Ramia, 2002: 3).

The emergent privatisation and contracting-out strategies had the backing of a range of prominent theories, including public choice theory, principal-agent theory, transaction cost economics and competition theory (Dunleavy, 1986; O'Flynn, 2007: 355). Public choice theorists have argued that governments are self-serving monopolistic entities that fail to operate efficiently (Stilwell, 2007: 203-204). By this rationale privatisation or contracting-out is more appropriate than government provision of many services, because the private sector can be more efficient and effective (Dunleavy, 1986: 16). Principal-agent theory advocates the use of contracts as a means of meeting formally defined objectives by engaging organisations in a competitive market, through contracts (Kelly, 1998: 205). A transaction cost economics argument in favour of government contracting-out strategies draws on Coase's (1937) theorem to demonstrate that the transaction costs of contracting-out (that is, the costs governments incur tendering and managing contracts) can be exceeded by the costs of managing these services in-house (O'Flynn, 2007: 356). Finally, competition theory has also been deployed to promote the importance of competition to induce efficiency and reduce government costs (O'Flynn, 2007: 356-357).

Accordingly, Anglophone policy makers in the 1970s instigated a drive to deconstruct what was deemed to be a monopolistic and bureaucratic Weberian model of public administration (O'Flynn, 2007: 354; Garofalo, 2011: 19; Pollitt and Bouckaert, 2011: 5-10). This has been part of what was originally described as 'New Public Management' (NPM) (Hood, 1991). At the ideological level, NPM is motivated by the belief that the public sector is inherently inefficient and ineffective compared to the

private sector (Pollitt and Bouckaert, 2011: 10). From the 1970s to the 1990s these policy makers pursued NPM with the hope of reducing costs, while ideally minimising government 'interference' in the free-market economy, and improving the quality of public services by making governments more 'business-like' and adaptable (Hood, 1991; Cope, 1995: 30; Hindess, 1997; Svensen and Teicher, 1998; Howe, 2008; Freiberg, 2010: 112; Pollitt and Bouckaert, 2011: 6-7). For the male breadwinners, who enjoyed employment security and stability for the three decades after World War II, NPM was part of an array of neoliberal policies that undermined their employment security as union membership was eroded and jobs were outsourced. These changes are described in more detail in the following sub-section 2.2.2.

Strategies of NPM across Anglophone countries are diverse and fragmented. Indeed, since the 1990s, government strategies promoting transparency and trust, governance and partnerships, and automation through computer technology have come to the fore, with the original tenets of efficiency and quality notwithstanding (Pollitt and Bouckaert, 2011: 7-11). These approaches can be internally inconsistent and at times contradictory, from 'freedom to manage', to prescriptive and often compulsory performance standards; or the emphasis on output rather than process, while also stressing disciplined resource usage (Hood, 1991; Svensen and Teicher, 1998; Ranald and Black, 2000). Critics of NPM have argued that these contradictions have exposed the weaknesses of NPM. Whilst these debates about NPM and post-NPM strategies are of interest, this thesis is concerned with simply providing a broad understanding of the context in which NSW school cleaners came to be working for contracted cleaning companies, and thus regulated through both labour law and contractual mechanisms.

Indeed, privatisation and contracting-out strategies have remained a central tool of government, shifting government regulation from administrative or public law to contract or civil law (Yeatman, 1995; Collins, 1999; Gahan and Brosnan, 2006; Freiberg, 2010: 132-133). This paradigm is 'built on concepts of contract rather than administrative law, on bargains and incentives rather than rules and regulations, on exchanges rather than orders and commands' (Freiberg, 2010: 25). For NSW school cleaners, this suggests that regulation of labour standards through the government cleaning contracts may take precedence over regulation through labour law mechanisms. Given the 'poverty of sanctions' (Collins, 1999: 90) described in the previous Sub-section 2.1.4, this raises questions about the effectiveness of contracts for services as the dominant regulatory mechanism for upholding labour standards.

## **2.2.2 Contracting-out and competitive tendering in Australia**

During the 1990s local, state and federal Australian government bodies were guided by the Hilmer Report on National Competition Policy (1993) and the Industry Commission Inquiry into Competitive Tendering and Contracting Out by Public Sector Agencies (1996), to privatise potentially profitable public services and contract-out non-core services (Sullivan, 1997; Yeatman, 1997; Ranald and Black, 2000; Chalmers and Davis, 2001: 75; Young, 2007; Freiberg, 2010: 25). Proponents of privatisation argued this would improve efficiency and productivity by removing bureaucratic constraints and creating the conditions for competitiveness in all sectors of the economy, thereby reducing costs (Domberger, Meadowcraft and Thompson, 1987; Domberger, 1992; Domberger and Hall, 1995; Domberger, Hall and Li, 1995). The National Competition Policy 1995 and competitive tendering and contracting (CTC) in Australia followed the British and New Zealand models of CTC of many public sector

services (Paddon, 2001: 26; Ryan, 2007b). Australian governments subscribed to the notion, originally introduced by Domberger, Meadowcraft and Thompson (1987) that CTC would realise savings of 20 per cent for government departments (Quiggin, 2002: 90).

Opponents of privatisation have argued that this is simply a cost cutting strategy, targeting cost reductions when hiring the most vulnerable workers (Cope, 1995; Fraser, 1997; Svensen and Teicher, 1998; Quiggin, 2002; Walsh, 2004; Peetz and Preston, 2009). Indeed, when contracting-out was adopted as an Australian government policy the Industry Commission Australia (1996: 180-182) acknowledged that it affected 'categories of employees that are most vulnerable to job losses', with expected job losses of between 17 and 29 per cent (Hodge, 1999: 465). Moreover, the House of Representatives Standing Committee on Family and Community Affairs (1998: 1) noted that the expansion of contracting-out raises 'important questions of accountability and quality, equity and distribution and impacts of contracting'.

Government tendering processes are primarily concerned with ensuring that governments obtain 'best value for money' (Seddon, 2009). Small and Ranald (1999) found that when utilities were privatised in Australia and abroad, there was no evidence that newly formed private companies performed better (or worse) than the public utilities had done economically, once all costs were taken into account. They did, however, find that in almost all cases employment levels were reduced as a result of privatisation or public sector restructuring. Remuneration tended to increase for higher-level management, but decrease for lower-level workers, although the patterns were not consistent (Small and Ranald, 1999). Evidence from the privatisation of South Australian water and sewerage services found that the commercialisation and



outsourcing of previously government-provided services resulted in reduced quality of service (Ranald and Black, 2000).

Other challenges that have been identified with contracting-out government services include conflicting objectives (that is, profitability goals for contractors as opposed to quality or welfare goals for government), performance monitoring, and problems with co-ordinating implementation processes once the private company has assumed responsibility under the contract (Small and Ranald, 1999: 22-23; Chalmers and Davis, 2001: 75). One example of where these problems became apparent was the outsourcing of Commonwealth Government IT services, which was made compulsory under a centralised outsourcing initiative from the Department of Finance (Quiggin, 2002: 101). Centralised outsourcing of IT services proved to be a poor fit for specialised agencies, like CSIRO, and failed to take account of requirements, such as virus protection. As a result, where savings were projected to be \$1 billion over seven years, instead IT services cost the federal government seven per cent more under contracts, than it had cost when the services were predominantly in-house (Chalmers and Davis, 2001: 76; Quiggin, 2002: 101). A further problem that Ranald (1997) highlighted was the potential for corruption that can result from contracting-out, because contractors are protected by 'commercial in confidence' provisions.

A contentious issue that has come to light with the rise of privatisation and contracting-out has been the way in which trade union participation and union jobs have been adversely impacted (Dabscheck, 2001; Fairbrother *et al.*, 2002; Cooper and Ellem, 2008: 541). Many authors have argued that contracting-out has been adopted as a strategy specifically designed to marginalise trade unions (these authors include Heery and Abbott, 2000; Dabscheck, 2001: 5; Barton, 2002: 132, 138; Fairbrother *et al.*,

2002; Fairbrother and Testi, 2002: 119; Ranald, 2002: 177; Ryan *et al.*, 2005: 442; Teicher *et al.*, 2006: 245-246; Cooper and Ellem, 2008: 541). This has been accomplished by 'changing the structure of the workforce' (Heery and Abbott, 2000: 155). The fragmentation of the workforce that arises from contracting-out services makes it harder for unions to organise and represent workers (Heery and Abbott, 2000: 155; Fairbrother *et al.*, 2002: 2). Barton (2002) found that the privatisation of the Gas and Fuel Corporation of Victoria was specifically designed to reduce the 'influence' of unions over management, with a view to reducing employment and employment related expenditures. These authors have demonstrated that trade unions have been marginalised as contracts have become increasingly pervasive.

Dabscheck (2001: 5) has argued that 'contractualist regulation' has become the dominant paradigm in efforts to erode union influence. This is a salient point for this research, which seeks to understand how labour standards are regulated when services are contracted-out, and if, as Dabscheck contends, contracts have become the dominant paradigm in regulating work. This thesis looks beyond this premise, to explore other ways in which contracting has impacted the employment relationship.

To conclude, there are wide bodies of scholarly work both opposing and advocating government contracting-out policies. 'Much of the debate is implicitly, if not explicitly, deeply political – some would say ideological' (Seddon, 2009: 39). Proponents have argued that contracting-out is necessary to improve efficiency and quality of services, while reducing government expenditure (Domberger *et al.*, 1987; Domberger and Hensher, 1992). Opponents claim that privatisation has been used as a strategy to reduce government spending by lowering the quality of service provision, in a way that is more politically palatable than government simply lowering standards of direct

provision (Ascher, 1987; Cope, 1995; Fraser, 1997; Small and Ranald, 1999; Quiggin, 2002: 93). Analyses have shown that CTC adversely impacts on labour standards and conditions of employment; workers are often required to bear the cost of efficiency gains through job loss, salary cuts or eroded working conditions (Cope, 1995; Quiggin, 1996; Fraser, 1997; Underhill and Fernando, 1998; Quiggin, 2002; Mayer-Ahuja, 2004). There is also a body of research demonstrating that the contract has become a dominant tool used to marginalise trade unions by contracting-out services (see Heery and Abbott, 2000; Dabscheck, 2001: 5; Barton, 2002: 132, 138; Fairbrother *et al.*, 2002; Fairbrother and Testi, 2002: 119; Ranald, 2002: 177; Ryan *et al.*, 2005: 442; Teicher *et al.*, 2006: 245-246; Cooper and Ellem, 2008: 541).

## **2.3 Regulating labour standards through procurement contracts**

### **2.3.1 Historical context**

The use of public procurement as a regulatory tool is becoming increasingly popular (Howe and Landau, 2009: 577), although the practice is not new (McCrudden, 2007: 26). Public procurement was an important tool for social protection throughout the 19th and 20th centuries; with the practice of using public procurement to direct social outcomes originating in 19th century Britain, the United States and France (McCrudden, 2007: 4-12, 26-62). For instance, the 1891 British Fair Wages Resolution directed government departments to insert a clause stipulating that workers would be paid 'generally accepted rates' in procurement contracts (Bercusson, 1978; McCrudden, 2004: 258). Bercusson's (1978) analysis of the British Fair Wage Resolutions demonstrated that the legislation was poorly enforced and largely ineffectual.

Nevertheless the use of clauses specifying base working conditions and pay of the male breadwinner were included in British government procurement contracts

until the First World War. Then once the War commenced British and United States governments found procurement to be a useful tool for providing jobs for disabled war veterans, a practice that later expanded to include all disabled citizens. After World War Two the British government directed procurement towards 'sheltered workshops' for disabled workers (McCrudden, 2004: 259). In the United States the expansion of anti-gender-discrimination legislation was coupled with affirmative action requirements in government procurement contracts in the 1960s and 1990s respectively (McCrudden, 2004: 261). Likewise, in South Africa there has been a constitutional requirement since 1994 that government procurement be used as a regulatory tool to redress past discriminatory practices (Bolton, 2006).

There is growing international interest in using public procurement as part of a broader public policy agenda for the pursuit of social protection (Bolton, 2006; Harland *et al.*, 2006; Howe and Landau, 2007; McCrudden, 2007). There is also an emerging trend in Australian public policy toward the use of social protection clauses in public procurement. In July 2009 the Australian Government issued a statement acknowledging that it has a 'role as a model purchaser to encourage good practices from its suppliers' (Australian Government, July 2009). This statement included new measures to ensure that private contractors protected labour rights for employees hired through government contracts. The statement made particular mention of contracted cleaners, as a distinct group of workers the Australian Government inspectorate body, the Fair Work Ombudsman (FWO), understands to be at risk.

To this end the Australian Federal Government set out Fair Work Principles, requiring that government agencies are informed of how tenderers comply 'with their obligations to ensure fair, cooperative and productive workplaces' (Australian

Government, January 2010: 4). These Principles preclude Commonwealth government agencies from entering into contracts with companies that have proven records of non-compliance with relevant labour laws, and make particular mention of ‘the history of exploitation and underpayment problems in the cleaning services’ (Australian Government, January 2010: 4-5). While these Principles do not apply to the NSW state government contracts for school cleaners being examined in this thesis, they do underscore the obligation for minimum labour standards to be upheld when services are outsourced by governments.

### **2.3.2 Public procurement as a regulatory tool to enforce labour standards**

There is a paucity of research on how Australian federal, state or local governments enforce labour standards’ clauses in contracts for services. The only research of this kind that has been conducted in Australia is a study of the Victorian Government Schools Contract Cleaning Program by Howe and Landau (2009). This dearth of research is problematic for two reasons. First, as was evidenced in the previous Section 2.2, ideologically driven policies to contract-out or privatise potentially profitable and non-core government services have resulted in a proliferation of both contracting-out and privatisation in Australia. This has highlighted the dominance of contracting, and raises questions about whether contracts take precedence over labour law mechanisms for enforcing labour standards. The generous array of enforcement measures available under labour law, compared to limited options under contracts, indicates that if the enforcement of labour standards through labour law mechanisms were to become subservient to the contracts for services, this would indeed be cause for concern.

The second reason pertains to how labour standards are being enforced for workers who are providing services under government contracts. Trade unions have demonstrated increasing propensity to engage with organisations and government agencies that contract-out services to address labour standards issues arising under the contracts (Tarrant, 2011). This has been vividly demonstrated with the United Voice 'Clean Start' campaign. To explain briefly, Clean Start is modelled on the US Justice for Janitors campaign. The campaign adopts a unique approach because it targets the organisations, including government agencies, which contract-out cleaning services. The onus is thereby placed on the organisations that engage contracted cleaning companies to only appoint contractors that have committed to upholding labour standards. As a result, contracted cleaning companies are impelled to commit to the Clean Start standards of upholding minimum labour standards if they wish to win contracts with most major companies or government bodies (United Voice, 2012).

The NSW government has not committed to the Clean Start agreement, although the Federal Government did so in 2009 (Australian Government, January 2010). There are also questions about the success of this campaign in compelling contractors to comply (interview with industry consultant, 2010). More research is required to understand the effectiveness of the Clean Start campaign, but those questions fall outside the bounds of this thesis. Nevertheless, campaigns like this are significant because they demonstrate the prevalence of trade unions utilising contracts for services as a mechanism to enforce labour standards. The remainder of this section examines in more detail how contracts for services can be used to enforce labour standards and outlines the limited research that has been done to understand how labour standards are being regulated through contracts for services.

The contract as a form of regulation is reliant on the limited tools of contract law (Freiberg, 2010: 132). Principles of 'openness, fairness, participation, impartiality, accountability, honesty and rationality' (Seddon, 2009: 18) underpinning government regulation contrast with the objectives of contracting:

*Secrecy ('commercial in confidence'), no duty to act fairly (though this is arguably changing), participation of the immediate parties but otherwise non-inclusiveness, no duty to act impartially, accountability only to the extent required by the contract and no more (and certainly not to anyone else), honesty and no duty to act rationally in the sense required by public law.* (Seddon, 2009: 18)

By outsourcing the provision of services, government agencies rely on contract law to protect labour standards for workers providing those services. Any legal enquiries into the contracts will only be able to examine whether the terms of the contract have been met, not whether better decisions have been made (Seddon, 2009). The onus is on parties to the contract to conduct their own monitoring and enforcement of contract terms (Collins, 2000: 87).

As the contract pyramid of enforcement in Sub-section 2.1.4 illustrated, contract law suffers from a 'poverty of sanctions' (Collins, 1999: 90). The enforcement options available to either party to a contract are limited to contract termination and remedies payable for breaches of contract (Collins, 1999: 90-93; Seddon, 2009: 44). This has proven difficult to apply in problems with employment relationships, such as in cases of unfair dismissal (Johnstone and Mitchell, 2004: 110-111). The risk of litigation if governments terminate contracts for services is a major deterrence to governments' employing this enforcement strategy (Seddon, 2009). Collins (1999: 90) argues that the sanction of contract termination available for governments utilising contract law to

provide services 'is weak in securing policy objectives' (see also Daintith, 1994: 231 where the same point is made).

Contracts may contain both primary regulatory dimensions and secondary or extraneous regulatory dimensions (Freiberg, 2010: 132). The extraneous regulatory mechanisms refer to 'the pursuit of regulatory outcomes that are extraneous to the primary purpose of the contract or grant but considered to be in the public interest' (Seddon, 2009: 44). By utilising contracts as a regulatory mechanism, governments can in fact, avoid the necessity of applying legally based accountability mechanisms for 'extraneous' matters, such as labour standards of service providers. Thus, while there are many examples of Australian state and territory governments including employment related legislation or industry specific codes of conduct in procurement contracts, these are usually overlooked in practice as the tender assessment process favours 'best value for money' (Svensen and Teicher, 1998; Marshall, 2006; Howe and Landau, 2009; Seddon, 2009).

Ambiguity arises in understanding how the enforcement mechanisms of contract law and labour law intersect and overlap (Collins, 1999: 45). Johnstone and Mitchell (2004: 101) call attention to the need to avoid 'regulatory collision' when overlaying regulatory approaches. Howe (2006a) concludes that:

*'[T]here is no consistency in deployment of government wealth as labour regulation in Australia, whether the focus is on its purpose or form. In situations where instruments have been used to undermine labour law there is clearly a conflict or collision between the two regulatory forms.'* (Howe, 2006a: 184)

This means that for NSW school cleaners there is a potential conflict between contracts being used as a tool for government to cut costs by undermining labour standards, and the contract being used as a regulatory tool to uphold labour standards. This question of



the enforceability of labour standards through contracts for government cleaning services has only been addressed to a very limited extent in the literature.

Howe and Landau's (2009) study of the regulation of labour standards under the Victorian Government Schools Contract Cleaning Program found that more research was required to understand whether contracts for services are an effective regulatory tool for labour standards. As will be discussed in the next Sub-section 2.3.3, they found that the program was an innovative example of responsive regulation because it enrolled many state and non-state actors in the regulatory process. They called into question, however, the effectiveness of the threat of withdrawal of contract status as the 'big stick' in the enforcement pyramid (Howe and Landau, 2009: 586-587). A comparable international study by Cope (1995: 34) found that the 'Fair Wage Clause' added to a UK local government's contracts for school cleaning services, to ensure labour standards were upheld after privatisation, was 'nebulous' and 'had no statutory force'. In this instance cleaners' pay and employment conditions were eroded as a result of privatisation in spite of the 'Fair Wage Clause'. To conclude, more research is required to understand whether contracts for services have the capacity to effectively protect cleaners' labour standards when cleaning services are contracted-out.

### **2.3.3 Responsive regulation in procurement practices**

There is also a dearth of analysis of government efforts to guide labour conditions using government procurement as a responsive regulatory tool (Arrowsmith *et al.*, 2000; Harland *et al.*, 2006; Weiss and Thurbon, 2006; McCrudden, 2007; Brammer and Walker, 2009; Howe and Landau, 2009). One example of the use of procurement to regulate labour standards was in the Australian textile, clothing and footwear industry. This industry was long characterised by 'outworkers' working in poor conditions. The

Homeworkers Code of Practice was instituted in March 1998 after a campaign by trade unions and community organisations to improve labour standards for these 'outworkers' (Weller, 1999: 214). Firstly retailers, then state and federal governments gradually changed their procurement practices to take into account labour standards for workers producing the garments and footwear. This could be viewed as the application of light touch mechanisms to build the responsiveness of regulation to problems arising for workers. Responsive regulation allows for this type of 'tailor-made', rather than one-size-fits-all, response to regulatory challenges. Most importantly, the responsive regulation model illustrates the importance of involvement from trade unions and community groups, in building a participative and communicative regulatory environment to effect improvements to labour standards (Howe and Landau, 2009: 586).

Howe and Landau (2009) also used the responsive regulation framework to conduct a rare analysis of a government program to improve labour standards through procurement policies – the Victorian Government Schools Contract Cleaning Program. They found that this program achieved some success in improving labour standards because it was 'responsive', with high levels of communication and co-operation between stakeholders. This program was unique in that it involved many key stakeholders in the design and implementation (Howe and Landau, 2009). This approach is consistent with the model of responsive regulation. Accordingly, they found that a key outcome of the program was increased education and awareness about labour standards, which raised standards across the entire industry. Success was also attributed in part to trade union involvement, strong institutional support from the employer associations and 'a well-resourced bureaucracy providing expert assistance

and advice' (Howe and Landau, 2009: 585). These aspects are all indicative of high levels of responsiveness in defining and implementing regulation.

Limitations of the use of contracts to enforce compliance with labour standards were also highlighted in this study by Howe and Landau (2009). When contractual breaches occurred, revocation of contract status was seen as a last resort, and mostly 'light touch' techniques were employed, including negotiation, awareness education, requests for compliance, and warnings. That study raised questions as to whether the perceivably hollow threat of withdrawal of contractor status was a sufficiently strong consequence of non-compliance. Indeed, the absence of a formal dispute resolution mechanism risked undermining the success of the program. This casts doubt upon whether contracts are a sufficient enforcement mechanism for labour standards, even if there is a high level of participation, co-operation and communication between stakeholders.

The research of NSW government cleaning contracts conducted for this thesis expands upon the study conducted by Howe and Landau. This thesis takes a more comprehensive view of how the government cleaning contracts are regulated. Significantly, this thesis incorporates the perspectives of 38 cleaners, giving an in-depth understanding of what the actual labour standards are for these cleaners. This thesis also probes in detail how the labour law mechanisms for regulating labour standards combine with contractual mechanisms. This contrasts with the Howe and Landau study, which, while extremely insightful and useful, limits the research question to an understanding of how labour standards are promoted through a government procurement program.

## 2.4 Discussion

This chapter finds that a useful definition of regulation for this thesis must be narrow enough to contain findings within boundaries that help us understand how to enforce compliance with labour standards, yet broad enough to accept that there are 'light touch' tools for promoting labour standards, such as contracts for services (Black, 2002a; Baldwin and Black, 2008). A mid-range definition of regulation meets this purpose, as it considers the broad range of government tools, from targeted rules backed by sanctions, to the financial incentives of winning a contract for compliance (Baldwin *et al.*, 1998). Thus, this thesis considers how labour standards are regulated through a combination of command and control and 'light touch' measures, used by the state to shape and steer the economy and society. The array of enforcement options are organised into Ayres and Braithwaite's (1992) responsive regulation enforcement pyramid, so they can be called upon at the appropriate level to match the severity of the infringement.

Regulatory theory also describes how there has been a general move from traditional command and control styles of regulation to broader approaches that focus on promoting compliance (Baldwin *et al.*, 1998; Gahan, 2006; Gahan and Brosnan, 2006; Freiberg, 2010). This has been backed by ideological arguments driving minimal government involvement in the economy and society. At the same time there has been an emergence of ideology supporting governments' achieving more efficiency and productivity by contracting-out service provision to the private sector (Murray, 2001; Quiggin, 2002). Privatisation has been widely adopted as assertions that governments should be 'steering not rowing' have taken hold (Sullivan, 1997; Ranald and Black, 2000; Gahan and Brosnan, 2006; Howe, 2010). Australian governments have

contracted-out non-core services and privatised other potentially profitable services. There have been arguments that this has improved the efficiency of the public sector by increasing transparency and management accountability (Domberger *et al.*, 1987). Others contend that savings have simply been a transfer of costs from the public service to the most vulnerable workers in society (Cope, 1995; Fraser, 1997; Svensen and Teicher, 1998; Quiggin, 2002; Walsh, 2004; Peetz and Preston, 2009).

There is only limited understanding of how public procurement works as a policy tool (Arrowsmith *et al.*, 2000; Harland *et al.*, 2006; Weiss and Thurbon, 2006; Brammer and Walker, 2009; Howe and Landau, 2009). Amidst political resistance to direct regulation of corporations, public procurement is being revisited as an ideal 'light touch' regulatory tool (Howe, 2010). Contracts are considered a form of 'light touch' regulation, but they are enforceable predominantly through the command and control mechanisms of contract termination or remedies payable for financial losses incurred (Seddon, 2009). These enforcement strategies are difficult, if not impossible, to implement when there are breaches to government contracts for services (Cope, 1995; Seddon, 2009).

Little is known about how labour standards for workers are being regulated when governments contract-out services. The analysis in this chapter has shown that contracts used in isolation struggle to meet the requirements of responsive regulation. Instead, the inclusion of labour standards provisions in government contracts for services are expected to support labour law regulation by creating economic incentives for contracting companies to meet contract requirements, or risk not being awarded future contracts (Howe, 2006a). In adopting contracts as a regulatory tool, governments attempt to meet government requirements (protecting the public purse while providing

public goods and services) by using a tool designed to facilitate commercial objectives (Daintith, 1994; Collins, 1999; Howe, 2006a; Seddon, 2009).

## **2.5 Conclusion**

Ideologically driven policies to privatise and contract-out government services have arisen since the 1980s. Dabscheck (2001) has asserted that contracting has, in fact, become the dominant paradigm. However Dabscheck's argument and subsequent analyses of the impact of 'contractualist regulation' on industrial relations have centred on the marginalisation of trade unions. Meanwhile, unions have affirmed the salience of contracts for services in regulating labour standards by adopting strategies to regulate labour through these contracts, rather than through the traditional mechanisms of labour law. Unions are both being drawn towards using contracts to regulate, for the reasons described in this chapter, and driven away from using traditional labour law mechanisms for regulation, for reasons which shall be explained in the following chapter. Paradoxically, contracts have been adopted as a strategy to erode labour standards and as a tool for regulating labour standards, yet contracts have poor mechanisms for enforcing those labour standards.

## Chapter 3

### Regulating Labour Standards

#### Introduction

Labour standards in Australia have traditionally been regulated through labour market regulation. Over the last two decades this regulation has undergone significant transformation. In this chapter the focus is on how the employment relationship has been individualised as the contract of employment between employer and employee has risen to the fore (Deakin and Wilkinson, 2000; Bray and Macneil, 2011). Since the 1980s there has also been a decentralisation of the collectivist system. Industry level bargaining has been deconstructed and replaced with bargaining, predominantly, at the enterprise level (Thorntwaite and Sheldon, 2012: 265). At the same time, as was demonstrated in the previous chapter, the proliferation of privatisation and contracting-out has also changed the employment relationship (Ranald and Black, 2000; Dabscheck, 2001; Murray, 2001; Fairbrother *et al.*, 2002; Quiggin, 2002; Lee, 2006; Nossar, 2006). Many researchers suggest that vulnerable workers have suffered the most as contracting-out strategies have targeted the reduction of costs, by reducing labour standards of those least able to defend themselves, and labour law has failed to adequately protect vulnerable workers (Burgess and Campbell, 1998; Ranald and Black, 2000; Johnstone *et al.*, 2001; Aguiar and Herod, 2006; Marshall, 2006; Nossar, 2006; Ryan and Herod, 2006; Kaine, 2012: 211).

The regulatory roles of government bodies, including government inspectorate bodies, and trade unions are explored in this chapter. As was elicited in the previous chapter, regulation encompasses defining, implementing, monitoring and enforcing

standards. Particular attention is paid to the enforcement of labour standards, because, without enforcement, rules and regulations can be rendered hollow and meaningless (Quinlan, 2006: 27-28; Weil, 2008; Weil, 2011). Government inspectorate bodies and trade unions have traditionally both played a role in enforcing labour standards, with one coming to the fore if the other is deficient in enforcement capacity. This is explained in Section 3.1. The roles of trade unions in regulating labour standards are explored in Section 3.2. An analysis of how the responsive regulation model applies to the current Australian labour regulatory framework under the Fair Work Act is provided in Section 3.3. The chapter concludes with an exploration of the significance of upholding labour standards for cleaners, as a subset of vulnerable workers.

### **3.1 The regulation of labour**

A brief history of the regulation of labour through industrial relations mechanisms, and changes in the employment relationship since the colonisation of Australia are provided in this section. This background is necessary in order to build a complete understanding of how labour standards are being regulated through labour law. These will be compared in later chapters with the contractual mechanisms described in the previous chapter. In doing so, this chapter will answer the labour law components of the first two research questions:

1. What are the minimum labour standards prescribed by (the contractual and) labour law regulatory mechanisms?
2. What are the [labour law] mechanisms for enforcing labour standards for school cleaners?

#### **3.1.1 Colonial Australia 1788-1901**

The regulation of labour in the Australian penal colonies was first established, under British rule, during the eighteenth century. Before statutory intervention



commenced and labour law became the prevalent source of regulation for labour, workers in England were regulated through other mechanisms: the obligation to serve and be paid for serving was controlled through local custom, social ordering, local by-laws and by manorial courts (Johnstone and Mitchell, 2004: 103). During the eighteenth century, the British state was transitioning from medieval social protection, whereby wages were fixed for most workers, to a system dominated by laissez-faire ideology. Medieval protections of workers were repealed in 1756 in favour of laissez-faire markets, which were fully established in the British parliament by 1808 (Webb and Webb, 1907: 44). For employment relations this meant that Masters and Servants Acts were instituted and opportunities to establish minimum wage provisions were not taken (Webb and Webb, 1907: 50).

Likewise, from the 1820s to 1870s, the Australian colonies, led by NSW, were embracing Masters and Servants Legislation (Goodwin and Maconachie, 2011: 57). The British Masters and Servants Acts were blatantly inequitable. Employers were assigned 'unilateral powers of control' over employees, as managerial prerogative was enshrined in the employment arrangement (Deakin and Wilkinson, 2005: 14). Managerial prerogative can be thought of as the employee implicitly ceding 'to the employer a degree of authority over the pace and organisation of the work which he or she undertakes to do' (Deakin and Wilkinson, 2000: 46). Harsh criminal penalties applied for employees who breached the terms of employment, including three months imprisonment for leaving employment, yet there was minimal liability for employer breaches (Webb and Webb, 1907: 232). Masters and Servants Acts in the Australian colonies had even more severe penalties, including provisions restricting wages and worker mobility, while emphasising worker compliance (Merritt, 1984: 63-64; Patmore,

1991: 24-25). This was consistent with the penal nature of the colonies and the prevalence of the pastoral economy, and supported employers who faced limited labour supply (Quinlan, 1987: 63-67; Patmore, 1991: 26-31; Goodwin and Maconachie, 2011: 59).

The result of the harsh Masters and Servants Acts in Great Britain during the 1800s was a tumultuous century of trade union actions to improve the terms of employment for employees (Merritt, 1984; Gahan, 2006: 274; Goodwin and Maconachie, 2011). Trade unions in Australia performed a range of functions during this century, from collective bargaining and strike action to the provision of welfare and insurance (Quinlan, 1987: 73; Gahan, 2006: 274). From this drive for social protection arose terms limiting employer power, expressed in contractual form, which paved the way for the contract of employment (Deakin and Wilkinson, 2005: 15). The trade union movement ultimately achieved minimum labour standards for workers. Gradually this allowed for the employment contract to be underpinned by a legal minimum wage and minimum conditions determined through state regulation (Webb, 1912).

Between 1873 and 1898 the Australian colonies introduced Factories and Shops Acts (Goodwin and Maconachie, 2011: 60). These Acts included the notion of the employment contract, that is employers and employees are associated through a contract, which assumes both parties meet as equals. This was problematic because, for most analysts of labour law, the employment relationship was, and remains, inherently unequal, with a bias towards capital (Kahn-Freund, 1972; McCallum, 2011). To redress this imbalance the Factories and Shops Acts began incorporating 'social protection' into twentieth century labour law policy, by introducing minimum labour standards (Howe *et al.*, 2006: 307; Goodwin and Maconachie, 2011: 60). Complexities in the employment

relationship arose because of tensions between inherent bias towards employers, implicit in the contract, and efforts to protect employees (Kahn-Freund, 1972; Deakin and Wilkinson, 2000: 46; Johnstone and Mitchell, 2004: 109; Goodwin and Maconachie, 2011: 59). These complexities persist to this day (Johnstone and Mitchell, 2004; Deakin and Wilkinson, 2005: 108-109).

The inclusion of labour standards in the contract of employment is not sufficient to ensure employers will comply (Quinlan, 2006: 37). Historically, trade unions have played a critical role in maintaining or enhancing employment conditions by regulating and enforcing labour standards (Webb and Webb, 1907: 1; McCallum, 2002: 231; Gahan, 2006: 274; Lee, 2006; Hardy and Howe, 2009: 306-307). Nevertheless, to bolster workers' protections, governments need to commit to monitoring and enforcing labour standards by instituting regulating bodies, such as an inspectorate agency (Quinlan, 2006: 37). The Factories and Shops Acts set this precedent with the introduction of enforcement inspectorates in the colonies (Goodwin and Maconachie, 2011: 59). These inspectors lacked the statutory power to impose adequate penalties, or even to enforce back-payment of wages arrears. This left them reliant upon a range of 'light touch' law tools to educate, persuade and negotiate with employers to back-pay shortfalls in wages. Without a 'big stick' the regulation was less credible and inspectors were forced to resort to bluffing and negotiation tactics. Nonetheless, the Factories and Shops Acts represented an advancement in employee rights, because they introduced the notion that governments had a role to play in intervening to protect employees' labour standards (Goodwin, 2004: 7; Goodwin and Maconachie, 2011: 61-62).

### **3.1.2 Compulsory conciliation and arbitration 1901-1996**

A responsive style of regulating labour standards was soon to become a more formalised and comprehensive system of upholding and improving labour standards for workers in Australia. Compulsory conciliation and arbitration was introduced in 1904 across a newly federated Australia, building on colonial experience. The scope for statutory arbitration and conciliation was couched in the Australian constitution from 1901 (Treuren, 2000:75). This was a system in which federal and state arbitration systems co-existed, such that by 1991, 46.5 per cent of employees were covered by state awards and 31.5 per cent of employees were under federal awards (Stewart, 2009: 28). A retrospective analysis of this framework reveals that it included responsive regulation elements as it centred on collective bargaining, with trade unions having a significant role in setting, implementing, monitoring and enforcing standards (Johnstone and Mitchell, 2004: 108; Gahan, 2006: 277-279; Fenwick and Howe, 2009: 173; Hardy and Howe, 2009).

Under compulsory conciliation and arbitration, awards became the central regulatory tool in Australian industrial relations (Bray, 2011: 17). Awards are 'legally enforceable determinations' which set out terms and conditions of employment across industries (Bray, 2011: 17; Goodwin and Maconachie, 2011: 62). Awards formed the basis of the minimum labour standards, leaving the employers and employees scope to engage in bargaining to reach agreements that exceeded these minimum standards (Cooney *et al.*, 2006: 226; McCallum, 2011: 8). The contract formed the legal structure of the industrial relations system because contracts were a 'prerequisite for the operation of an award obligation', but contracts were not incorporated into the nature of labour law (Johnstone and Mitchell, 2004: 110). In this way, there was a separation between

statute based regulation through state institutions (including unions and employers) and the contract of employment, which intermingled, but was never reconciled in the compulsory conciliation and arbitration system (Deakin and Wilkinson, 2000; Johnstone and Mitchell, 2004; Deakin and Wilkinson, 2005). Importantly, individual contracts could be made and these were essentially contractual arrangements, which could not undercut the award arrangements, and very often exceeded award standards (Cooney *et al.*, 2006: 227-228).

Trade unions were integral to the formation, implementation, monitoring and enforcement of awards, which were created in conciliation and arbitration tribunals (McCallum, 2002; Johnstone and Mitchell, 2004: 108; Ewing, 2005: 13; Fenwick and Howe, 2009; Hardy, 2012: 118). Unions and employer associations disputed the details of minimum labour standards for various classifications of employee at these tribunals (McCallum, 2011: 8). A core principle of the award system became 'comparative wage justice', as unions sought to uphold historical wage differences between the occupations (Goodwin and Maconachie, 2011: 62-63). The guiding principle was that wages should be 'fair and reasonable'. They should be more than simply a means to survive, instead providing for 'normal needs in a civilised community' (Justice Higgins 1907 in Masterman-Smith, May and Pocock, 2008: 12).

Trade unions were also integral to the monitoring and enforcement of awards and industrial agreements. In fact, unions displaced the inspectorate agencies as the regulatory body because provisions for an inspectorate to monitor and enforce the conciliation and arbitration system were not included in the 1904 legislation (Hardy, 2009: 87; Hardy and Howe, 2009: 315; Goodwin and Maconachie, 2011: 63; Hardy, 2012: 118). Enforcement was, and remains, a costly process; this discouraged

government from establishing a system of inspectorates for most of the first half of the twentieth century (Goodwin and Maconachie, 2011). There was also reluctance to give inspectorate agencies the autonomy required for them to be effective, while the need for enforcement of labour standards was underestimated by regulators (Hardy, 2009: 87).

In the second half of the century, government inspectorate bodies were substantially underfunded, with some variations (Hardy, 2009: 87). From the 1950s, the Menzies federal government formalised the roles of eighteen loosely organised inspectors to establish the Arbitration Inspectorate (Hardy and Howe, 2009: 315). This inspectorate was poorly resourced, but did its best to proactively visit a range of workplaces and conduct inspections (Maconachie and Goodwin, 2010b: 375). In the mid 1970s, the Whitlam government prioritised the building of a comprehensive inspection strategy. Resourcing of the inspectorate body peaked in 1975 with 103 inspectors (an increase from 56 inspectors in 1973). Resourcing constraints and another shift in political ideology meant that by 1978 inspections were once again superficial, and driven only by employee complaints (Goodwin and Maconachie, 2011). By the late 1970s, inspectors took on more of a role in educating and advising employers of their obligations and employees of their rights (Maconachie and Goodwin, 2010b: 376). On the whole, resourcing constraints throughout the second half of the century rendered the inspectorate bodies ineffectual (Hardy and Howe, 2009: 315). With the exception of a few years in the mid 1970s, when the risk of detection through proactive inspections and prosecution of offenders was higher, inspectors lacked the capacity to effectively deter non-compliance. Enforcement strategies centred on cajoling employers to comply, as regulators were forced to adopt a 'light touch' method of enforcement (Quinlan and Sheldon, 2011: 13).

There was an assumption that unions would be the default enforcement body in the absence of an effective government funded inspectorate agency (Hardy and Howe, 2009: 315). If a government inspectorate body monitoring and enforcing minimum labour standards is not fulfilling its duty, then the responsibility falls to unions through their role in enforcing rules. The monitoring and enforcement role fell to unions because they were parties to awards and agreements, and they had an obligation to their members to uphold minimum standards (Hardy, 2012: 118). As a consequence, during the first half of the twentieth century in Australia, 'the role historically ascribed to unions approximates that of the official regulatory agency' (Goodwin and Maconachie, 2011: 63).

There is, however, limited understanding of how trade unions enforced labour standards (Gahan, 2006; Gahan and Brosnan, 2006; Hardy and Howe, 2009: 315). Indeed, the enforcement of minimum labour standards has been largely overlooked by traditional industrial relations scholars (Quinlan and Sheldon, 2011: 10). It is understood that much of trade union enforcement activities were informal and so records have not been kept to help us understand how this occurred (Lee, 2006: 47). It is known that the effectiveness of trade unions as enforcement bodies was contingent on legislated rights of unions to enter workplaces and pursue cases of non-compliance (Lee, 2006; Hardy and Howe, 2009). High levels of union participation were integral to the success of this system, with union density peaking at 60 per cent of all employees in 1951 (Lee, 2006; Cooper and Ellem, 2008; Bray *et al.*, 2009: 210; Hardy and Howe, 2009). In the context of low unemployment, high trade union participation, and a homogeneous system of workers as employees, all covered by the employment contract, this approach was justifiable (Saunders, 2006; Quinlan and Sheldon, 2011).

By formalising the role of unions as a party to the formation, implementation, monitoring and enforcement of awards, the Australian government instituted a bipartite approach to the regulatory enforcement of labour standards. In this system, both the official inspectorate and unions monitored and enforced labour standards, with unions utilising 'industrial pressure and dispute resolution processes' as their key regulatory tools (Hardy and Howe, 2009: 20; Hardy, 2012: 123). Although this approach was taken at a time when command and control was the dominant framework, in retrospect it appears to fit better within the framework of responsive regulation because it was collaborative, harnessing relevant non-state actors in the process (Howe, 2004; Cooney *et al.*, 2006; Gahan and Brosnan, 2006; Hardy and Howe, 2009; Hardy, 2012: 120). Despite the best efforts of the inspectorate agency and unions, systematic employer non-compliance persisted throughout this period (Goodwin and Maconachie, 2011: 66).

Successful enforcement by unions was contingent on high levels of union participation. Problems started to arise with falling union participation rates in Australia, beginning in the 1980s and dipping down to 18 per cent by 2010 (Cooper and Ellem, 2011: 37). There is a wealth of scholarly interest in the attrition of trade union participation during this period (Peetz, 1998; Svensen and Teicher, 1998; Edwards, 2003; Bamber, Lansbury and Wailes, 2004; Cooper and Ellem, 2008; Ewing, 2008; Hyman, 2008; Cooper and Ellem, 2011). One explanation is that worker attitudes to unions have become less positive, as increasingly educated workers assumed they did not need union assistance and human resource management practices displaced the role of unions in the workplace. At the same time workers have become less and less a homogeneous group of employees covered by awards and employment contracts. Thus



the 'representation gap', in the sense that workers are not being represented by a party that can support their rights at work, has broadened (Bray, Waring, MacDonald and LeQueux, 2001: 3). Furthermore, government and employer hostility towards unions 'interfering' in the free market (Howe *et al.*, 2006: 307-308) have seen attacks on collective bargaining and union based enforcement of labour regulation (Bray and Macneil, 2011; Cooper and Ellem, 2011). Trade union representation has been increasingly replaced by non-union representation and enforcement, where the onus typically falls on the employee (Lee, 2006; Bray and Macneil, 2011).

With the introduction of the *Industrial Relations Act 1988 (Cth)* Australia started to depart from a system of compulsory conciliation and arbitration. This new legislation saw the advent of collective bargaining at the enterprise level, when previously collective bargaining only occurred at the industry level (McCallum, 2002: 227). At the state level, the NSW government also introduced enterprise level bargaining with the *Industrial Relations Act 1991 (NSW)* (Fairbrother *et al.*, 2002: 17). These changes ushered in a new degree of difficulty for the enforcement of minimum labour standards. Industrial agreements could now create different wages and working conditions within an occupation, from workplace to workplace, making it harder to monitor and enforce labour standards (Quinlan, 2006: 35-36; Goodwin and Maconachie, 2011: 67). The deconstruction of the system of compulsory conciliation and arbitration, and thus trade union based bargaining, was a protracted and complex process that was dealt a fatal blow in 1996 with the introduction of the *Workplace Relations Act 1996 (Cth)* (Cooper and Ellem, 2008: 532-533; Fenwick and Howe, 2009).

### 3.1.3 Workplace Relations 1996-2009

The *Workplace Relations Act 1996 (Cth)* introduced the option for individual agreements between employers and employees called Australian Workplace Agreements (AWAs) (Cooper and Ellem, 2011: 42). Significantly, unions lost much power to negotiate on behalf of employees (Cooper and Ellem, 2008: 538-540; Gahan and Pekarek, 2012: 196). This legislation ended the monopoly unions had held over the negotiation of awards and collective agreements by allowing other agents, or the individual employee, to negotiate as well (Bray and Macneil, 2011: 156). The legislation also limited the matters allowable for inclusion in awards (Quinlan and Johnstone, 2009; Bray and Macneil, 2011: 156). Trade union capacity to enforce labour standards was undermined by reducing right of entry powers and changing the dispute resolution processes (Baird *et al.*, 2009; Fenwick and Howe, 2009; Hardy and Howe, 2009; Goodwin and Maconachie, 2011). Dispute resolution processes had been the exclusive domain of unions as employee representatives until 1990, when an amendment was made to the Industrial Relations Act to allow individuals to pursue enforcement proceedings (Bray and Macneil, 2011: 157).

In the meantime, further degradation of the inspectorate system had occurred from 1996, with the inspectorate body placing more emphasis on educating employers about the benefits of Australian Workplace Agreements, rather than enforcing minimum labour standards (Goodwin and Maconachie, 2011: 68). Then in 1997 the Howard Coalition government contracted-out the main functions of the inspectorate bodies to the state governments. The terms of the contracting-out arrangements made it clear that the state inspectorates were to follow federal procedures, which had placed the onus on employees to settle their own disputes through small claims courts (Hardy,

2009: 88). These changes could be described as the 'individualisation' of enforcement processes (Lee, 2006) as well as increasingly individualised labour standards regulation (Murray, 2001; Bray and Macneil, 2011: 152). An indication of the 'individualisation' of enforcement was that of the 299 complaints received in 2002-03, 296 were resolved by the employees themselves in the small claims courts (Bray *et al.*, 2001; Goodwin and Maconachie, 2011: 69).

Reform of the industrial relations system peaked with the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (hereafter Work Choices) (Peetz and Preston, 2009: 445). The key changes were the erosion or removal of regulated minimum standards, unfair dismissal protection, and collective bargaining and rights to representation (Elton and Pocock, 2008; Baird *et al.*, 2009). The Work Choices legislation of 2005 was a stark departure from the collectivist system that had been firmly entrenched since 1904 (Ryan and Herod, 2006).

As part of the shift to individualisation, awards for private sector employees were moved from the state to federal sphere using the Constitutional Corporations Power and a federal minimum wage was introduced (Bray *et al.*, 2001; Riley, 2008b; Fenwick and Howe, 2009). This meant that many minimum conditions, particularly wages, classification of employees and occupational health and safety (OHS) standards, were no longer included in award standards (Quinlan and Johnstone, 2009). OHS for school cleaners continued to be regulated by the NSW state government under the *Occupational Health and Safety Act 2000 (NSW)* for the duration of the period in which this research took place. Nonetheless, 2005 marked the point in time at which NSW school cleaners departed from the state based award and collective bargaining system, to be regulated under agreements in the new federally based Work Choices legislation.

The enactment of Work Choices created opportunities for employers to use AWAs, which had been introduced with the 1996 legislation, more broadly and, with the abolition of the no disadvantage test, to reduce conditions (Gahan and Pekarek, 2012: 196). In response to the alarm this raised amongst workers and trade unions, the Howard government strengthened the federal inspectorate system (Mitchell, Gahan, Stewart, Cooney and Marshall, 2010: 82; Goodwin and Maconachie, 2011: 70). This was also required because inspection workloads had increased due to the partial take-over of the state based industrial relations system by the federal jurisdiction. The inspectorate body, known then as the Workplace Ombudsman (WO), was injected with \$97 million in extra funding between 2006 and 2010, including the employment of 957 inspectorate staff by 2010, at least half of whom were inspectors (Goodwin and Maconachie, 2011: 70). The inspectorate body was substantially better empowered to monitor and enforce compliance with legislated labour standards (Maconachie and Goodwin, 2010b: 377). Employers who breached regulations and failed to voluntarily rectify the breaches were prosecuted, with 35 prosecutions actioned in 2006-07 (equivalent to the total number of prosecutions undertaken in the previous ten years) and 67 prosecutions pursued in 2007-08 (Goodwin and Maconachie, 2011: 70).

It has been argued that this legalistic approach from a central inspectorate body was more 'command and control' and less responsive than earlier approaches to labour standards' regulation seen in Australia (Cooney *et al.*, 2006). Indeed, while on the one hand the inspectorate's role was strengthened and expanded, the role of trade unions to monitor and enforce diminished, as trade union participation and powers to enter workplaces and investigate breaches was eroded (Hardy and Howe, 2009). This was the first time in Australia's history that the government inspectorate body took a greater

role than the trade unions in monitoring and enforcing industrial relations regulations (Goodwin and Maconachie, 2011: 72). Nonetheless, changes to the regulation of labour standards, coupled with the decline in union capacity to support enforcement of those standards, created problems for workers. This situation ultimately built political pressure for change.

### **3.1.4 Fair Work 2009 - present**

The political pressure resulted in a change in government in 2007 and Work Choices was replaced by the *Fair Work Act 2009*, with transitions to Fair Work commencing in early 2008 (McCallum, 2011). Fair Work continued to utilise Constitutional Corporations Power to work towards a federal industrial relations system, although this time the States were given the option to voluntarily defer their industrial relations powers to the Federal Government. Fair Work differed from Work Choices, in that it returned good faith bargaining, provisions for minimum wage conditions and a safety net. Individually based industrial rights, however, remained as the underpinning of the law (Riley, 2008b; Gahan and Pekarek, 2012: 196).

The Fair Work system incorporates three levels of federal regulation (Riley, 2008a). The base level consists of ten National Employment Standards (NES), which provide Australia's first legislated safety net, covering basic entitlements such as working hours and rights to leave (McCallum, 2011). The second level is the modern award, a revised and simplified version of the traditional award system. The highest level is enterprise-based collective bargaining agreements (EBAs) and Individual Flexibility Agreements (IFAs), with workplace agreements subject to a 'better off overall test' (BOOT) since 2010 (Riley, 2008a). There is also a federal minimum wage level that is reviewed annually by the Fair Work Australia Minimum Wage Review Panel

(Jefferson and Preston, 2011: 313). The Act includes General Provisions, which cover freedom of association and protection against discrimination and other wrongful treatment (Fenwick and Howe, 2009: 192). Minimum terms and conditions of employment mandated through the NES, IFAs and legislated general protections against discrimination or wrongful treatment are all examples of the continuation of the individualised approach to industrial relations (Hardy, 2009: 101; Murray and Owens, 2009).

The Fair Work Act supports collective bargaining for enterprise agreements, unlike its predecessor, Work Choices (Cooper and Ellem, 2011: 47; Todd, 2011: 59), but, both the engagement of a trade union in a collective bargaining process and, indeed, the bargaining of a collective agreement, as opposed to reliance on the modern award, are voluntary under Fair Work (McCallum, 2002: 228; Forsyth, 2009: 130). However, if an employee or group of employees opt to collectively bargain an EBA, rather than depend on the modern award, the proposed EBA must be approved by Fair Work Australia before it can be enacted. Importantly, EBAs are subject to the BOOT before they can be approved, which ensures they do not undercut standards provided for in the modern award (Sutherland, 2009: 115). Once approved, EBAs take precedence over the relevant modern award. As such, EBAs contain similar legally binding minimum standards of wages and working conditions found in the modern awards (Bray, 2011: 28).

During the period covered in this thesis, school cleaners' labour standards were, and remain, subject to the Fair Work Act. The instruments that directly regulate the labour standards for these workers are the EBAs between the contracted cleaning companies and their trade union, United Voice. EBAs are the primary instrument for upholding and upgrading labour standards for these cleaners. These EBAs are

underpinned by the Cleaning Services Award 2010 (Cleaning Award). A broader safety net is provided by the National Employment Standards legislation.

There is little variation between the EBAs for each contracted cleaning company. United Voice played a central role in negotiating and instituting these enterprise agreements. The EBAs prescribe pay rates, leave entitlements and other employment conditions, such as provisions for clothing, and protective equipment requirements. The EBAs also cover OHS, discrimination, and grievance procedures. The EBAs refer OHS regulation to the *NSW Occupational Health and Safety Act, 2000* and its amendments. This state based legislation also extends to bullying and harassment in the workplace. The EBAs include grievance procedures, which allow third party support (often from a trade union representative) and encourage timely settlement through discussions with immediate supervisors and senior managers. Matters can be referred to Fair Work Australia to conciliate as a last resort. In matters where discrimination is present employees may have grounds to lodge a complaint and have the matter addressed by the NSW Anti-Discrimination Board.

Labour standards for NSW school cleaners are monitored and enforced by the federal inspectorate agency, the Fair Work Ombudsman (FWO), and the trade union. Broadly speaking, the objectives and functions of the FWO remain similar to the WO, with the maintenance and even improvement of resources to prosecute infringements and deter non-compliance (Goodwin and Maconachie, 2011: 71). However, the Fair Work Act gives FWO inspectors broader powers. Inspectors now not only assess whether employers are meeting their obligations under the awards, but they also consider compliance with the NES safety net. Inspectors continue to assess compliance

with workplace agreements. This change empowers the FWO to have more influence over workplace practices (Hardy and Howe, 2009: 328).

### **3.2 The Role of Trade Unions**

Thus far this chapter has included an examination of the evolution of government inspectorate bodies in Australia. This evolution has culminated in the establishment of the Fair Work Ombudsman, which has more powers and resources to enforce labour standards for workers covered by the Fair Work Act than have previously been enjoyed by inspectorate bodies in Australia. Government inspectorate bodies, as established in the previous section, have historically played a dual role with trade unions in enforcing labour standards. This raises questions about the extent to which trade unions will continue to play a part in enforcing labour standards. Indeed, it raises questions about the role of trade unions in regulating labour standards in all respects; that is, in defining, implementing, monitoring *and* enforcing labour standards. The participation of trade unions in regulating labour standards is ideal if regulators are to follow the responsive regulation model and take a collaborative and democratic approach (Ayres and Braithwaite, 1992: chapter 3; Cooney *et al.*, 2006: 223-224; Howe, 2008: 53; Hardy, 2012: 118). The regulatory role of trade unions is a critical question in a thesis that seeks to understand how labour standards are regulated through the combination of labour law and procurement contracts when services are contracted-out. A broader analysis of the role(s) of trade unions is provided in this section. Then in the following section the analysis returns to the dual role of the inspectorate and trade unions in enforcing labour standards by applying the responsive model of regulation to each.



Although the specific role of trade unions has been much contested, it is widely agreed that they have a role in regulating labour markets relations (Gahan, 2006:261; Hardy and Howe, 2009; Goodwin and Maconachie, 2011). 'The regulative functions of such actors remain largely undeveloped at both theoretical and empirical level' (Gahan, 2006: 261). The Webbs (1897) have suggested that unions' regulatory role is carried out through three avenues: enforcing unions' rules, collective bargaining processes, and political action to establish legislation to protect workers. More recently Ewing (2005) has offered a typology of the functions of trade unions, which include service, representation, regulation, governmental and public administration.

The service function of trade unions encompasses the provision of insurance or professional services, such as legal representation and advice or support with claiming standards that have been prescribed by law (Ewing, 2005: 3). Professional services can be an enforcement function in so much as unions can assist workers to claim their minimum entitlements. Trade unions in Australia traditionally had sufficient power to protect workers who were not paid in accordance with minimum standards, by putting forward prosecutions of non-compliant companies (Ryan and Herod, 2006: 492). As was explained in the previous section, under Work Choices unions had significantly less power than the Workplace Ombudsman to enforce workplace rights through the pursuit of court proceedings. Changes under the Fair Work Act expanded the role unions could play in facilitating court proceedings for aggrieved workers. Unions, however, typically have constrained resources and are not able to take up this important enforcement role (Hardy and Howe, 2009: 330-331). Ewing (2005: 3) points out that as the capacity for unions to negotiate and implement regulations diminishes, the role played by unions in enforcement through professional services become increasingly pertinent.

The second function of unions, described by Ewing (2005: 3-4), is the workplace representation function. This can include both individual and collective representation of employee interests in the workplace. Collective representation by Australian trade unions typically involves the negotiation of EBAs with companies. In terms of individual representation, trade unions' role in influencing labour standards can extend beyond improving wage rates. It can also include communicating directly with management to resolve disputes or determine 'manning levels', OHS, control over work tasks, and decisions about work/life balance (Freeman and Medoff, 1984: 3-4; Gahan, 2006:265-267; Hardy and Howe, 2009). There are arguments that trade unions can improve the retention and development of skills in the workplace, improve communication by disseminating information from the ground level, improve morale by enhancing 'voice' and even improve the efficiency of management (Freeman and Medoff, 1984: 8, 20-21; Gahan, 2006:266-267).

The regulatory function of trade unions takes into account the ways in which trade unions institute rules for workers who are not necessarily trade union members (Ewing, 2005: 4). Historically in Australia unions were central to the state sanctioned system of compulsory conciliation and arbitration (McCallum, 2002; Ewing, 2005: 13; Cooper and Ellem, 2008) but the regulatory role of trade unions has become less formalised with the dismantling of that system (McCallum, 2002). Meanwhile their informal regulatory role has also diminished as trade union participation is dramatically reduced (Cooper and Ellem, 2011).

The final two regulatory functions of trade unions are the governmental and public administration functions (Ewing, 2005: 4-5). These functions involve industry level collective bargaining and engaging with government to influence legislation.

Examples include union submissions to the Fair Work Act Review in 2012 and the Fair Work Australia Minimum Wage Panel. In this way, unions like United Voice, contribute to government policy. These functions of unions are increasingly important in Australia since the compulsory conciliation and arbitration system has been dismantled and the capacity to regulate through collective bargaining has been limited to the enterprise level. These higher level activities of unions have been examined by other scholars and are less of a concern for this thesis (see for example, Ellem and Franks, 2008; Hyman, 2008; Forsyth, 2009). Instead, in this thesis, the endeavour is to understand how unions and other government bodies define, implement, monitor and enforce labour standards for school cleaners.

### **3.3 Fair Work Act and responsive regulation**

The framework of responsive regulation to assess how labour standards for school cleaners are being enforced is applied in this thesis. An examination of whether the regulation of employment standards through labour law mechanisms in Australia meets the requirements of responsive regulation is provided in this section. A consideration of the array of enforcement measures available to enforcement bodies is also set out in the format of the responsive regulation enforcement pyramid. For enforcement bodies to determine the appropriate response to infringements, they need to be communicating with regulatees. Ideally, non-state actors, like trade unions, are enrolled in the regulatory process to enhance the potential for regulators to collaborate, adapt and respond appropriately (Ayres and Braithwaite, 1992: chapter 3; Hardy and Howe, 2009). A reflection on the extent of trade union involvement in the regulation of labour standards, and the implications for responsive regulation of labour in Australia is also included in this section.

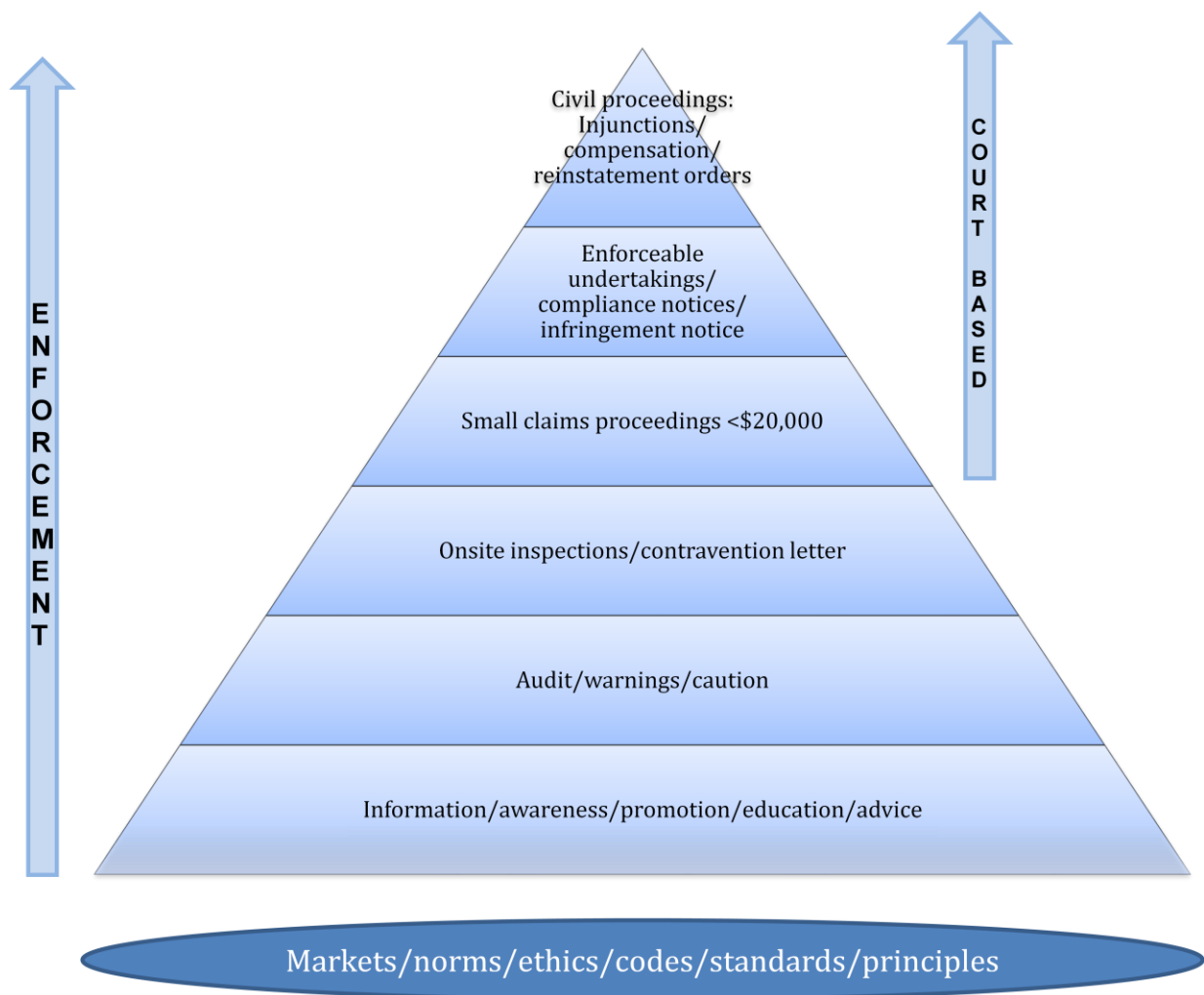
### 3.3.1 FWO and trade union labour standards enforcement

The FWO's approach to enforcement is responsive, in the sense that it uses a range of enforcement strategies from persuasion and reforming with education through to deterrence with the threat of punishment (Hardy, 2009; Goodwin and Maconachie, 2011: 71). The *Fair Work Bill (2008) Cth* emphasised that the FWO would focus on 'preventative compliance' (using awareness and advice) and 'voluntary compliance' (using enforceable undertakings) (Hardy and Howe, 2009: 332). The credible threat of consequences for persistent non-compliance is present too, with the option to pursue enforcement through civil proceedings. Therefore the approach taken by the FWO broadly fits the responsive regulation model of enforcement, and is illustrated in the pyramid below, Figure 3.1.

This pyramid illustrates how the lowest level of enforcement encompasses the preventative compliance techniques. These are ways in which the FWO seeks to prevent infringements by educating and improving awareness, including providing information, awareness, education and advice or promoting compliance. Ideally these preventative compliance techniques are the starting point and the most commonly used tools of enforcement for the FWO (Hardy and Howe, 2009: 311). Nevertheless, in severe cases the FWO may be compelled to commence enforcement proceedings at any point further up the pyramid. If problems persist after options from the lowest layer of the pyramid have been exhausted, the FWO may be prompted to move up the enforcement pyramid and conduct an audit or issue a warning or caution. In many instances problems would cease at this level, as the employer has been made aware of their obligations and given an opportunity to correct their behaviour. If employers persist with not complying, then the FWO might advance to conducting an onsite inspection or issuing a contravention

order. However, where breaches are more severe or more consistent the FWO may deploy court-based punishments, ranging from voluntary compliance, like enforceable undertakings or compliance notices, to firmer approaches, like civil proceedings. Meanwhile, individual employees, on their own or with assistance from a trade union, have the option to pursue small claims proceedings to recover unpaid entitlements of up to \$20,000 (Hardy, 2009: 102-105).

**Figure 3.1 Fair Work Ombudsman and responsive regulation under Fair Work Act**



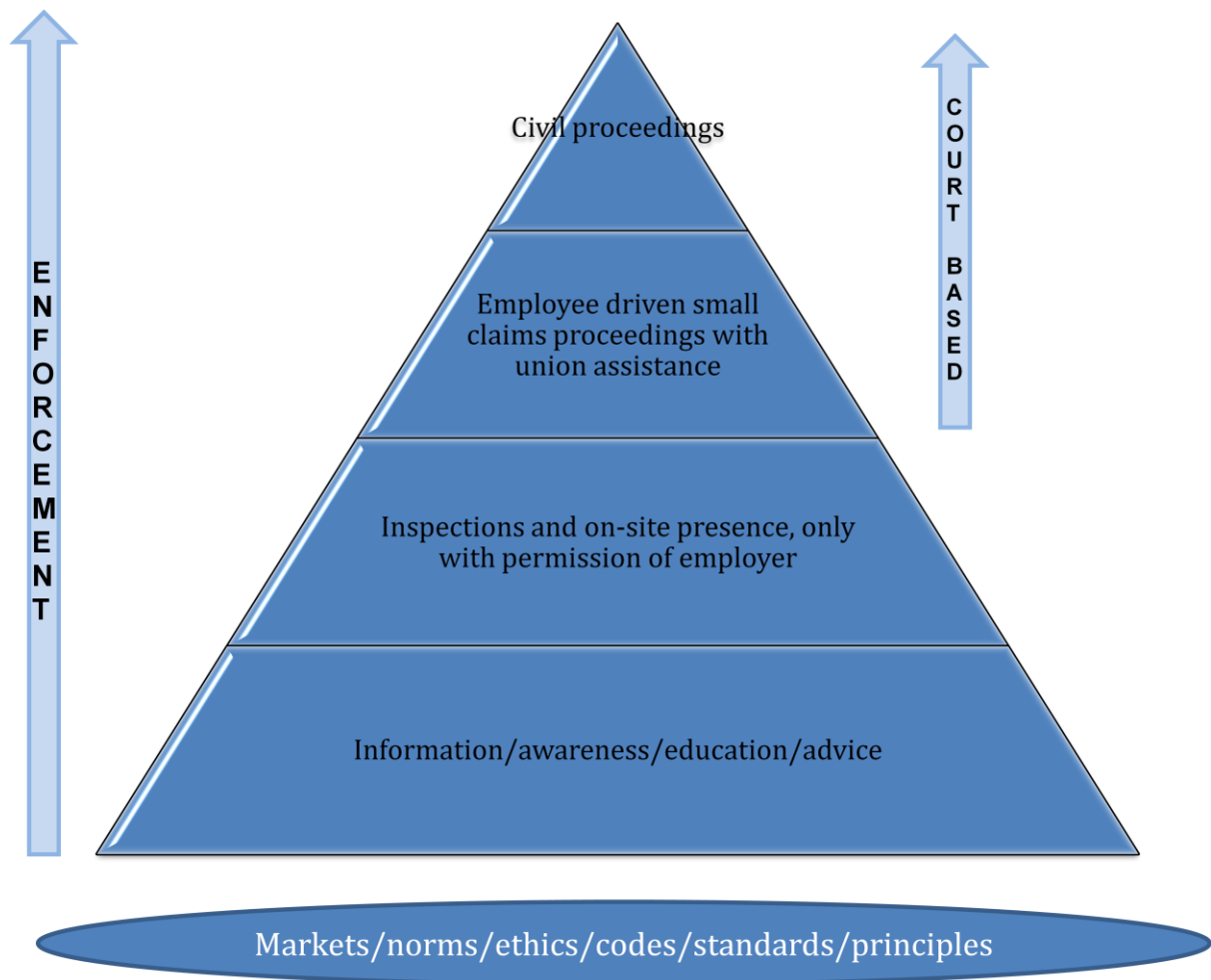
Source: Adapted from enforcement pyramids by Ayres and Braithwaite, 1992: 39 and Freiberg, 2010: 98 and from descriptions of penalties in Hardy and Howe 2009: 331-333 and Goodwin and Maconachie 2010b: 379.

In spite of the wide array of enforcement measures available, it has been argued that the Fair Work approach to enforcement is less responsive than the strategies of the twentieth century. This is because it is less collaborative and fails to explicitly enrol non-state actors, such as trade unions, in the negotiation, implementation and enforcement of labour standards (Cooney *et al.*, 2006). Neither Work Choices, nor Fair Work support collaboration between unions and the inspectorate bodies to uphold labour standards (Hardy and Howe, 2009: 330). Under the Fair Work Act, unions are no longer automatically required to assist employees to bargain workplace agreements (Cooper and Ellem, 2011: 38-39). Union capacity to monitor labour standards has been limited because, since Work Choices, broad powers to enter and inspect workplaces have been transferred from unions to the inspectorate body (Bray and Macneil, 2011: 160). The Fair Work Act has expanded options for unions to pursue court actions for infringements, while reducing options for less formal, or less costly, enforcement mechanisms, such as industrial action (Hardy and Howe, 2009: 331). Although the examination of state-based regulation is the focus of this thesis, it is vital to consider the regulatory tools of trade unions, as they have traditionally played an integral role in labour standards formation, implementation, monitoring and enforcement. The responsive regulation model can be applied to trade union enforcement of labour standards in Figure 3.2 below.

This pyramid illustrates the comparatively limited range of enforcement strategies for unions compared to the FWO. The enforcement measures available to unions have been reduced since compulsory conciliation and arbitration was dismantled, with restrictions placed on industrial action and dispute resolution processes, which had been commonly used informal enforcement procedures for unions

in the twentieth century. The 'big stick' available to unions is bringing civil proceedings for infringements exceeding \$20,000 in unpaid entitlements. There are questions as to whether unions have the resources to pursue this expensive strategy to a sufficient extent for it to be a viable deterrence mechanism (Hardy and Howe, 2009: 332).

**Figure 3.2 Trade unions and responsive regulation under Fair Work Act**



Source: Adapted from enforcement pyramids by Ayres and Braithwaite, 1992: 39 and Freiberg, 2010: 98 and from descriptions of penalties in Hardy and Howe 2009: 331-333.

This analysis has provided a brief overview of the enforcement measures that are available under the Fair Work Act for the FWO and trade unions. It is still too early

to have a clear understanding of the role of state and non-state enforcement agencies since the Fair Work Act commenced in 2009. Research is currently underway, by Hardy and Howe, to understand the investigative and enforcement roles played by the FWO. There is also little understanding of how government regulators interact with non-state bodies to implement and enforce minimum labour standards (Gahan and Brosnan, 2006: 145; Hardy, 2012: 118). This thesis contributes to filling that gap in knowledge by building an understanding of how labour law (as regulated and enforced by the FWO) and contract law (as regulated by government departments in conjunction with contracted companies and trade unions) interact to regulate school cleaners' labour standards.

The analysis in this sub-section has shown that although there is an array of enforcement measures available to the FWO for upholding labour standards, the regulatory approach is left wanting when it comes to formally enrolling non-state actors to collaborate in the regulatory process. The Fair Work Act fails to mandate the involvement of trade unions in collectively bargained agreements, and has upheld a range of other restrictions on union capacity to monitor and enforce labour standards that were introduced by Work Choices. An examination of what this means for responsive regulation of labour standards in Australia is given in the next sub-section.

### **3.3.2 Responsive regulation in Australian industrial relations**

Throughout the twentieth century, Australian trade unions and employer associations had a central role in the compulsory conciliation and arbitration system. Trade unions played an integral part in setting labour standards, while they were also involved in the education and enforcement of those labour standards (Gahan, 2006; Hardy and Howe, 2009; Hardy, 2012: 118). Thus, labour law in Australia followed a



uniquely responsive regulatory approach under compulsory conciliation and arbitration (Howe, Mitchell, Murray, O'Donnell and Patmore, 2005: 203). Albeit, one mandated by the state and reliant upon command and control style regulation (Fenwick and Howe, 2009: 174). Nonetheless the extent of adaptability, collaboration, and thus responsiveness in the system of labour law ran against the grain during a period of predominantly command and control style regulation.

Since Work Choices, labour law has become more based on individual rights, yet more centralised and reliant upon 'legalistic standard setting by legislature' (Cooney *et al.*, 2006: 225). By reducing the capacity of trade unions to participate in the regulatory process, labour regulation in Australia has become less responsive (Cooney *et al.*, 2006; Hardy and Howe, 2009). This could result in the regulation of labour standards being less effective. There are arguments that a more formal and less responsive legal system is more likely to be met with resistance and subversion (Lobel, 2005; Howe, 2010). This is evidenced by employers finding ways to circumvent more restrictive labour law practices. An example of subversion in the cleaning industry is the increasing prevalence of subcontracting, which 'often exists purely as a means of circumventing legal and regulatory frameworks so as to reduce operating costs' (InClean Magazine, August/ September 2009b). The practice and consequences of subcontracting will be discussed in further detail in Section 3.4.

Labour standards of cleaners whose work has been contracted-out are regulated through both the labour law mechanisms, described in this chapter, and contractual mechanisms described in the previous chapter. Government procurement has been proffered as a form of regulation of labour standards in its own right. Government contracts can be utilised to overlay the labour law system and reinforce the regulation

of labour standards. This has the potential to increase the responsiveness of the regulatory approach, by being collaborative and enrolling government agencies that oversee contracts in the process of regulating labour standards. As was discussed in Sub-section 2.3.2, there is also potential for trade unions to engage with the contracting process to support the regulation of labour standards. The following chapters in this thesis include investigations of whether the potential for parties to the contracts and trade unions to be collaboratively regulating labour standards is realised in the NSW government school cleaning contracts. Firstly, however, this chapter closes with an analysis of precarious work and the impacts of contracting-out to reassert the importance of understanding how cleaners' labour standards are regulated.

### **3.4 Individualisation of labour, contracting-out and precarious work**

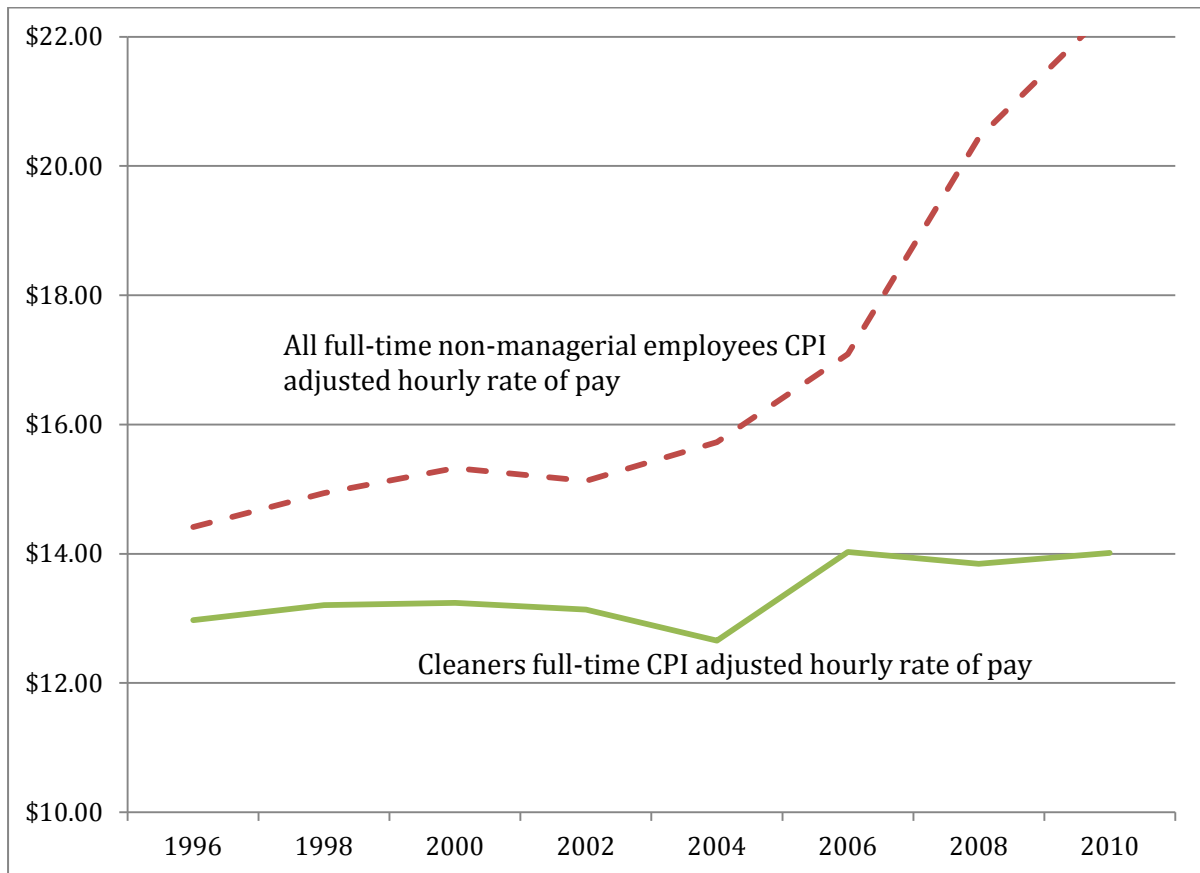
During the twentieth century the employment relationship came to be regarded as a contractual one (Ramia, 2002; Deakin and Wilkinson, 2005: 14). Legislative reforms since 2005, described in the first section of this chapter, emphasise individual employment rights (Mitchell and Arup, 2006; Bray and Macneil, 2011; Goodwin and Maconachie, 2011). For cleaners and other precarious workers, this individualisation of the employment relationship has exacerbated problems of exploitation.

In this context, principles of labour protection are being subjugated to principles of maximising competitiveness, efficiency and productivity (Johnstone and Mitchell, 2004: 116; Ewing, 2008: 103; Kaine, 2012: 210). The Work Choices legislation focused on breaking the 'rigidity' of awards by allowing employers as much flexibility in the terms and conditions of employment as possible. For cleaners, this meant the elevation of individual industrial rights at the expense of collective industrial rights, increased casualisation, increased outsourcing, and the intensification of productivity

expectations (Quinlan, 2006; Ryan and Herod, 2006; Campbell and Peeters, 2008; Baird *et al.*, 2009). Evidence is mounting of the polarisation of disparities between vulnerable workers, such as cleaners, and other categories of higher paid workers (Ryan *et al.*, 2005; Aguiar, 2006; Baird *et al.*, 2009; Pollert and Charlwood, 2009; Holley and Rainnie, 2012).

Holley and Rainnie (2012) provide evidence of a growing gap between full-time cleaners' earnings and those of other full-time non-managerial employees in Australia between 1996 and 2010. They use Australian Bureau of Statistics (ABS) data from the Employee Earnings and Hours tables, collected biennially, to provide an understated view of the earnings of Australia's cleaners compared to all other non-managerial employees. This data does not capture Australia's most vulnerable cleaners, those who are employed on a part-time or casual basis or those who are self-employed or working informally. A comparison of full-time cleaners' CPI adjusted weekly earnings and those of non-managerial employees reveals that while the earnings of non-managerial employees increased relative to CPI, cleaners' earnings remained fairly steady (Holley and Rainnie, 2012: 153). Figure 3.3 below graphically illustrates the increasing disparity between cleaners' hourly rate of pay and all non-managerial employees' hourly rate of pay using CPI adjusted rates of pay. In 1996 full-time cleaners earned 90 per cent of the hourly rate paid to all full-time non-managerial employees, but by 2010 this had reduced to 62.5 per cent.

**Figure 3.3 Comparison of hourly rate of pay for cleaners and all non-managerial employees (full-time employees, CPI adjusted) 1996-2010**



Source: ABS Cat. No. 6303.0, 6401.0

This understated look at the increasing disparity between cleaners' and non-managerial employees' rates of pay reveals that there is a widening trend. Even full-time cleaners formally employed in Australia are increasingly earning comparatively lower incomes than other non-managerial full-time workers (Holley and Rainnie, 2012: 154). The increasing vulnerability of workers, like cleaners, has been attributed in part to increasingly tenuous relationships between employers and workers with precarious employment arrangements, including casual, temporary and self-employment (Burgess and Campbell, 1998; Boushey and Fremstad, 2008; Weil, 2009a).

The objective of social protection for workers becomes more complicated when the employment relationship is obfuscated through contractual arrangements (Quinlan, 2006: 24). To minimise the costs of labour, the cleaning industry has sought to attract workers who have few other alternatives and are therefore compelled to work for low salaries, with irregular hours and poor job security. This group largely consists of middle-aged immigrant workers attempting to get a foothold in the Australian job market and/or females with domestic duties that limit their ability to work in other positions (Ryan and Herod, 2006; Vosko, 2007; Boushey and Fremstad, 2008; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009).

The increasing prevalence of contracting-out workers has also been associated with 'a profound growth in precarious or insecure employment' experienced in most developed countries (Nossar, 2006: 202). Cost reductions have been achieved through contracting-out, but these are often borne in invisible ways by the workers themselves (Quiggin, 1996; Quiggin, 2002; Ryan *et al.*, 2005; Quinlan, 2006). Vulnerable workers, such as cleaners, have suffered more than most since employers have also been able to increasingly 'exteriorize' them (Aguiar and Herod, 2006: 11) to avoid the legal obligations that come with direct, full-time employment (Burgess and Campbell, 1998; Marshall, 2006; Nossar, 2006; Ryan and Herod, 2006; Kaine, 2012: 211). Contracting-out provides opportunities for businesses and governments to abdicate their legal and ethical responsibilities for the welfare and security of the people who indirectly work for that organisation (Marshall, 2006: 542). Employers tend to be strategic and opportunistic in seeking regulatory loopholes (Masterman-Smith *et al.*, 2008), using elaborate supply chains with multiple levels of contracting and subcontracting to 'evade/minimise statutory entitlements' (Quinlan, 2006: 29).

Subcontracting-out cleaning services is both a strategy to reduce labour and management costs and to obstruct collectivisation (Dabscheck, 2001; Fairbrother *et al.*, 2002; Cooper and Ellem, 2008: 541; Wills, 2009: 443, 445). Subcontracting is a particular cause of the exploitation of workers; a strategy used to eke out profits in the highly competitive contracted cleaning industry (Aguiar, 2000: 73; Aguiar and Herod, 2006: 3-4; Ryan and Herod, 2006: 491). The most effective way to minimise costs in the contracted cleaning industry is to employ cleaners 'off the books', paying them cash and offering no other entitlements or employment security (see Leonard 1992: 154 in Aguiar, 2000: 73).

Cleaners are motivated to accept these conditions for various reasons, which commonly include work permit restrictions (like international students or illegal immigrants), language limitations (like illiteracy or the inability to communicate in English), or they are women with family responsibilities that limit their capacity to commute or work certain hours (Fraser, 1997; Alcorso, 2002; Aguiar and Herod, 2006; Ryan and Herod, 2006; Vosko, 2007; Boushey and Fremstad, 2008; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009; Standing, 2009: 71). Thus, there is an underlying theme of fear of dismissal due to poor alternative employment options for cleaners who accept and persist with subcontracted positions that undermine their labour standards entitlements (Aguiar and Herod, 2006; Seifert and Messing, 2006: 142; Elton and Pocock, 2008; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009; Standing, 2009: 71-74; Wills, 2009: 445). This is true for the NSW cleaning industry, with a proliferation of illegal subcontractors who fall short of providing the employment and salary conditions required by labour law (Ryan and Herod, 2006: 491; Ryan, 2007b).

There is also evidence that occupational health and safety (OHS) practices have worsened since the outsourcing of cleaning services commenced (see Johnstone *et al.*, 2001; Quinlan *et al.*, 2001; Lobel, 2005: 1092-1095). Correlations have been identified between outsourcing and greater incidents of harassment, bullying, fatigue and injuries in the workplace (Fraser, 1997; Quinlan *et al.*, 2001: 348). In a tangential matter, Ironside and Seifert (2003) and Hutchinson (2011: 3-4) identified increasing prevalence of bullying and harassment in the public sector as a result of restructuring workforces through contracting-out strategies. Changes to industrial relations since 2004 and the de-collectivisation of workplaces have resulted in workers being increasingly fearful of victimisation if they report OHS problems (Quinlan and Johnstone, 2009: 439). Quinlan and Johnstone (2009) point out that this is in spite of federal and state IR and OHS legislation prohibiting the victimisation of workers for reporting OHS problems.

When cleaning services are outsourced, there is a pattern of augmenting workloads with each transfer to a new party (Ryan, 2007b). When cleaners' workloads are augmented, their work intensity increases and they necessarily become more 'productive' by exerting more effort to clean a given area in less time (Quiggin, 2002: 51; Campbell and Peeters, 2008: 36-37). Given the nature of cleaning work, there is minimal potential for cleaning productivity to be enhanced in any way other than by the person conducting the cleaning exerting more effort (Quiggin, 2002: 51). What is more, contracts cannot take into account all the informal or invisible aspects of cleaners' tasks (Quiggin, 2002: 51; Seifert and Messing, 2006: 135; Ryan, 2007b: 32). Consequently, outsourcing typically results in added workload pressures for cleaners, which has injurious implications for occupational health and safety (Fraser, 1997; Alcorso, 2002;

Aguiar and Herod, 2006; Quinlan, 2006; Seifert and Messing, 2006; Sogaard, Blangsted, Herod and Finsen, 2006; Campbell and Peeters, 2008: 37).

Furthermore, the physical demands of cleaning are usually underestimated (Aguiar and Herod, 2006: 2), with cleaning often considered to be low impact work, a task traditionally done by women that is natural and undemanding for them (Seifert and Messing, 2006: 130). As a result, OHS is a key issue facing cleaners with a diverse array of workers attending isolated sites at various hours of the day and night (Alcorso, 2002; Ryan, 2007b). To illustrate this point, in 2000-2001 cleaners in Australia were found to have a rate of injury 2.2 times higher than the national average rate of injury (Aguiar and Herod, 2006: 2).

Indeed, Australian cleaners provide their services in one of the most competitive cleaning industries in the world (Ryan and Herod, 2006), with would-be contractual cleaning firms competing on the basis of a price that is largely determined by how much is paid to workers. At least 70 per cent of cleaning firm costs are labour related (IBISWorld, April 2010). Ryan's (2007) interview with a senior manager of a major cleaning firm revealed that management was aware the company placed profits first, people were commodities and corners would be cut to save costs wherever possible. The manager noted that in the intensely competitive contract cleaning environment the firm would always offer the minimum standards possible:

*So if the letter of the law says we're allowed to sack you, we'll sack you. If it says we have to pay you a redundancy payment, we'll pay that to you. But if it says we don't have to we won't. We can't afford to. (Cleaning company manager cited in Ryan, 2007b: 201)*

Vulnerable workers, such as cleaners, have suffered more than most since employers have been able to increasingly hire them as 'independent contractors' or



casuals, avoiding the legal obligations that come with direct, full-time employment (Burgess and Campbell, 1998; Marshall, 2006; Ryan and Herod, 2006). Tenuous relationships between employers and employees in the forms of sub-contracting, temporary employment, self-employment and similar contractual forms are cited as primary reasons for the increasing vulnerability of workers (Burgess and Campbell, 1998; Weil, 2009a).

The rise of precarious work also raises questions about the extent to which workers are covered by labour law regulation. More and more workers fall outside the sphere of standard employment relationships. Independent contractors, self-employed small business workers and home-based workers are ambiguously, at best, covered by formal government labour law regulation (Quinlan, 2006: 40-41). The Fair Work legislation failed to accommodate the changing nature of work by not including those working outside the standard employment relationship. There is still an inherent power imbalance when there is scope for workers to be hired either under individual employment contracts under common law, or worse still, as contractors hired under contract law (Kahn-Freund, 1972; Wilson, 1997; Aguiar and Herod, 2006; Marshall, 2006; Quinlan, 2006). Thus, many argue that attempts to broaden the scope of standard employment laws and regulations must go much further, as they currently fail to acknowledge the range of non-standard work arrangements (Bromberg and Irving, 2007; Vosko, 2007; Murray and Owens, 2009).

### **3.5 Discussion**

On the one hand there is evidence that, in spite of upheavals to the Australian labour law system over the past three decades, the 'protective strength' of Australian labour law has remained relatively constant over this period (refer to the Mitchell *et al.*,

2010 empirical analysis of the 'protective strength' of Australian labour law from 1970 to 2010). On the other hand there has been a noticeable increase in pay disparities between vulnerable, low-paid workers and other workers (Baird *et al.*, 2009; Pollert and Charlwood, 2009; Standing, 2009: 99). Cleaners, in particular, have become increasingly worse off than other workers in Australia, working harder for less pay (Holley and Rainnie, 2012). The findings reported in this thesis are significant because they give voice to a group of workers experiencing the dual effects of contracting-out and increasingly individualised employment relationships.

The brief history of the regulation of labour standards and the employment relationship demonstrates that the contract has always been 'the cornerstone of modern labour law' (Kahn-Freund, 1972; Johnstone and Mitchell, 2004; Deakin and Wilkinson, 2005: 108-109). Contract law and other types of private law have been crucial to the 'contemporary legal regulation of work' (Cooney *et al.*, 2006: 216). The part played by the contract of employment has been to simultaneously co-ordinate the subordination of the worker to the managerial prerogative of the employer, and to protect that worker from exploitation. Labour lawyers have argued that the protection of workers' standards should be a public law, not contract law issue, because it is a collective matter, not one to be dealt with at the individual level of contracts (Murray, 2001; Deakin and Wilkinson, 2005: 101).

*The advent of employment protection legislation is therefore part of a wider process of 'individualization' within labour law which is responsible for the increased doctrinal importance of the individual employment relationship and hence of its juridical form, the contract of employment. (Deakin and Wilkinson, 2005: 100)*

The contract has become increasingly prevalent in the process of individualisation of the employment relationship. Indeed, the employment relationship

has come to be regarded as contractual, with an emphasis on individual employment rights and a de-emphasis on collective protections of labour standards. Since 2004 command and control mechanisms of 'legalistic standard setting by legislature' (Cooney *et al.*, 2006: 225) have been employed to deconstruct the collective regulation of labour standards. The regulation of labour has become less collective; with fewer opportunities for trade unions to represent workers in developing, implementing, monitoring or enforcing labour standards.

As a result of the changes to the regulation of labour, combined with the rise of contracting-out, vulnerable workers, like cleaners, have experienced decreasing job security and rising pay disparities compared with other workers (Burgess and Campbell, 1998; Ryan and Herod, 2006; Weil, 2009a; Holley and Rainnie, 2012). Subcontracting has been a particularly egregious strategy used in the cleaning industry to erode labour standards (Aguiar, 2000; Aguiar and Herod, 2006; Ryan and Herod, 2006: 491; Ryan, 2007b). Workers from non-English speaking backgrounds and women have suffered more than most as they have limited alternative employment options (Fraser, 1997; Alcorso, 2002; Aguiar and Herod, 2006; Ryan and Herod, 2006; Vosko, 2007; Boushey and Fremstad, 2008; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009; Standing, 2009: 71). This review of the literature has also demonstrated that occupational health and safety standards have been impacted by the rise of contracting-out, coupled with the changes to labour regulation (Fraser, 1997; Johnstone *et al.*, 2001; Quinlan *et al.*, 2001; Alcorso, 2002; Aguiar and Herod, 2006; Quinlan, 2006; Seifert and Messing, 2006; Ryan, 2007b).

### **3.6 Conclusion**

Labour law was once the dominant source for regulation of the employment relationship. During the twentieth century, regulation of the employment relationship was responsive and collaborative, with state and non-state actors formally enrolled in building, implementing, monitoring and enforcing labour standards regulation. Minimum labour standards were set by awards, which were negotiated, monitored and enforced largely by trade unions. With the individualisation of the employment relationship, and increasing prevalence of contracts for services, the regime of regulation has changed. Governments have overlaid the regulation of labour standards through labour law mechanisms with regulation through contracts for services.

By combining regulation through labour law and contracts for services, the regulation of labour standards has the potential to be more responsive. Dual regulation could be more participative and employ a more expansive array of enforcement tools. Little is understood about whether labour law and contractual regulatory mechanisms combine to form a more responsive, and indeed more powerful regulatory system, or whether one regulatory approach takes precedence to the detriment of the other. This thesis contributes towards understanding how two different forms of regulation interact. Do they reinforce each other, protecting the labour standards of workers, or do they pull in different directions, destabilising established protections in the labour market?

## Chapter 4

### Research Design, Methodology and Data

#### Introduction

This thesis explores how the labour standards of NSW government school cleaners are regulated through the dual mechanisms of labour law and contracts for services. In investigating this relationship a case study methodology has been utilised. The selection of this research approach to answer the central research questions is outlined and justified in this chapter. The research questions are revisited in Section 4.1. Case study methodology is explored in Section 4.2 and the reasons for the selection of this approach are outlined. The multiple sources of data and their collection and analysis are considered in Section 4.3.

#### 4.1 Research questions

As was explained in the first chapter, this thesis examines how the labour standards of NSW government school cleaners are being monitored and enforced when governments contract-out these services. This thesis asks the question:

**How are labour standards regulated through the combination of labour law and procurement contracts when services are contracted-out?**

This question is divided into smaller components to probe the case of NSW school cleaners:

1. What are the minimum labour standards prescribed by the contractual and labour law regulatory mechanisms?
2. What are the mechanisms for enforcing labour standards for school cleaners?

3. Who is responsible for determining labour standards, and monitoring and enforcing those standards for school cleaners?
4. What are the actual (as opposed to specified legal minimum) labour standards of school cleaners?
5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?
6. How well does the regulation of labour standards for school cleaners meet the requirements of responsive regulation?

Questions one and two have been addressed in *Chapters 2 and 3*. Question three is explored in *Chapter 5* which sets out the roles of each of the entities that impact on labour standards for school cleaners. Question four is addressed in *Chapters 6, 7 and 8*, which provide accounts of labour standards for NSW school cleaners, largely from the perspective of the cleaners themselves. Question five is explored through *Chapters 7, 8 and 9*, which examine compliance with labour standards prescribed by contracts and labour law. Question six, looking at which bodies take responsibility for compliance and how they meet the requirements of responsive regulation, is answered in *Chapter 9*.

## **4.2 Methodology**

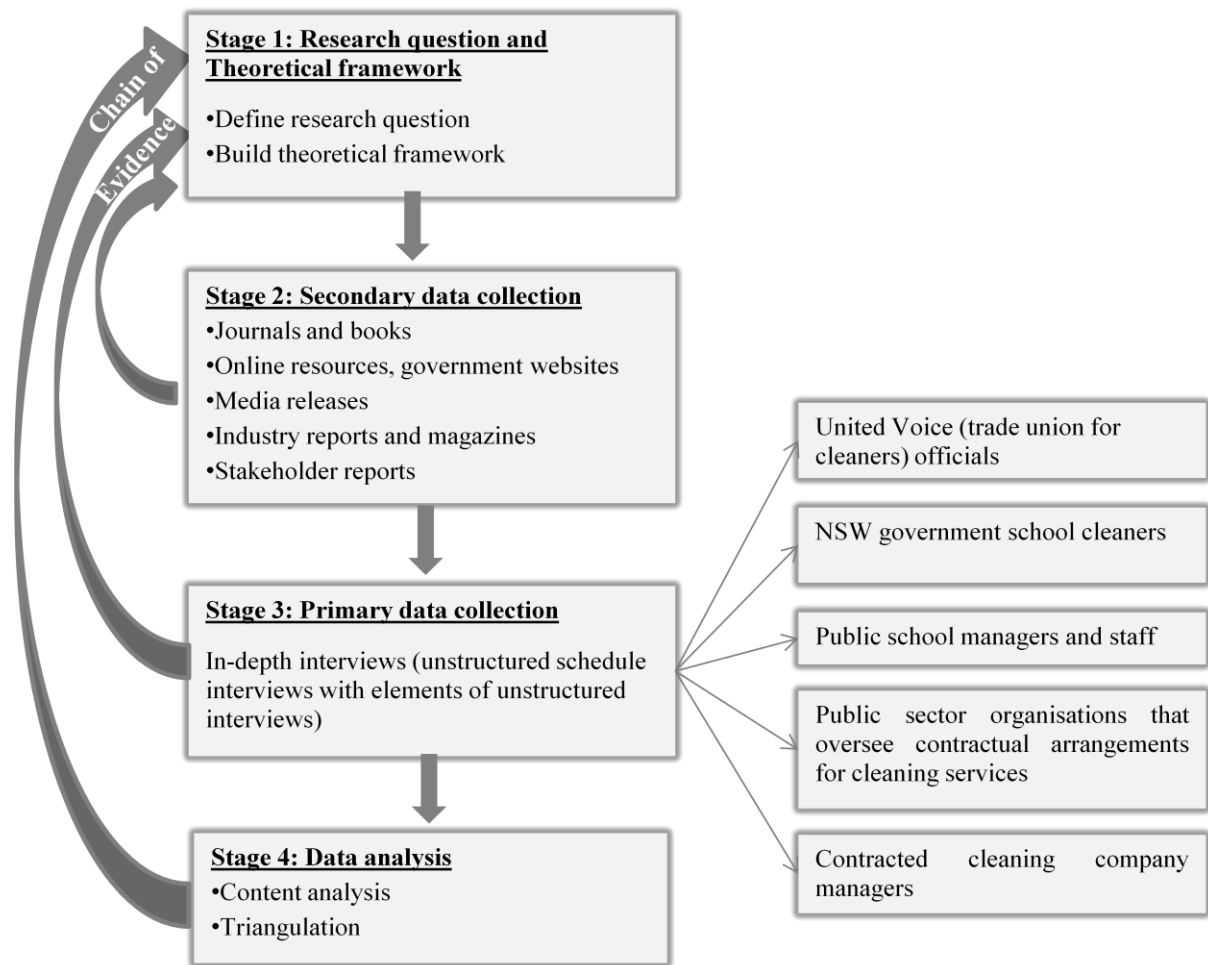
In this research, a holistic and multidisciplinary case study approach is used to understand how labour standards for NSW school cleaners are regulated through the combination of labour law and contracts for services. Flanders (1965; 2002) and Hyman (2008) argue that to understand industrial relations, it is necessary to consider other disciplines, such as politics, law, economics and sociology. The case study methodology is best suited for this level of complexity and therefore plays a strong role in industrial relations research (Bray *et al.*, 2009). This research combines the industrial relations

approach with regulatory theory and the disciplines of economics, law and public policy in examining contractual regulation, further warranting the use of a case study to tackle the complexities and better understand multi-causalities (Bray *et al.*, 2009).

The case study is also optimal to use here because it is difficult to distinguish between the phenomenon of how school cleaners are regulated, and the context of the provision of cleaning services at NSW government sites. Indeed the context can be integral to the phenomenon being observed (Yin, 1994). According to Yin's influential work defining case study research, the case study method 'investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident' (Yin, 1994: 13). O'Leary (2005: 79) adds that a case study is 'a method of studying elements of the social through comprehensive description and analysis of a single situation or case.' Although the use of a single case study lacks generalisability, it is a credible way to conduct a revelatory study (Yin, 1994). Here the single case study is a broad study of one sector of the cleaning industry, which includes multiple sites, companies and contract packages. A single case study approach is valid for first time explorations (O'Leary 2005). As this is the first time research has examined how labour standards are impacted upon by the interaction between labour law and contracts for services the single case study is appropriate.

The case study method is a 'comprehensive research strategy' that relies on 'multiple sources of evidence' because the number of variables being investigated exceeds the number of data points or perspectives of the variable being observed (Yin, 1994: 13). The sources of data used and the way they have been used for this case study is summarised in the diagram below:

**Figure 4.1 Collection of data for case study**



The **first stage**, defining the research question and the theoretical framework, was critical to the case study as it shaped the data collection and analysis (Yin, 1994). Yin (1994) advises researchers to continuously link the questions being asked, data being collected and conclusions drawn back to the research questions and theoretical framework. The **second stage** entailed a detailed literature review to give a general overview of historical and current academic research regarding government contracting and industrial relations in NSW.

For the **third stage** qualitative data was gathered in semi-structured, face-to-face interviews with key stakeholders involved in the NSW government school cleaning contracts. These included school cleaners, trade unions officials, school principals and



teachers, government officials and cleaning company managers. The open-ended qualitative interviews followed Denzin's (1970) model of the unstructured schedule interview (USI) with elements of the unstructured interview (UI) where this yielded better results. The interviews also adopted Guba and Lincoln's (1981) model of qualitative analysis that uses naturalistic methodologies and responsive evaluation. This involved interviewing, observing, and analyzing documents and records in an unobtrusive manner, minimising the impact on the participants. The semi-structured format was conducive to understanding the wider range of personal and social matters (DiCicco-Bloom and Crabtree, 2006). In writing up the results thick descriptions and interpretations were used to give the thesis verisimilitude. Thick descriptions give context, meaning, intentions and reveal the process (Denzin, 1994).

In order to minimize decay of the data from these interviews, all interview transcripts were transcribed by the interviewer, allowing opportunities to revisit the data in a neutral environment and understand it better. Care was taken to distinguish between actual data from interview transcripts and personal impressions from the interviewer. Interviewees were also given the option to review transcripts of the interviews to verify the information (although only a few of the managers and officials who were interviewed took up this option). This improved the integrity of the data and reduced the chances of statements and observations being misinterpreted. A further objective of the qualitative interviews was to hear from a wide range of stakeholders, as well as cleaners from a range of backgrounds, working in varying situations. The aim was to build an accurate understanding of the real situation. Miles and Huberman (1994) suggest that an effective way to reduce sample bias is to constantly assume it will occur and to keep checking for it. Interviews covered various aspects of the

perceived labour standards of school cleaners and the extent to which these were implemented and regulated. *Annex A* provides a detailed list of themes covered in these interviews.

Data provided during interviews was systematically cross-checked and analysed. Firstly, after each interview the data gathered was examined for any information that required cross-checking. If data needed to be cross-referenced with relevant legislation, government or company policies, this was done immediately. If another party needed to be interviewed to cross-check information then notes were taken to do this. Secondly, once all interviews were completed the data was coded according to the themes that had emerged during the research. Twelve broad themes were identified on the basis that they had recurred in the majority of interviews and they were relevant to the regulation of labour standards. These twelve themes were: pay entitlements, unpaid overtime, sick leave entitlements, certificate III qualifications, OHS training, workplace safety, workplace injuries, cleaning communications book, supply of materials, supply of equipment, locking gates and outside users. Data was coded both quantitatively (usually on the basis of whether that participant had a positive or negative experience) and qualitatively (where the actual experience of the participant was summarised and recorded). All relevant data that told a story from the perspective of the participant was retained in the participant's original words to maintain the integrity of the data. Finally, meaning was extracted by comparing the experiences of the participants and how their legal minimum labour standards were enforced. This was then analysed in the context of the responsive regulation theory, to test the effectiveness of the regulation and enforcement of the labour standards.

**Stage 4** of the research involved data analysis and triangulation. Miles and Huberman (1994) recommend making a matrix of the data sources to examine the methods and types of data and check for 'inconsistencies and contradictions'. They also recommend using triangulation to help ensure data is more reliable, rather than to support prematurely drawn conclusions. Data validation and triangulation through the chain of evidence also occurred constantly throughout **stages 2** and **3**. Where required, further testing, verification and validation of outlier information or rival explanations was tested (Creswell, 1998). Methods to triangulate and validate data included: exploring outliers; negative evidence; extreme cases and surprises; testing opposing views; replicating key findings; testing correlations; using unbiased samples; and remaining conscious of researcher bias to keep it minimal, for example by seeking feedback from participants/interviewees (Miles and Huberman, 1994).

A constructivist epistemological position, as defined by Crotty (1998) and Schwandt (1994), underpins this research; meaning is both subjective and objective and is constructed by public officers, employers, cleaners and by researchers within the contexts of public offices and various work places. For a constructivist, understanding of an actual situation is sought through multiple meetings with participants who are experiencing that situation (Creswell, 2009: 8). Participants in the research have wide and varied experiences of their situations and their interpretations of those situations are subjective. Thus, to explore those different interpretations researchers ask open-ended questions and listen carefully to the responses, taking all opportunities to probe for more information (Crotty, 1998; Creswell, 2009: 8). The historical and cultural setting is also important for a constructivist, therefore researchers focus on the particular context in which participants live and work. Ultimately the researcher's aim

was to 'make sense of (or interpret) the meanings others have about the world' (Creswell, 2009: 8). From this understanding researchers are then able to induce a pattern of meaning and understand the theories that could explain the situation that had been discovered. This process is distinct from the grounded theory strategy of inquiry, in which 'theoretical constructs [are] derived from qualitative analysis of data' (Corbin and Strauss, 2008: 1). The objective of this thesis is to contribute an understanding of an existing situation – that of the regulation of labour standards when services are contracted-out – and to use existing theory to help explain this situation, rather than to develop new theory.

A critical enquiry theoretical framework is used as the research seeks to not only explain the situation, but also to identify problems and ultimately bring about change (Crotty, 1998: 113). The critical enquiry framework expands on the constructivist view of the world in that there is a 'consensus view of truth founded on reason' which ultimately serves human emancipation (Blaikie, 1993: 213). Therefore, rather than seeking to develop a new theoretical framework for the regulation of labour standards, this research is more concerned with illuminating the problems and influencing change for the better.

This thesis adhered to The University of Sydney ethical guidelines for interviewing subjects and the use of information obtained from these interviews. Predictably, issues arose from the school cleaners' perspective because of an enduring adversarial relationship between them and the government department managing the contracts. The participants were concerned about the impartiality of the researcher. As it is all but impossible for researchers to prove to non-researchers that a neutral approach is taken (Whitfield and Strauss, 1998), the researcher was clear and upfront

about the purpose of the research to all participants in order to minimize perceptions of researcher bias. In addition, all organization and personal identities were concealed. Furthermore, all efforts were made to gather a range of information from various stakeholders to minimise the risk of researcher bias. These sources of information are described in the following section.

### **4.3 Data sources**

Case study methodology is optimised by using multiple sources of evidence, which converge on particular facts or findings (Yin, 1994). The types of evidence gathered for this research included documentation, archival records, interviews and direct observations.

#### **4.3.1 Archival records**

Archival records were only used minimally for the purpose of understanding the history of the NSW government cleaning contracts. Archival records were used in early exploratory stages and informed later findings. For example, lists of previous contract holders and early documentation on the privatisation of the NSW Government Cleaning Service provided a context for later findings and informed the interviewer of key issues to address in interviews.

#### **4.3.2 Documentary evidence about the NSW government cleaning contracts**

This research involved an extensive and wide reaching examination of government contract documentation and government industrial relations documentation. Elemental documentation included: the Department of Education and Training Guide to the School Cleaning Contract 2006-2010; NSW Government Code of Practice for Procurement; Code of Tendering for NSW Government Procurement; NSW Government Procurement Policy; NSW Government Procurement Guidelines;

Implementation Guidelines: NSW Government Procurement; modern awards and the relevant enterprise bargaining agreements (EBAs). All of these documents were available online. Other documentation included, but was not limited to Fair Work Ombudsman reports and guidelines, IBIS World reports, ABS data, InClean Magazine, and trade union reports and campaign documents. Government websites were also key sources of information, including the Department of Education and Communities, the Department of Finance and Services, and NSW Treasury.

### 4.3.3 Interviews with key informants and stakeholders

Interviews were conducted with key informants and stakeholders, including government department representatives, trade union officials, contracted cleaning company managers, teachers and school principals. There were 16 stakeholder and key informant interviews conducted with 14 interviewees between July 2010 and April 2011. These interviews with all stakeholders and cleaners are summarised in Table 4.1 below:

**Table 4.1 Interviews with stakeholders**

Interviewees	No of interviews
<b>Cleaners</b>	38
<b>Contracted cleaning company managers</b>	4
<b>Union officials</b>	4
<b>Industry consultant</b>	1
<b>Former school teacher</b>	1
<b>School principals</b>	5
<b>Government official (DEC)</b>	1
Total	<b>54</b>

Details of the interviews with stakeholders and key informants are included in *Annex B*. Hereafter references to interviewees are written in the notation form

described in *Annex B*. For example, a reference to an interview with a cleaning company manager might be referred to as (CM 1); cleaners are all referred to as C1, C2 up to C38.

The government departments involved in the government cleaning contracts were NSW Treasury (Treasury), NSW Department of Finance and Services (DFS), and the NSW Department of Education and Communities (DEC). Government officials from DFS and Treasury were offered the opportunity to participate in this research, but declined to do so. Government officials from DEC were also asked to be interviewed, but after the first interview they too declined to participate. DEC school principals who volunteered to participate in the research did so against instructions from DEC, issued after the call for participants was sent to the primary and secondary school principals' associations. DEC had declined to participate on the grounds that the research was not of 'sufficient benefit to public education to justify the time and effort required of Departmental staff and students' (letter from DEC 24<sup>th</sup> August 2010). This was regardless of the fact that the research did not require any time or effort from students and only minimal time from a small number of school principals. The result was that school principals who participated were likely to be more autonomous than other principals, and this bias in the sample of school principals should be taken into account when considering the results.

It could be argued that the political circumstances in NSW at the time played a role in these decisions by government departments.<sup>4</sup> The minimal involvement of government officials in the interviews is a limitation of this research. A compounding reason for government officials declining to participate in this research was because the

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<sup>4</sup> A long-term Labor government was anticipating a landslide election against them that would oust them from leadership for the first time in 16 years. This anxiety was valid, as the Labor party lost power to the Liberal party in March 2011.

NSW government cleaning contracts were being retendered while this research was taking place. The call for bids commenced in July 2010, new contractors were announced in January 2011 and the new contracts commenced on the 1<sup>st</sup> July 2011. Thus, interviews were taking place during the tendering process.

The first NSW Government Cleaning Service contracts commenced in 1994. The contracts have now been put out to tender four times. The first contract period lasted from 1994 to 1999, the second from 1999 to 2006, the third from 2006 to 2011 and the current contracts commenced in July 2011. The number of sites in the contracts varies, as sites can be added to or removed from contracts during contract periods, and when contracts are renewed or retendered. In 2010 there were approximately 4,000 sites included in the contracts, 2,200 of which were schools. The schools are usually the larger sites and therefore the largest component of the contracts. Around 90 per cent of cleaning hours occur in schools. This is why cleaners working for companies with contracts with the NSW government are referred to as 'school cleaners' (UV 1).

When the NSW government tenders the cleaning services, each contract is divided into 'packages' of schools, TAFEs, police stations, court houses and various other government buildings. The packages are clustered by geographical area, which have varied each time the contracts have been retendered. Nonetheless the packages are substantial, usually including at least 200 sites. Collectively the NSW government cleaning contracts are worth in excess of AU\$300 million per annum (Laws, 2010). Each of the 2006-2011 contracts were worth as much as AU\$20 million per annum, placing them amongst the largest service contracts in the world (CM 1). The most recent contracts are valued at around AU\$30-40 million each per annum (UV 1). Therefore



probity and confidentiality are paramount during the tendering process, to ensure that the tendering process is fair and legitimate.

In-depth interviews were all conducted one-on-one and face-to-face in an environment chosen by the interviewees, such as their workplace or their local cafe. Evidence from these interviews was formally assembled on a database using Word documents and paper files. In each case where interviews took place, first contact was made with the organisation through an introductory email or letter, requesting consent for representatives from that organisation to participate in the research. These stakeholders and key informants were invited to participate in the research on the basis of their expertise in the areas of NSW government cleaning contracts and school cleaners. All participants were supplied with information about the research in the form of a 'Participant Information Statement', which was read out loud and explained to those who could not read. Participants also gave written consent to participate in the research and were given the option to withdraw at any point. Templates of the Participant Information Statement, Participant Consent Form and Letter of Introduction are included in *Annex C*. All audio files and data gathered were stored securely and only accessible to the researcher, in accordance with protocols established by The University of Sydney Human Ethics Committee.

#### **4.3.4 Interviews with school cleaners**

Interviews were conducted with 38 NSW government school cleaners to explore their working experience and how their labour is regulated. Cleaners were invited to participate in the research during their trade union organising meetings. These meetings are called Regional Organising Committee (ROC) meetings and they are held in 20 metropolitan areas and 12 regional areas around NSW three or four times per year.

ROC meetings are a forum for all union members working on the NSW government cleaning contracts. During these meetings the researcher introduced the study to the group, handed out flyers and invited these school cleaners to volunteer to meet for an interview. The flyer inviting cleaners to participate in the research is included in *Annex C*. Cleaners who participated could also choose to invite their friends and colleagues to participate. All participants were provided with a 'Participant Information Statement' and signed a 'Participant Consent Form'. For cleaners to feel comfortable to participate in this research it was paramount that they were confident their anonymity would be protected, therefore no cleaners are identified by name, suburb, place of work, the company they work for or their association with any other colleagues or managers. Cleaners are referred to as C1, C2 up to C38 as per *Annex B*.

Where practical, interviews were conducted face-to-face in a neutral environment in which the cleaners felt comfortable, such as their local club or cafe. Three of the cleaner interviews were conducted over the telephone and eight of the cleaners coupled up with a trusted friend, doing the interview two-on-one rather than one-on-one. The remaining 27 cleaners were interviewed on their own and face-to-face with the researcher. Cleaner interviews were conducted between October 2010 and February 2011.

#### **4.3.5 Direct observations**

Direct observations were possible when the researcher was permitted access to the site and could observe cleaners and managers working. Of the 38 interviews with cleaners and cleaners' on-site managers, 10 interviews were conducted on-site, allowing for direct observations of cleaners as they performed their duties and as they interacted with other cleaners on their site.

Direct observations also occurred at the trade union organising ROC meetings. At these meetings cleaners learn what their workplace rights are according to their EBAs and the contracts. These meetings were also a forum for cleaners to voice their work related concerns and they worked together to address those issues, usually devising strategies for taking the problems to the company that hired them. This research includes observations from eight ROC meetings, each attended by between 6 and 40 cleaners, at various locations around metropolitan Sydney.

#### **4.4 Conclusion**

This chapter has set out the methodological approach to answering the research questions and the data sources that have been gathered to address these research questions. An overview of the data sources highlights the reluctance of officials from government departments that oversee the contracts to participate in or support this research. The salience of this reluctance in demonstrating NSW government departmental attitudes towards cleaners' labour standards needs little emphasis. The minimal input from government departments that oversee the contracts also limits the breadth of viewpoints that can be discussed in the following chapters and thus is a limitation of this thesis.

## Chapter 5

### The NSW Government Cleaning Contracts

#### Introduction

Thus far this thesis has explored answers to the first two research questions:

1. What are the minimum labour standards prescribed by the contractual and labour law regulatory mechanisms?
2. What are the mechanisms for enforcing labour standards for school cleaners?

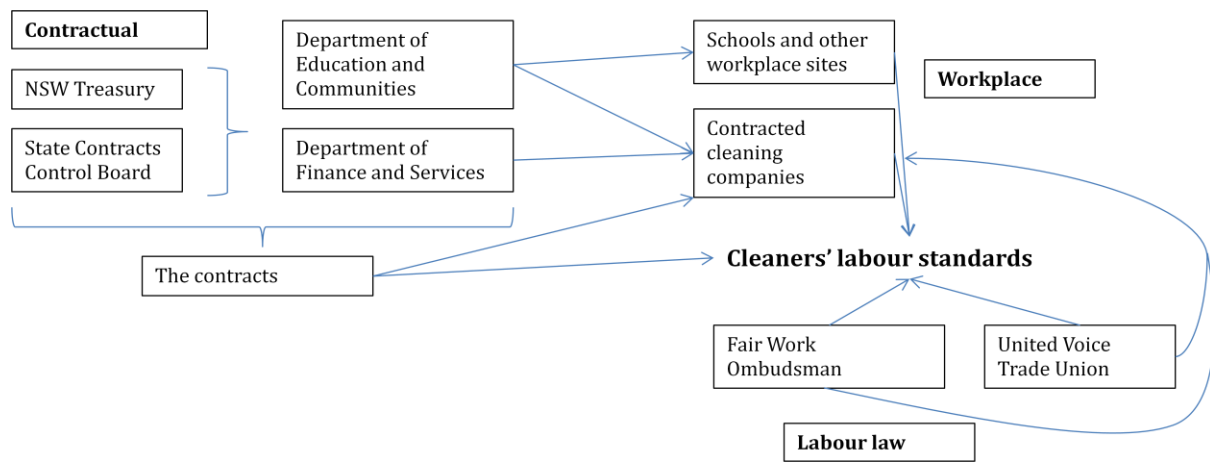
Analyses in *Chapters 2 and 3* have demonstrated that the combination of increasingly pervasive contracting-out of services and changes to the regulation of labour standards have had an adverse impact on the labour standards of vulnerable workers. Where labour law once provided the dominant mechanisms for enforcing labour standards, contractual mechanisms are becoming increasingly important. In this chapter the contractual aspects of the first research question will be examined and more detail will be given on the second question: mechanisms for enforcing labour standards. There will also be a comprehensive examination of the third research question:

3. Who is responsible for determining labour standards, and monitoring and enforcing those standards for school cleaners?

This incorporates the roles and functions of the government agencies that play a part in regulating labour standards of school cleaners. The roles of the trade union and cleaning companies in implementing and monitoring labour standards for school

cleaners are also explored in this chapter. Each of these government agencies and bodies, the trade union, the cleaning companies and, indeed, the contracts have a role in regulating cleaners' labour standards. The relationships between these entities and the cleaners is complex and convoluted, thus Figure 5.1 (below) is used iteratively throughout this chapter to provide a visual representation of these relationships.

**Figure 5.1 Regulating school cleaners' labour standards**



This figure depicts the regulation of cleaners' labour standards through contractual mechanisms as being an indirect relationship. The four government bodies that oversee the contracts regulate labour standards indirectly via the contracts, relationships with school managers and staff, and communication with the contracted cleaning companies. Conversely, the entities that regulate labour law for the cleaners, the Fair Work Ombudsman and United Voice play a direct role in regulating cleaners' labour standards. Cleaners' labour standards are also directly regulated at the work sites by the contracted cleaning company managers and by on-site staff at the place of work.

The labour law regulatory mechanisms and how they are monitored and enforced are outlined in Section 5.1. The two principal entities that monitor and enforce

labour standards are the national inspectorate body, the Fair Work Ombudsman, and United Voice, the cleaners' trade union. Contractual regulatory mechanisms are examined in Section 5.2. This includes NSW government procurement policy, the Code of Practice and Implementation Guidelines for Procurement as well as the terms of the NSW government cleaning contracts (2006-2011). These contracts are administered by three separate government departments: the NSW Department of Treasury (Treasury), the NSW Department of Finance and Services (DFS) and the NSW Department of Education and Communities (DEC) and there is an additional role for the State Contracts Control Board (SCCB). Each agency has a unique set of objectives, yet they are all regulating, in some way, the labour standards of these cleaners through the government cleaning contracts. Although school cleaners are employees of contracted cleaning companies, their labour standards are impacted upon by the legal contracts for services and addendum policies, codes and guidelines.

A background to regulation that can take place in the workplace is provided in Section 5.3. This includes a profile of the cleaning companies carrying out NSW government cleaning contracts in Sydney during 2010. The various factors that contribute to the regulation of school cleaners' labour standards can be best summarised in Table 5.1 below. This table also outlines the structure of this chapter.

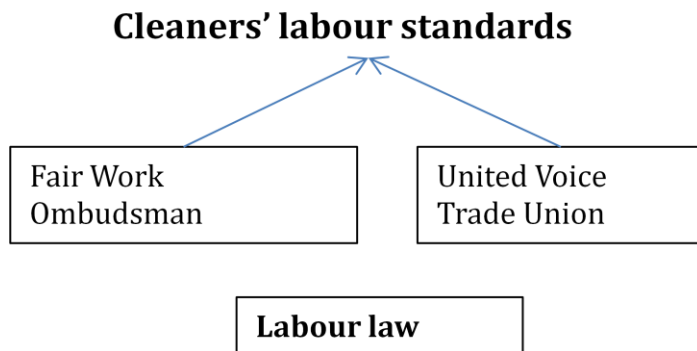
**Table 5.1 Parties involved in the regulation of school cleaners' labour standards**

<b>5.1 Labour law</b>	<ol style="list-style-type: none"> <li>1. Fair Work Ombudsman</li> <li>2. United Voice (union)</li> </ol>
<b>5.2 Government contracts</b>	<ol style="list-style-type: none"> <li>3. NSW Treasury</li> <li>4. State Contracts Control Board</li> <li>5. Department of Finance and Services</li> <li>6. Department of Education and Communities</li> <li>7. The contracts</li> </ol>
<b>5.3 Workplace</b>	<ol style="list-style-type: none"> <li>8. The contracted cleaning companies</li> </ol>

## **5.1 Labour law**

As was discussed in *Chapter 3*, there are two primary entities responsible for monitoring and enforcing the labour law regulations for contracted cleaners. There is the cleaners' trade union, United Voice, and then there is the national inspectorate, the FWO. Historically these two bodies have alternated taking the primary role in monitoring and enforcing labour standards in Australia (Hardy and Howe, 2009; Bray and Macneil, 2011; Goodwin and Maconachie, 2011; Hardy, 2012). The role of the FWO in monitoring and enforcing labour standards is explored in the beginning of this section, followed by an outline of the role of the cleaner's trade union, United Voice in influencing, monitoring and enforcing labour standards. The direct regulatory relationships between the FWO and school cleaners and between United Voice and school cleaners are depicted in Figure 5.2 below.

**Figure 5.2 Labour law mechanisms for regulating school cleaners' labour standards**



### **5.1.1 Fair Work Ombudsman**

In Australia and most other countries, the inspectorate has become the default institution for monitoring and enforcing workplace regulations, while the potential for trade unions to monitor and enforce labour standards has been continuously eroded (Goodwin and Maconachie, 2011). Previously trade unions had played the central role in regulating labour standards (Webb and Webb, 1907: 1; McCallum, 2002: 231; Gahan, 2006: 274; Lee, 2006; Hardy and Howe, 2009: 306-307). Although the FWO is the national inspectorate, its objectives centre around education and facilitation, with an emphasis on ‘promoting harmonious, productive and cooperative workplace relations’ (Fair Work Ombudsman, 2011). The stated purpose of the FWO is to provide ‘education, assistance and advice about fair work practices, rights and obligations to employees, employers and outworkers’ (Fair Work Ombudsman, 2011). There are criticisms of the inspectorate for taking a ‘largely persuasive compliance-based’ approach to regulation (Goodwin and Maconachie, 2011: 71). Unfair dismissal claims are dealt with by Fair Work Australia, leaving the FWO to educate and facilitate co-operation between employers and employees regarding all other workplace regulations.

Quinlan (2006:27-28) notes that when an inspectorate’s primary function is centred on education instead of enforcement, there is ‘potential to render the law’s



proclaimed purpose as tokenistic.’ Further, it has been argued that over-reliance on the inspectorate, without support from trade unions reduces the effectiveness of the labour law (Standing, 2009:44-45). Although the capacity of the FWO, as the inspectorate body, has been strengthened under the Fair Work Act (2009), there has been criticism of the largely ‘voluntary compliance’ approach of the FWO, whereby compliance is based on persuasion (Hardy, 2009; Maconachie and Goodwin, 2010a).

While the function of the FWO is to ensure compliance with workplace laws, monitoring is conducted on a reactive basis, that is, the onus is on employees to report non-compliance. If, for instance, an employee has a complaint about unpaid (the FWO term is ‘overdue’) income entitlements, the FWO can facilitate that employee taking a claim to the relevant court. In extreme cases the FWO prosecutes the businesses. In the four years between May 2006 and May 2010 the FWO prosecuted five cleaning service businesses. In these instances the court awarded penalties against the employers roughly equal to the amount they had underpaid their employees (a total of around \$375,500 in penalties plus around \$375,600 in back-payments to employees) (Fair Work Ombudsman, June 2011: 4).

Cleaners constitute 2.5 per cent of the Australian workforce, yet between March 2006 and April 2010 cleaners lodged 24 per cent of employee complaints to the FWO, and between July 2009 and April 2010 they lodged 39 per cent of employee complaints (Fair Work Ombudsman, June 2010: 3). The FWO system of monitoring centres on responding to complaints made by workers, and thus is dependent on aggrieved workers calling the Ombudsman to report problems. When the FWO receives a particularly high volume of complaints from one sector, they might conduct a ‘campaign’ targeting that sector to educate businesses and investigate whether a

selection of employers are meeting their workplace obligations. One such campaign targeted the Australian cleaning services sector between September 2010 and May 2011. This campaign found that of the 315 businesses audited,<sup>5</sup> 117 (37 per cent) were not compliant with all the required wage and workplace regulations (the FWO term is 'requirements'). Most of these were 'monetary contraventions': 75 businesses (24 per cent of audited businesses) were underpaying the hourly rate of pay for their cleaners. The audit resulted in \$242,451 in back-pay being recovered for 621 employees from those 75 businesses (Fair Work Ombudsman, June 2011).

It is noteworthy that the campaign recovered retrospective underpayments of income for cleaners, but in most instances there was no penalty for businesses that had breached their obligations. For the most part, cleaning companies were encouraged to comply in the future through the education and awareness component of the campaign. For severe cases, however, significant penalties were imposed. In one such case penalties were imposed on the Glad Group Pty Ltd, which was prosecuted because it underpaid 32 cleaners \$133,845 between October 2008 and August 2009 (Fair Work Ombudsman, 2012). The Federal Magistrates Court acknowledged that penalties need to be imposed at a meaningful level in order to deter future breaches and therefore fined the Glad Group \$62,000 (*Fair Work Ombudsman v Glad Group Pty Ltd* (2012) FMCA 731 at 16, 23, and 31).

Traditionally, enforcement by Australian inspectorates amounted to little more than ensuring the handful of audited companies pay any shortfall in unpaid wages (Hardy, 2009: 85-87; Goodwin and Maconachie, 2011). When expected penalties were so minimal, deterrence theory suggests that a rational employer would have limited

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<sup>5</sup> According to the FWO there are 15,000 cleaning service businesses in Australia, so the audit covered approximately 2.1 per cent of the sector.

incentive to comply with workplace regulations (Weil, 2011:43). Recent prosecutions demonstrate that the FWO is better resourced and has taken a more aggressive stance in prosecuting than any of the previous inspectorates. Notwithstanding this, if companies voluntarily comply after being found in breach they will generally not be prosecuted, it is only when they refuse to cooperate or if workers are deemed to be vulnerable (like cleaners) that prosecutions occur and these penalties can indeed be very large.

Monitoring, however, is reliant on workers lodging complaints with the FWO. This is a practical approach given that in an industry like cleaning, where thousands of workers are spread out across thousands of work sites, the demand on inspectoral resources to proactively monitor would be acute (Quinlan *et al.*, 2001: 355). This is not to suggest that a practical approach is an ideal approach. As will be seen in the following subsection 5.1.2, an inspectorate enforcement system reacting solely to reported problems is limited by the propensity for workers to report problems. (As an aside, a more proactive 'reflexive', rather than reactive approach has been applied with some success to the regulation of OHS in Europe, Canada and Australia. This approach centres on implementing self-regulating processes of monitoring and controlling OHS standards (Walters, Johnstone, Frick, Quinlan, Baril-Gingras and Thebaud-Mony, 2011: 55-56).)

In conclusion, Figure 5.2 shows the FWO and United Voice operating jointly to directly regulate labour standards. Literature reviewed in Section 3.1 demonstrated that the inspectorate and unions interchange as the primary enforcement bodies (Goodwin, 2004; Lee, 2006; Maconachie and Goodwin, 2010b; Goodwin and Maconachie, 2011; Hardy, 2012). Thus, where the role of monitoring and enforcing labour standards by trade unions has been left increasingly vacant since the 1990s

(Hardy and Howe, 2009: 307), the FWO is taking up this position, with resources to inspect and powers to impose penalties that will effect deterrence. Nevertheless, the emphasis of the FWO is on education and facilitation, as they take a 'largely persuasive compliance-based' approach to monitoring and enforcement (Goodwin and Maconachie, 2011).

### **5.1.2 United Voice**

The previous sub-section included an assessment that the FWO enforcement strategies are reliant on workers reporting infringements. This can be problematic for vulnerable workers, such as cleaners, as many studies have shown. For example, Weil and Pyles' (2005) empirical study of compliance and complaints made across different industries in the United States showed that workers such as cleaners are less likely to make complaints than other workers, even though non-compliance in cleaning industries is higher than elsewhere. Cleaners are workers who 'feel vulnerable to exploitation' (Weil and Pyles, 2005: 91). Thus, they are less likely to report infringements because they may not have adequate knowledge of their rights or they may fear retaliation, such as schedule changes, or, in the extreme, termination. Weil and Pyles therefore argue that there is a need for involvement from alternative bodies, such as trade unions, that facilitate workers exercising their rights.

For NSW school cleaners, the shortfall in monitoring and enforcement of labour standards by the FWO is addressed, in part, by the cleaners' trade union, United Voice. NSW school cleaners have retained a particularly high level of trade union member density at 67 per cent, compared to the national average, which is below 20 per cent (UV 1). The union has negotiated EBAs with each of the companies that are contracted to the NSW government cleaning contracts and is recognised by these companies as a

legitimate voice of the workforce. United Voice therefore has the potential to monitor and enforce NSW school cleaners' labour standards, as unions in other fields have traditionally done in Australia.

A broader understanding of the role of trade unions, one which goes beyond monitoring and enforcement, is required to understand the part United Voice plays in regulating cleaners' labour standards. Empirical application of Ewing's (2005) typology of the five functions of trade unions, from *Chapter 3*, will elucidate the role played by United Voice in regulating labour standards for school cleaners. These five functions were service, workplace representation, regulation, governmental and public administration (Ewing, 2005: 3).

A critical role of United Voice, under the service function, is to offer assistance to aggrieved employees that choose to make legal claims. United Voice provides other meaningful professional services by offering support and advice through a helpdesk. The helpdesk at United Voice fields many calls from school cleaners, assisting them to understand and assert their employment rights. This can be helpful from the contract cleaning company's perspective because the union and the contractors can work together to resolve issues for the cleaners (CM 3).

Ewing's (2005: 3-4) second function of unions is the workplace representation function, which encompasses both individual and collective representation of employee interests in the workplace. Collective representation for NSW school cleaners involves the negotiation of EBAs with each of the contracted cleaning companies. Individual representation by United Voice incorporates ways in which United Voice deals directly with management to improve workplace conditions. One key avenue for United Voice to communicate with cleaners is the institution of union organising meetings, the ROC

meetings (UV 1). ROC meetings are organised by United Voice so that members from each region, who are working for the same contracted cleaning company come together three or four times each year and discuss any issues they are having with their work. The issues raised in ROC meetings most frequently pertain to understanding school cleaners' task requirements, as per the contracts. Less frequently issues are raised in these meetings regarding the EBAs and compliance with labours laws. It is through this forum that United Voice monitors the ways that contract and labour law compliance or non-compliance impacts upon cleaners' workloads and other labour standards. United Voice communicates directly with company management on matters that have arisen during ROC meetings. Observations of ROC meetings revealed that these matters can be diverse, ranging from the distribution of calendars for school holidays, to the calculation of time allocated to clean new buildings, or the supply of gloves and goggles and the formation of an OHS committee.

United Voice retains an important role in the third function of trade unions, the regulatory function. United Voice does this by negotiating the enterprise agreements for all school cleaners, including for non-members. Indeed, United Voice has the greatest potential to influence improvements to and compliance with labour standards for school cleaners through the negotiation of EBAs. A United Voice official explained that the Queensland and ACT school cleaners' EBAs set out minimum requirements for cleaning rates, measured in hours per square metre for each different type of flooring and space usage. No such minimum requirements for cleaning rates exist for NSW school cleaners.

The most significant development for this thesis in the regulatory role of trade unions has been the rising importance of influencing and negotiating terms of

employment contained in the procurement contracts for services. This has been manifested as an alignment of the objectives of United Voice and the contracted cleaning companies. This contradicts traditional views of trade unions being sources of monopoly labour power, at odds with employers as they perpetually seek increases in wages and labour conditions (Gahan, 2006:266). Instead, they both seek to achieve improved labour standards for the school cleaners, because fundamentally the 'client', the government department, pays for these improvements while the cleaning companies and United Voice benefit from improved staff retention and worker morale (Tarrant, 2011). This view was supported by two of the three cleaning company managers who participated in this research (CM 1 and CM 3).

As a result of this alignment of objectives of United Voice and the contracted cleaning companies, even exercises like developing the EBAs were not adversarial. In fact the parties worked together constructively to complete the EBAs (CM 3). It would, of course, be 'playing Pollyanna' to suggest that fundamental differences between the objectives of cleaning companies and trade unions do not remain. This is evidenced in one company manager's view that United Voice has too much control and influence in this sector and they make unreasonable demands for increased working hours for school cleaners, within the scope of the present contracts (CM 2). One company manager suggested that while United Voice can be helpful, there are examples of where organisers are obstructive or 'really seem to me to be quite archaic' (CM 3). For example, at the end of the contract some organisers were telling school cleaners to use all their sick leave. The objective was to highlight to the government that not transferring accumulated sick leave from one contract to the next was unfair to the school cleaners (UV 1). The companies, however, find themselves caught in the cross-

fire because they are held to account when cleaners take sick leave *en mass* at the end of a contract; as the companies are required to make up the missed hours (CM 3).

The contracts also contain provisions for a Cleaning Communications Group, which includes representatives from the Department of Education and Communities, the Department of Finance and Services, school principals' representatives, Teachers' Federation representatives, P&C representatives and United Voice officials. The Cleaning Communications Group meets every three to four months. This is important because it provides an avenue for United Voice to communicate regularly with the government agencies overseeing the contracts about cleaners' labour standards. Issues raised by United Voice in these meetings are documented and therefore 'on the record', so United Voice uses these meetings as an opportunity to raise issues and follow-up whether they are being addressed (UV 1). The Cleaning Communication Group provides an opportunity for United Voice to formally participate in regulating the school cleaners' labour standards through the contracts.

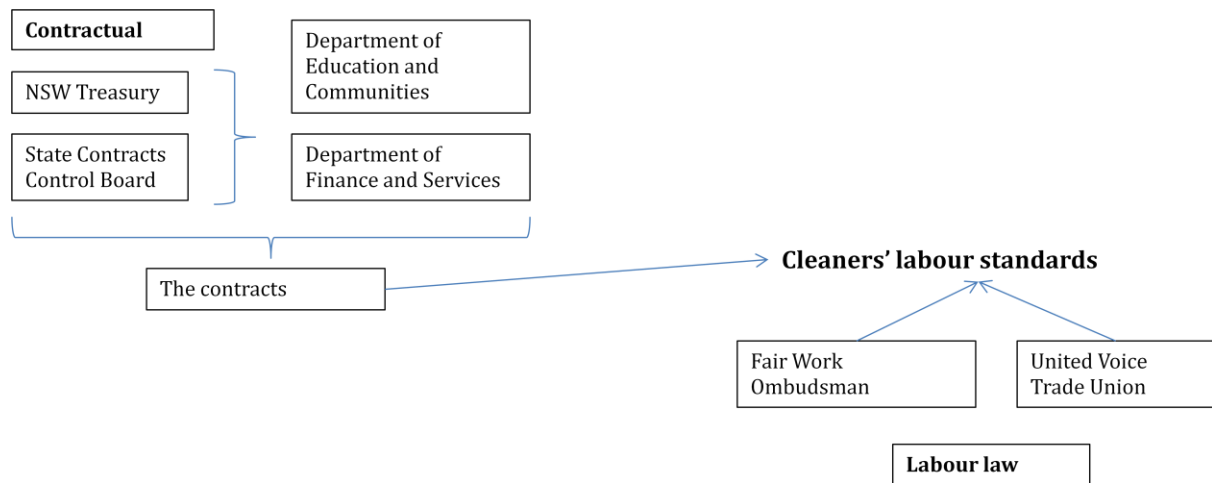
United Voice also has a role in regulating school cleaners' labour standards through Ewing's fourth and fifth functions of unions: the governmental and public administration functions. For example, United Voice contributed to government policy by making a comprehensive submission to the Fair Work Act Review in 2012. To conclude, the information in this section has shown that United Voice plays an integral role in negotiating, monitoring and enforcing labour standards for school cleaners. Importantly, the union is regulating these standards not just through labour law mechanisms, but also through the government contracts for services.



## 5.2 Government contracts

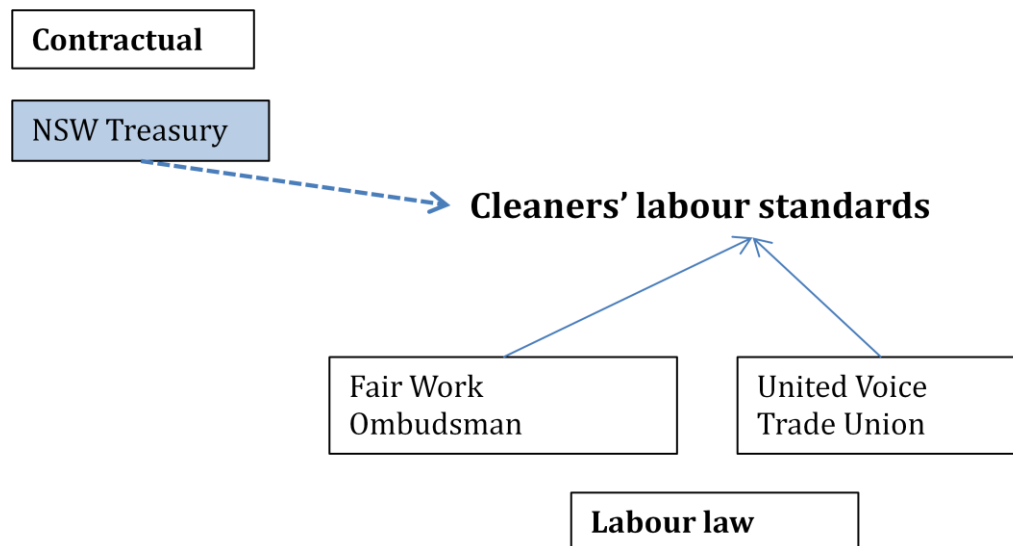
The analysis in this section explores how NSW school cleaners' labour standards are regulated through contractual mechanisms. This brings into the regulatory picture three government agencies that manage the contracts, a statutory authority and the contracts themselves. The contracts contain many clauses that directly specify conditions of employment for cleaners, as well as corroborating the labour law standards, including the EBAs and OHS legislation for school cleaners. The contract terms are defined by Department of Education and Communities and the Department of Finance and Services, therefore these agencies indirectly regulate the cleaners' labour standards through the contracts. The contract terms that these agencies can include or exclude from the contracts are constrained by financial and legal conditions placed on them by NSW Treasury and the State Contracts Control Board. Therefore this agency and statutory authority also play an indirect role in regulating cleaners' labour standards. The relationships between these government agencies, the statutory authority and the contracts in regulating labour standards are illustrated in Figure 5.3 below. This figure now includes both the contractual and labour law mechanisms for regulating school cleaners' labour standards.

**Figure 5.3 Contractual mechanisms for regulating school cleaners' labour standards**



### 5.2.1 NSW Department of Treasury

**Figure 5.4 The role of NSW Treasury in regulating school cleaners' labour standards**



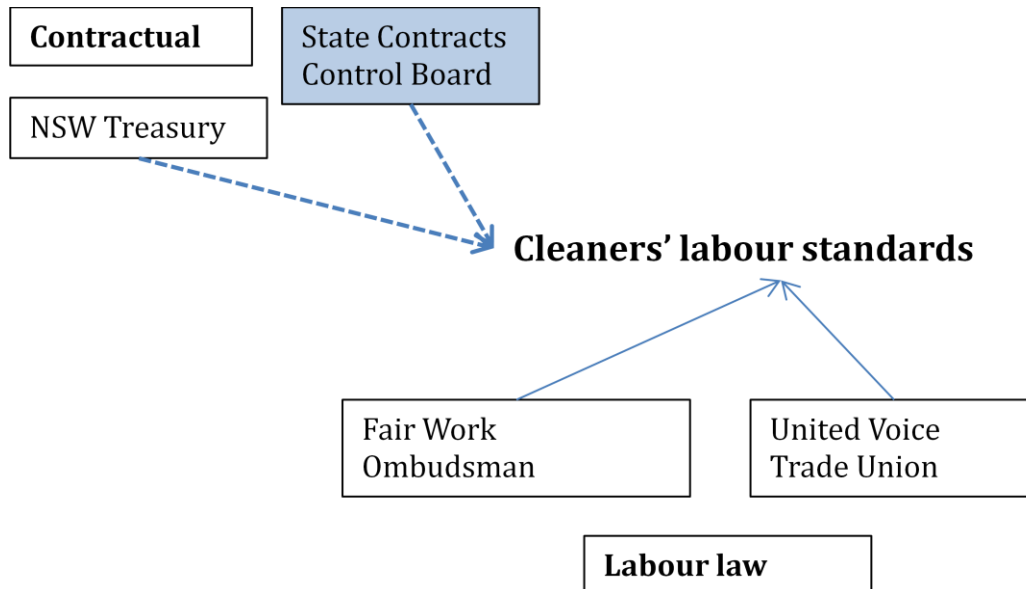
The NSW Department of Treasury (Treasury) indirectly impacts on cleaners' labour standards, as is indicated by the dotted line in Figure 5.4 above. Treasury is responsible for 'maintaining and monitoring the Procurement Policy', as well as developing policies for procurement (NSW Treasury, July 2004: 6). To this end,

Treasury has developed procurement guidelines and the Code of Practice by which public sector agencies and contractor companies and suppliers are bound., In NSW a universal Code of Practice and Implementation Guidelines for all government procurement has been in place since 2005 (Howe and Landau, 2009; Howe, 2010).

The stated objective of the Procurement Policy is 'best value for money in supporting the delivery of government services' (NSW Government Procurement, 2011). Treasury is the decision making body for the contracts. A cleaning industry consultant explained that, 'Treasury isn't concerned with labour standards for school cleaners, that is not their mandate; their mandate is to spend as little money as possible' (IC 1). Governments can be responsive to campaigns decrying the erosion of labour standards for school cleaners, but bureaucrats inevitably are most concerned with their short-term budgetary constraints, notwithstanding that the budgetary pressures, of course, come from the same politicians (IC 1). This is consistent with the view that government tendering processes prioritise 'best value for money' (Seddon, 2009). Invariably cleaners' labour standards are impacted upon when governments award contracts to the lowest bidders. Ryan and Herod (2006:491-492) provide evidence of cleaners bearing the costs of contracts that have been won on the basis of undercutting price, through reduced labour standards.

## 5.2.2 The State Contracts Control Board

*Figure 5.5 The role of the State Contracts Control Board in regulating school cleaners' labour standards*



The State Contracts Control Board (SCCB) is a statutory authority that has control over reporting mechanisms and powers. As such, it indirectly regulates the labour standards for school cleaners, as illustrated in Figure 5.5 above. The SCCB is a decision making body that has 'sole responsibility' for NSW government contracts for goods and services (IC 1). The SCCB is mandated to provide contracts on the basis of 'value for money' while ensuring 'probity and fairness' (*Public Sector Management (Goods and Services) Regulation, 2000*). The SCCB is responsible for inviting tenders, determining contract conditions, and granting and establishing contracts (*Public Sector Management (Goods and Services) Regulation, 2000*). This differs from the role of Treasury, which is primarily to manage budgets; Treasury approves the cleaning contract expenditure.

In 2010 the members of the SCCB were the Director General of Education, and heads of three departments: DEC, Treasury and NSW Department of Environment, Climate Change and Water. These members were nominated by the Minister to represent public sector agencies that procure goods and services. The SCCB is made up entirely of public servants directing government departments and as a result seeks to meet departmental (budgetary) objectives rather than political objectives (IC 1). The SCCB sits outside the normal Westminster style of government reporting structure, where typically the departmental head or secretary reports to the minister. Instead heads of departments attempt to make independent decisions on government contracts (IC 1).

Under the Public Sector Employment and Management Act 2002 the SCCB is responsible for regulating procurement and administering complaints. The procurement requirements of the SCCB are to maximise potential for competition between suppliers, maintain probity during the tendering process and ensure 'that the tender selected should be the most advantageous to the Public Service' (NSW Treasury, July 2004: 5). A competitive tendering process seeks to minimise cost and maximise the quality of goods or services provided. It also seeks to minimise the risk of corruption, while achieving the best value for money.

Most importantly, for this thesis, the SCCB is responsible for investigating complaints about competitiveness or government procurement procedures by contractors or public sector agencies (*Public Sector Employment and Management Act, 2002*). Nominally the stated role of the SCCB is to deal with breaches of the Code of Practice or contracts by terminating the contract, but in reality this has never occurred (IC 1). As was seen in *Chapter 2* and Figure 2.3 'Contract pyramid of enforcement' for

responsive regulation, the only 'big stick' enforcement mechanism available if contractual provisions are breached is termination of the contract (Seddon, 2009: 37). If this has never occurred in practice then this raises doubt about the plausibility of the threat of the 'big stick' to enforce contracts. This is significant for the regulation of labour standards through contracts for services, because without a plausible threat of contract termination the enforcement of labour standards' clauses in contracts is at risk.

There was one situation in which cleaning contracts with one particular company were not extended after the end of the contract term in December 2009, in spite of all other contracts being extended for 18 months. In this case the government was extremely cautious and fearful that if the contracts for all but one company were renewed they would be exposed to the risk of litigation (IC 1). A former contracted cleaning company manager's view was that, 'It's public servants being scared of their minister, scared of public opinion and scared of making a decision.... because if you do nothing then you can't make a mistake' (CM 1). Ultimately the government did make the decision to put the contracts this one company held out for tender and the contracts were awarded to a different company. There were no legal repercussions, yet the threat of litigation had almost prevented the government from taking this step.

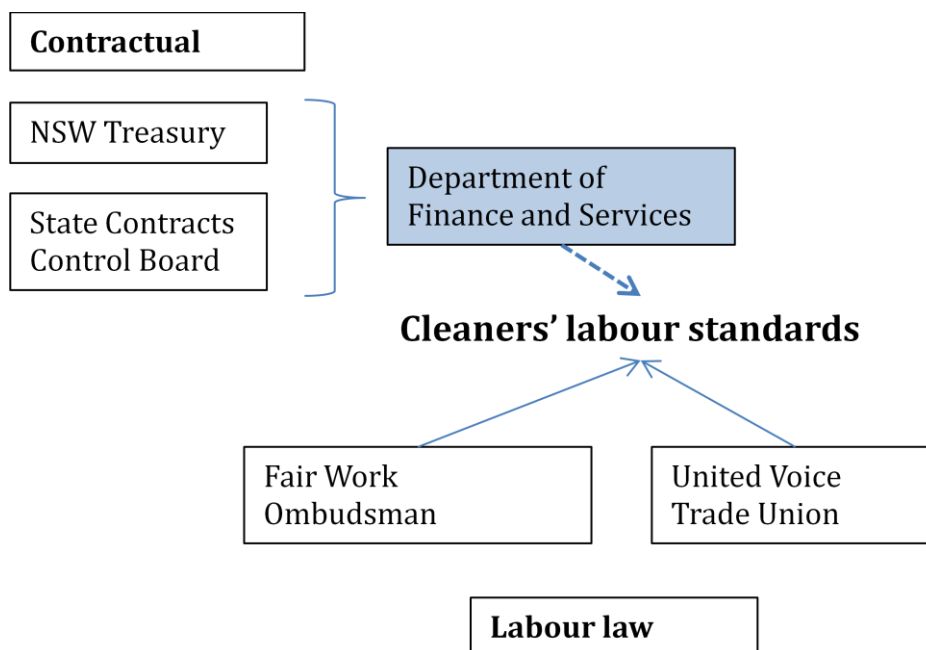
Fear of litigation also meant that reasons for not renewing the contracts were not made clear by government, but various stakeholders offered explanations. The most pervasive explanation was that quality of service had dropped and on-site managers (mostly school principals) pushed for a new contractor (IC 1, SP 4 and SP 5). Another explanation was that there were tensions in the company's relationships with school principals and the trade union (UV 1, IC 1, and CM 2). Thus, the termination was largely about poor relationships and there were suggestions of problems with quality of

service. There was no indication that government chose not to renew the contract due to concerns about labour standards.

Although the SCCB has the powers to regulate compliance with the government contracts for services, there is little evidence of these powers being exercised. There is certainly no evidence of the SCCB exerting its authority to ensure compliance with labour standards clauses in the contracts. The statutory authority also has the potential to impact upon labour standards of school cleaners during the tendering process. If the SCCB and Treasury prioritise best value for money without ensuring there are adequate provisions for upholding the required labour standards, then labour standards can be undermined. In this sense, both the SCCB and Treasury play an indirect role in regulating school cleaners' labour standards.

### 5.2.3 NSW Department of Finance and Services

**Figure 5.6 The role of the Department of Finance and Services in regulating school cleaners' labour standards**



The NSW Department of Finance and Services (DFS) (formerly known as the Department of Commerce), has four primary functions in regulating school cleaning contracts, as prescribed by Treasury. These roles include: the implementation of procurement, through the SCCB; advising Treasury on procurement matters; maintaining web-based materials on behalf of Treasury; and assisting Treasury with other related schemes (NSW Treasury, July 2004: 6). Thus, the DFS is indirectly regulating cleaners' labour standards through the contracts, and their regulatory role is largely defined by Treasury and the SCCB. This relationship is illustrated above in Figure 5.6. In the day-to-day management of the contracts, the most visible role DFS plays is in developing and managing WEBClean, an online system to manage, monitor and facilitate communication between parties to the school cleaning contracts.

The role of DFS could be summarised as the 'project manager' of the NSW government cleaning contracts (IC 1). However, the part DFS plays in these contracts garners little respect from the DEC school principals who participated in this research. They see them as utterly incompetent at managing all aspects of a school site (SP 2 and SP 4). Participants in this research from DEC and United Voice argued that DFS benefits financially from being involved in the contracts, but fails to add value. Indeed DFS receives a dividend for their role in 'project managing' the contracts, as do each of the agencies involved, to cover the cost of their involvement in managing the contracts. Dividends from the cleaning contracts are paid in a circular manner between the government departments; Treasury pays DEC, DEC pays DFS then DFS pays Treasury. Therefore Treasury supports DFS having a continuing role in the contracts, despite there being little justification for doing so, because Treasury is paid a dividend as a

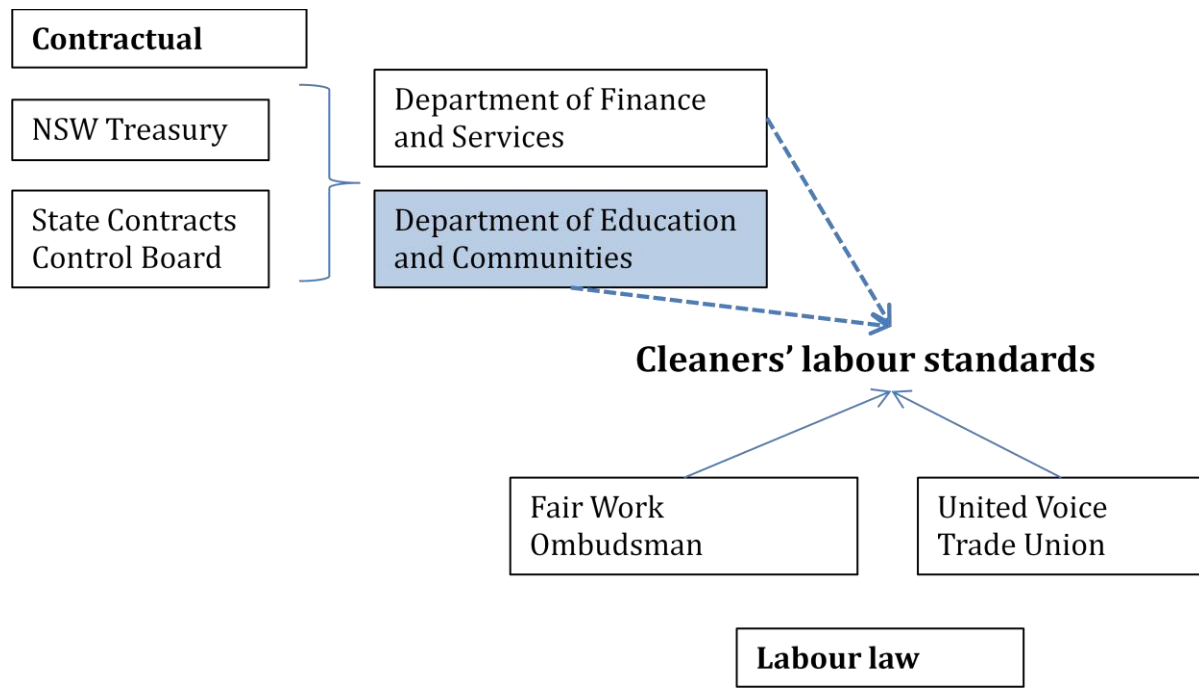


result of their support for DFS (IC 1). DEC estimated in 2009 that this circular arrangement adds an additional \$7 million per year to the cost of the contracts (IC 1).

From the position of project manager, DFS can potentially enhance communication between parties to the contracts. This can be done predominantly through building and supporting an effective online system of monitoring. The WEBClean online system can improve the potential for monitoring and enforcement of contract terms, including compliance with prescribed labour standards. DFS also impacts on cleaners' labour standards simply by being involved in the contracts and taking a dividend for their role as project manager. Consequently, DFS plays an indirect role in monitoring labour standards. One view is that part or all of the dividends paid to DFS could be redirected into the contract payments to enhance the rate of payment or reduce the work intensity for the cleaners. A slightly more farfetched claim is that they play a role in reducing labour standards by extracting payment for project managing the contracts that might otherwise be directed to the cleaners themselves.

## 5.2.4 NSW Department of Education and Communities

*Figure 5.7 The role of the Department of Education and Communities in regulating school cleaners' labour standards*



The NSW Department of Education and Communities (DEC) plays a significant role in the NSW government cleaning contracts process because the majority of the cleaners are working in DEC schools and TAFEs. The DEC originally managed all government cleaning services in-house before they were contracted-out in 1994. The DEC is defined as the 'client' in the NSW government cleaning contracts, because contracted cleaning companies predominantly provide cleaning services for the DEC. From the perspective of Treasury, the role of the DEC as an agency is to ensure 'efficiency and effectiveness of their procurement', while monitoring compliance with the NSW Government Procurement Policy, particularly at the stage of preparing procurement proposals (NSW Treasury, July 2004: 6). As the agency charged with monitoring contract compliance, the DEC is indirectly regulating the labour standards of school cleaners, as depicted in Figure 5.7 above.

As an agency acting as the client in the contractual relationship, the DEC has a responsibility to monitor contract compliance and follow appropriate processes when breaches occur (NSW Government, 1999: 28). So the DEC is responsible for lodging complaints of non-compliance with the SCCB. Another role of the DEC is to assist with preparing procurement proposals by providing up-to-date maps of the schools. The DEC maps then form the basis for quotes to be provided for tenders and variations to be made to contracts when buildings are added or taken away. In practice, most participants in this sector find that the DEC maps are outdated, inaccurate and variations are slow to be marked. These inaccurate maps result in problems ranging from salary delays for school cleaners cleaning new buildings to difficulty in quoting prices for tenders (UV 1 and SP 2).

As a result of pressure from teachers and principals to uphold the quality of cleaning in schools after the privatisation of cleaning services, an inspection system was introduced under the Carr government to monitor the cleaning standards. The 2006-2011 contracts made use of 10 DEC Asset Management Unit (AMU) inspectors based in 10 regional AMU offices. According to the DEC, these inspectors conducted random inspections of schools roughly once or twice each year, as well as assisting with disputes regarding contract arrangements (DEC, March 2006; DEC 1). If the site was not deemed to meet the requirements for cleanliness then the contractor would be given a time frame to rectify the problems and the frequency of inspections would increase until inspectors were satisfied (DEC 1).

The official objective of random inspections was to ascertain whether contractors were 'meeting the required cleaning performance standards and whether or not safe work practices [were] being implemented at the school' (DEC, March 2006: 7).

The DEC inspectors were not concerned with employment conditions such as payment of wages or OHS standards for the cleaners. Monitoring of OHS standards was really the responsibility of NSW WorkCover inspectors. (Since the regulation of OHS standards *per se* were outside the scope of this thesis, no investigations were made of the inspections carried out by NSW WorkCover.) DEC inspectors had little or no interest in safe work practices for cleaners; they were concerned with cleaners providing a safe environment for students and staff at schools. An example of work practices monitored during inspections was whether cleaners correctly used the colour coding system for mops and buckets to ensure that mops used to clean wet areas were never taken into classrooms and vice versa (DEC 1). The DEC inspectors rarely saw the cleaners and relied on visual inspections, log books or reports from school staff about problems.

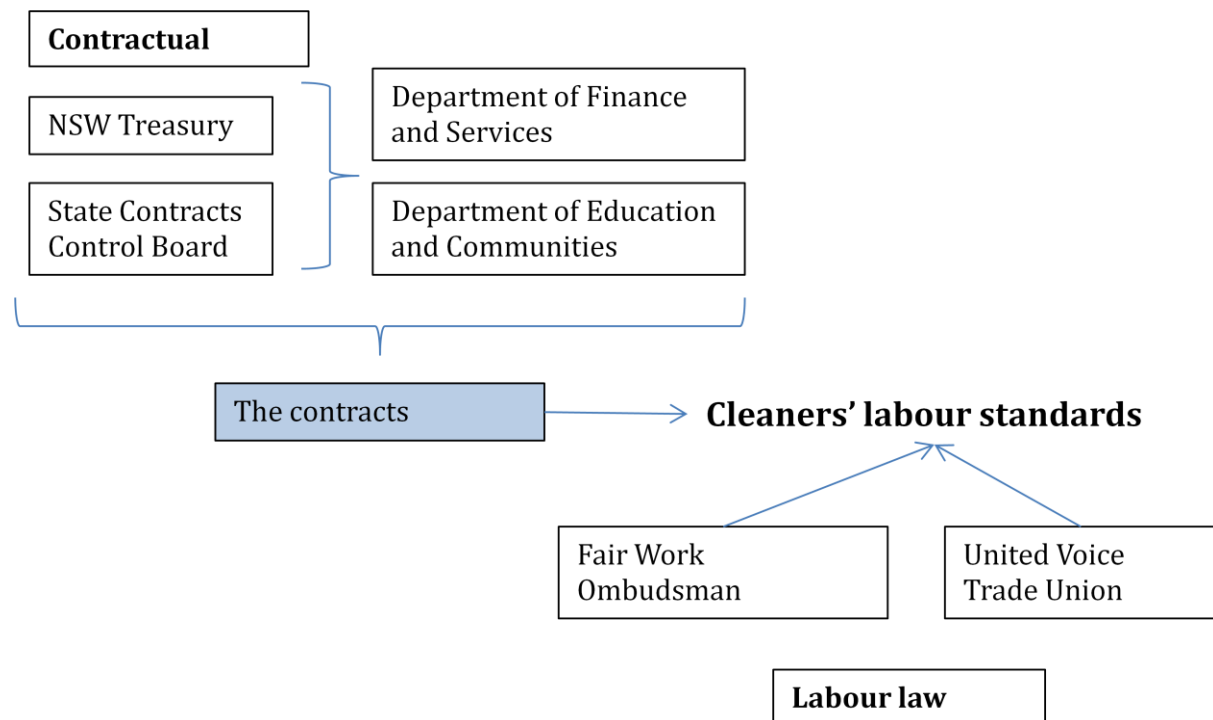
The practice of conducting inspections was phased out from mid 2010 and has been replaced by an onus on school principals to report problems via the WEBClean system. This change was most likely motivated by budgetary constraints, although other contributing factors may have been problems with probity and bullying by inspectors, which will be elucidated in *Chapters 7 and 8*. In practice there are many reasons why school principals are reluctant to lodge complaints on WEBClean ranging from worry about getting their cleaner in trouble, to resisting increasing workload pressures from the DEC (TF 1 and TF 2). There is some capacity for Public Works inspectors to participate in school inspections, but there was only evidence of this occurring rarely during the latter part of 2010 or early 2011.

In conclusion, the DEC has an integral part to play in regulating school cleaners' labour standards. They indirectly participate in the implementation of labour standards by contributing floor plan maps for the tendering process, which are used to determine

workloads for cleaners. Crucially for this thesis, the DEC has responsibility for monitoring and enforcing compliance with contract requirements. From 1995 to 2010 DEC inspectors were monitoring compliance with contract terms by inspecting work sites. This means that the DEC had the potential to proactively monitor school cleaners' labour standards, as prescribed by the contracts, and report any instances of non-compliance to the SCCB.

### 5.2.5 The contracts

**Figure 5.8 The role of the contracts in regulating school cleaners' labour standards**



The contracts contain clauses that specifically define labour standards for cleaners. They also contain clauses specifying that relevant labour law standards must be upheld. Furthermore, the process of tendering and awarding contracts impacts on cleaners' labour standards. This is because the selection criteria used have the potential to uphold or ignore labour standards, while the price of the contracts that are accepted can be adequate or inadequate to support all the labour standards entitlements. The

SCCB, Treasury, DFS and DEC all contribute in some way to defining, implementing, monitoring and enforcing the contracts. As such, the relationship between these government bodies and the contracts is illustrated above in Figure 5.8.

The third cycle of NSW government cleaning contracts is explored in this thesis. This cycle of contracts commenced at the beginning of 2006 and finished at the end of June 2011. Initially these contracts included over 4,000 sites, divided into 21 packages, contracted-out to six cleaning companies. During the five and a half year period these contracts were renewed twice.<sup>6</sup> This research took place between July 2010 and April 2011, during which time five companies were contracted to provide cleaning services around NSW: Transfield Services (Australia) Pty Ltd, Menzies International Australia, ISS Facility Services Australia Ltd, Spotless Group Limited, and Joss Facility Management. The research took place in metropolitan Sydney, and considered nine of the packages: three contracted to ISS Facility Services Australia, two to Menzies International Australia and four packages to Spotless Group Limited.

Four documents set out procurement policies, guidelines for tendering, terms of the contracts and the duties of each party to those contracts. The first document is the NSW Government Code of Practice for Procurement 2005, which is the current single Code of Practice governing all NSW government procurement. This is accompanied by the NSW Government Procurement Policy 2004, which contains the procurement policy, guidelines and procedures issued by NSW Treasury and underpins the practices outlined in the Code of Practice. In addition to these there is the contract itself, which is a contract between the DEC (which is both 'the client' and 'the agency') and the cleaning company for a package of cleaning sites denoted by geographical area.

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<sup>6</sup> Except for contracts with one company, which did not have its three contracts renewed in 2010, instead the contracts were retendered and won by one of the other existing contractors

The principles that form the basis of this government procurement policy are: 'Value for money; efficiency and effectiveness; probity and equity; and effective competition' (NSW Treasury, July 2004: 4). To meet the objectives of efficiency and effectiveness, as well as probity, the process for awarding cleaning contracts involves firstly pre-approving cleaning services companies that will be eligible to bid for a government cleaning contract. Companies are pre-approved by the DFS and the SCCB on the basis that they have the size, or capacity, to deliver cleaning services on a large scale, and that they will abide by the Code of Practice for Procurement (2005). Submitted tenders are then assessed on the basis of criteria that are weighted 70 per cent towards price and 30 per cent towards other criteria, such as past contract performance and legislative requirements, including Fair Work practices (UV 1). This enables the agency to meet the objective of best value for money, with some consideration of probity and equity, as well as effectiveness. In order to meet the objectives of 'effective competition' and 'probity' there has been a practice of restricting the number of contracts that can be awarded to one company during each contract period, so it is rare for one company to hold more than 40 per cent of the contracts.

Despite these measures to meet a range of objectives, when assessing competitive tenders labour standards criteria are often outweighed by best value for money objectives, because they are only part of 30 per cent of the evaluation (Howe, 2010). When asked what was the key to winning a tender for the NSW government cleaning contracts, a former manager of a contracted cleaning company replied:

*Price. The wisdom in the cleaning industry at large is that price will always be the determining factor. Why? Because the tenderers are all prequalified by the DFS, through the SCCB.... these were preselected tenderers because of the size of the job and the importance of the job.... then if they are all much of a muchness to you, why not take the cheapest price? (CM 1)*

By virtue of the fact that more than 70 per cent of the costs of providing cleaning services are labour related costs (IBISWorld, April 2010), efforts to compete on the basis of price typically result in one of two practices occurring. The first is that minimum labour standards are upheld and managers intensely scrutinise and manipulate work time during the tendering process, which ultimately results in work intensification for cleaners once a bid is won (Ryan, 2007b: 166). The second practice is to undercut the cost of the labour by subcontracting work out to cleaners who are not being paid their legal minimum entitlements (Ryan and Herod, 2006: 491-492).

When NSW government agencies contract-out goods and services, contractors are bound by the NSW Government Code of Practice and the Implementation Guidelines. Both these codes address the provision of minimum labour standards for employees. They state that the employer is responsible for the payment of all monies that the workers are legally entitled to, including all work related expenses (NSW Government, 1999: 23). Indeed, the Code of Practice requires service providers, employers and their employees to comply with the provisions of all applicable state and federal employment legislation, industrial awards and approved agreements (NSW Government, 1999; NSW Government, 2005). These provisions cover all relevant state and federal industrial relations laws, including training, leave entitlements, OHS (including bullying and harassment), workers compensation, rehabilitation and injury management, discrimination, superannuation and taxation (NSW Government, 1999: 23). Where subcontracting occurs, the contracts hold the principal contractor liable for ensuring that all service providers comply with their employment related obligations (NSW Government, 1999: 24-26).



During the research period, the contracts and the *Occupational Health and Safety Act 2000 (NSW)* and the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* placed a general duty of care on employers to comply with occupational health and safety obligations. This means that employers must ensure that all workers, including subcontracted workers, have safe systems of work, understand how to safely use their equipment and chemicals, and are provided with necessary training, instruction and supervision (NSW Government, 2005: 12-13). It is the responsibility of the agency (DEC) to 'set up a system for monitoring OHS performance of service providers and assist them to improve continuously their OHS management systems' (NSW Government Procurement Guidelines: Occupational Health and Safety, November 2006: 4).

The guidelines also outline procedures to be undertaken if legal or statutory breaches occur (NSW Government, 1999: 28). There is a review process if contractors lack commitment to the Code of Practice, as demonstrated by multiple breaches of the Code. This process gives the contractor ample opportunity to discuss the issues and rectify them before imposing sanctions. The contractor also has the option to seek a review from an independent person from senior management in the agency (DEC). Then there are provisions for sanctions to be imposed if contractors seriously breach the terms of the contracts, however the emphasis is on the agency to document issues and provide a 'fair review' (NSW Government, 1999). Serious or repeated breaches are dealt with by the SCCB, which aims to 'facilitate overall implementation' of the Code of Practice (NSW Government, 1999: 30).

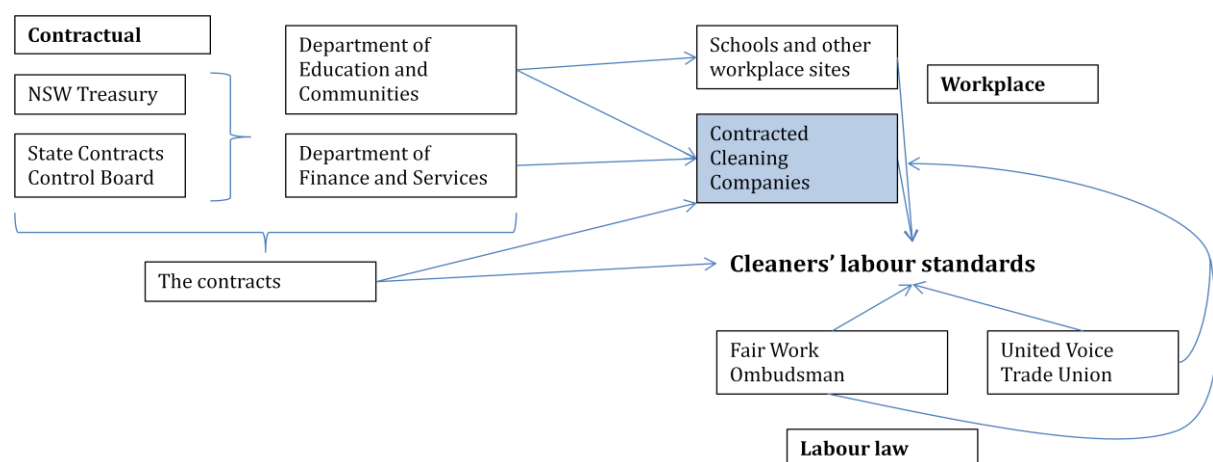
To conclude, the contracts form the final piece in the puzzle of contractual regulation of NSW school cleaners. The NSW government school cleaning contracts

directly regulate school cleaners' labour standards by defining the standards as well as prescribing the implementation, monitoring and enforcement of labour standards through the contracts. The contracts define cleaners' labour standards by specifying acceptable labour standards and reinforcing labour law standards. The prices at which contracts are awarded constrain the extent to which labour standards can be implemented. With price being 70 per cent of the selection criteria for contracts, there is a risk that contractors will be forced to undermine labour standards if they have undercut too much on price to win a contract (Ryan and Herod, 2006: 491-492; Ryan, 2007b: 166). The contracts also specify the requirement for monitoring by the DEC and procedures for enforcement by the SCCB, in the event of breaches of contract terms.

### 5.3 Workplace

#### 5.3.1 The contracted cleaning companies

**Figure 5.9 The role of contracted cleaning companies in regulating school cleaners' labour standards**



As depicted in Figure 5.9, contracted cleaning companies have a direct role in determining what the actual labour standards will be for school cleaners. Company managers can choose to undermine, uphold or exceed the contractual and labour law

requirements for labour standards. Decisions to undermine labour standards will be dependent on expectations of penalties imposed for infringements (Weil and Pyles, 2005; Weil, 2011). The contracts underpin the labour standards required by labour law and specify additional conditions that also directly or indirectly impact upon labour standards. The DFS, as project manager, and the DEC as the client also play a role in determining what will be contractually required by the contracted cleaning companies. These requirements, ranging from labour standards specifications to reporting obligations to equipment requirements, impact upon cleaners' labour standards. In these ways the DEC, the DFS and the contracts play a direct role in defining how contracted cleaning companies will deliver labour standards for cleaners. Additionally, the four government bodies (see Figure 5.9) impact upon the capacity cleaning companies will have to deliver prescribed labour standards. This capacity can potentially be constrained, for instance, by the price of the contracts that are awarded. Last but not least, Figure 5.9 shows that there is also a regulatory relationship between the contracted cleaning companies and United Voice and the FWO, whereby United Voice and the FWO have a role in defining, implementing, monitoring and enforcing labour standards for cleaners.

The three contracted cleaning companies that are considered in this research, because they were contracted by the NSW government to provide cleaning services in metropolitan Sydney between 2010 and 2011, are described in this sub-section. These three companies are ISS Facility Services Australia, Menzies International Australia and Spotless Group Limited. Companies are not identified in the results written in later chapters in order to preserve the anonymity of participants.

### *ISS Facility Services*

ISS Facility Services is a Danish multinational provider of cleaning, catering and security services with annual revenues of roughly AU\$6.5 billion. The company operates across 50 countries and has a high level of growth, driven by acquisitions. ISS acquired Tempo, an Australian cleaning company that was listed on the stock exchange in February 2006 and in doing so ISS acquired contracts for NSW government school cleaning. ISS employs around 415,000 employees worldwide. ISS Facility Services Australia has annual revenue of AU\$770 million, 55 per cent of which comes from cleaning services. The operating margin for ISS Facility Services Australia is between 6 and 7 per cent (IBISWorld, April 2010). Between January 2006 and June 2011 ISS Facility Services Australia held 9 out of 21 NSW government cleaning contracts for regional packages of New England, Clarence/Coffs Harbour, Lismore/Tweed Heads/Ballina, Port Macquarie/Taree, Ryde, Bathurst/Orange/Dubbo, Broken Hill/Bourke and the suburban packages of Blacktown/Parramatta/Windsor, and Mt Druitt/Penrith.

### *Spotless Group Limited*

Spotless Group Limited employs more than 40,000 people across Australia, New Zealand, USA, Asia and Europe (Construction & Property Services Industry Skills Council, 2010: 5). The company had a total revenue of AU\$2.65 billion in 2010–11, with cleaning services making up 17 per cent of that revenue (Spotless, 19 August 2011). In Australia and New Zealand, Spotless employs 11,000 cleaning services workers and the cleaning services division earned a profit of 6.8 per cent in 2010–11 (Spotless, 19 August 2011). Spotless purchased the asset services and cleaning services divisions of P&O Group in September 1999, and acquired Berkeley Challenge in 2006. Berkeley

Challenge had been one of the original NSW government cleaning contractors in 1994, and Spotless took its place as one of the key NSW government cleaning contractors. In late 2009 three NSW government cleaning contracts were retendered and Spotless won all three contracts, giving them a total of four NSW government contracts between February 2010 and June 2011 inclusive. Their contract packages included the suburban areas of Hornsby/Northern Beaches, Bankstown/Granville, Fairfield/Liverpool, and St George/Sutherland.

#### *Menzies International Pty Ltd*

Menzies' core business is the provision of cleaning services to government, and it has been providing cleaning services to the NSW government since contracts commenced in 1994. Menzies is a family business that operates only within Australia and has 4,000 employees. The company turns over close to \$300 million per annum (Menzies, 2011). Menzies is not a publicly listed company so financial data is less accessible, however it is known that in 2007–08 the company had a profit margin of 1.4 per cent (Menzies, 2011). Between January 2006 and June 2011 Menzies held four NSW government cleaning contracts for the regional areas of Batemans Bay/Queanbeyan, Shellharbour/Wollongong and the suburban areas of Campbelltown, and Bondi/Port Jackson.

This overview of the three cleaning companies contracted to provide NSW school cleaning services in 2010 and 2011 offers a sense of the scale of the cleaning companies that are contracted by the NSW government. These are large scale companies and two of the three are publicly listed. The size and industry dominance of these companies has an impact on how these companies manage labour standards for their cleaners. On the one hand these companies have higher overheads than smaller cleaning companies,

which can strain their financial resources (Ryan and Herod, 2006: 493). On the other hand having human resource departments and the requirement to uphold a reputation in the industry can have a positive effect on the provision of labour standards for cleaners (DEC 1).

## **5.4 Discussion**

This chapter included an analysis of the roles played by each of the entities involved in the NSW school cleaning contracts, with specific attention paid to the regulation of school cleaners' labour standards. The roles of bodies that regulate labour law context were examined in the next section. The examination of the roles played by the FWO and United Voice built on the analysis in *Chapter 3* of labour standards regulation through a national inspectorate and trade unions. The policies and practices of the FWO call into doubt whether an emphasis on education and co-operation between employers and employees is the best way to ensure compliance with labour standards for cleaners. In particular, issues arise when monitoring is done on a reactive basis. The FWO places the onus on employees (and the trade union) to monitor and report breaches of minimum standards. Research by Weil and Pyles (2005) suggests that cleaners are unlikely to report infringements to the FWO because they may not be aware of their rights, or may be fearful of retaliation. In a system reliant on employees making complaints when infringements occur, an absence of complaints can be mistaken for an absence of infringements. Without trade unions to support the monitoring of labour standards the FWO approach is troubling.

Information provided in the contractual regulation section underlined the complexities of having a web of government bodies overseeing one set of contracts for services. Furthermore, the analysis of government policies and practices found that the

core objective of 'best value for money' overrides concerns about labour standards compliance for school cleaners. When 70 per cent of the criteria for assessing contracts is cost, and all tenderers are pre-approved, meaning that all tenderers have already satisfied the other 30 per cent of tendering requirements, tenderers expect that bidding the lowest price is paramount to winning the contract. Ryan and Herod (2006: 491-492) give evidence of the cost of price reductions that are made to win contracts, being borne by the cleaners themselves in reduced labour standards. The relationship between cost reductions and costs being borne by the cleaners is explained in greater detail in the next chapter.

In spite of the fact that three NSW government agencies and one statutory authority oversee the contracts, there is little or no attention paid to monitoring and enforcing labour standards for the school cleaners. There is, however, an emphasis on OHS and environmental conditions for school staff and students that result from the standards of cleaning services being provided. This research also found evidence of reluctance on the part of the SCCB to use the only 'big stick' enforcement measure available for serious infringements – contract termination – due to fear of litigation.

Finally, the workplace section established that only the largest cleaning companies are contracted by the NSW government. Indeed, only these major companies have the capacity to be eligible to participate in these contracts, which are amongst the largest service contracts in the world. This chapter has not addressed the regulatory roles played by staff and managers at the sites where cleaners work, other than acknowledging that they have input. The impacts these staff and managers have on school cleaners' labour standards will be revealed in the following three chapters, which discuss the results of interviews with cleaners and site managers.

What is striking in this analysis is the number of bodies that have influence over the labour standards of school cleaners. Indeed, there are three government agencies, one government statutory authority, three contracted cleaning companies, two labour law entities and staff and managers at the work sites. This analysis has shown that United Voice is the only entity that is in regular, concerted contact with the workers, but is somewhat constrained in what it can achieve because of the power held by all the other bodies. In terms of the contracts, United Voice can pressure the DEC and the DFS to only award contracts to tenderers who have included provisions for all entitlements in their tenders. However the prioritisation of 'best value for money' objectives by NSW Treasury can override the concerns of the union (IC 1; Seddon, 2009; NSW Government Procurement, 2011). In terms of regulation through labour law mechanisms, the analysis in *Chapter 3* highlighted the limitations on trade unions' capacity to monitor and enforce labour standards. This was evident in the restricted right of entry and prohibitively expensive litigation processes for pursuing infringements exceeding \$20,000 in unpaid entitlements (Fenwick and Howe, 2009; Hardy, 2009: 102-105; Hardy and Howe, 2009: 332; Bray and Macneil, 2011: 157; Goodwin and Maconachie, 2011). United Voice does, however, retain a material role in defining the labour standards for cleaners through the negotiation of EBAs. United Voice is able to take these significant roles in defining labour standards, and to a lesser extent in monitoring and enforcing labour standards for NSW school cleaners because of the unusually high level of trade union participation (two thirds of school cleaners are union members) amongst NSW school cleaners.



## 5.5 Conclusion

This chapter addressed the third research question: Who is responsible for determining labour standards, and monitoring and enforcing those labour standards for school cleaners? The case study data included in this chapter demonstrated that there are six entities in total that are regulators: three government agencies, a statutory authority, the government inspectorate and the trade union. Thus the regulation of school cleaners' labour standards certainly appears to meet the collaborative and participative requirements of the model of responsive regulation.

The interrelationships between these entities are convoluted, and at times unexpected. There is an anomaly in the involvement of four government bodies in the administration of the contracts, each receiving a dividend for their involvement, but poor evidence of the value being contributed by each entity. There is unexpected unity between the trade union and contracted cleaning companies as they work together to appeal to government agencies to only award contracts for tenderers that include sufficient provisions to uphold all employee entitlements. Then there is predictable tension between government prioritisation of 'best value for money' objectives, and pressure from the trade union to uphold labour standards for the cleaners. Matters relating to the contracted cleaning companies' mandate to maximise profits and the impacts of competition for contracts in the cleaning industry will be explored in detail in the following chapter. In that chapter we turn to an exploration of the privatisation of the NSW Government Cleaning Service, the cleaning industry and a profile of cleaners in Australia, concluding with a description of school cleaners, outlining who they are and what work they are doing.

## Chapter 6

### The Cleaning Industry, Cleaners and School Cleaners

#### Introduction

This thesis seeks to understand how labour standards are regulated through the combination of labour law and procurement contracts when governments contract-out services. A case study of the NSW government school cleaning contracts is the vehicle used to understand specifically how labour standards are regulated through both labour law and contracts for services. Previous chapters have addressed the first three research questions:

1. What are the minimum labour standards prescribed by the contractual and labour law regulatory mechanisms?
2. What are the mechanisms for enforcing labour standards for school cleaners?
3. Who is responsible for determining labour standards, and monitoring and enforcing those standards for school cleaners?

The results and analysis of interviews with case study participants are presented in the following two chapters, in order to answer the fourth and fifth research questions:

4. What are the actual (as opposed to specified legal minimum) labour standards of school cleaners?
5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?

Before proceeding it is necessary to provide the history of the NSW government cleaning contracts and reveal findings from the case study that will set the scene for the following chapters. The process of contracting-out the NSW Government Cleaning

Service (GCS) is outlined in the first section of this chapter. Prior to the GCS being contracted-out in 1994 school cleaners were directly employed by the NSW Department of Education (now DEC). The contracting-out of the GCS has had serious implications for the OHS of cleaners and efforts by government departments to redress this are outlined in Section 6.2. An explanation of what is known and understood about the cleaning industry in Australia is set out in Section 6.3. A profile of cleaners in Australia is provided in Section 6.4. This can be compared with the final section, which outlines the profile of NSW school cleaners. A sketch of school cleaners' work schedules and task requirements is provided in the final Section 6.5.

### **6.1 Privatisation of the NSW Government Cleaning Service**

The NSW Government Cleaning Service (GCS) was established in 1915 as part of the NSW Department of Education. By 1989, the GCS had 12,500 employees cleaning government schools, TAFEs, offices, police stations, court houses and other government offices (Fraser, 1997: 14). The GCS was the largest employer of cleaners in NSW, most of whom were women and many of whom were from non-English speaking backgrounds. In the early 1990s, 98 per cent of cleaners in the GCS were union members (Fraser, 1997: 20). The GCS was established at a time when public sector jobs tended to be full-time, secure and highly unionized. This was common practice during this period, in which government became the model employer, setting employment standards for the country.

In 1989, the GCS operational costs were exceeding budget and the NSW government threatened privatisation if it did not run more efficiently. This occurred against a backdrop of the emergent ideology that government should be more efficient and businesslike, which was discussed in *Chapter 2*, Sub-section 2.2.1 (Hood, 1991;

Cope, 1995: 30; Hindess, 1997; Svensen and Teicher, 1998; Howe, 2008; Freiberg, 2010: 112; Pollitt and Bouckaert, 2011: 6-7). This prompted action from unions and management to work together to reduce costs and improve on budgetary targets. Voluntary redundancies were offered to 5,000 employees, leaving 7,500 employees working to secure their future as a government agency. In 1991/92 and again in 1992/93 the GCS came in under-budget by AU\$13 million, far surpassing the targets prescribed by the NSW government (Fraser, 1997: 15). In 1993 the NSW Cabinet decided to sell off the GCS anyway on the grounds that it would result in potential cost savings of an additional 20 per cent (Industry Commission Australia, 1995: 21, 136). Although a highly publicised campaign to block the sale of the GCS proceeded, led by the workers, unions, women's organisations, migrant employment and peak ethnic organisations, the sale went ahead. Three successful tenderers for the first contracts that commenced in 1994 were Tempo Services Pty Ltd (now ISS Facility Services Australia Ltd), Berkeley Challenge Pty Ltd (now Spotless Group Limited) and Menzies International (Aust) Pty Ltd (Fraser, 1997: 17-25).

The objective of contracting-out the NSW government cleaning services was to reduce the cost of cleaning services for the government (Industry Commission Australia, 1995: 21, 136). This in turn placed an emphasis on reducing labour costs in the contracting companies because labour related costs make up more than 70 per cent of a cleaning company's expenses (IBISWorld, April 2010). Despite the union campaign to prevent the contracting-out of the GCS failing, it did achieve better than originally anticipated conditions being conferred on employees transferred from the GCS to the private sector. However, cleaners lost five of their fifteen days of annual sick leave entitlements (unless they were absent due to illness for more than five consecutive

days), part-time workers had their hours of work reduced by up to ten per cent and relief workers were not covered by the employment guarantee to ensure continuity of employment, so most lost their jobs (Fraser, 1997: 18; Ryan, 2007b: 46). Importantly, the intentions of contracted cleaning companies to reduce cleaning hours to improve 'efficiency' was explicit; most of which was achieved through natural attrition and by moving cleaners around to different work sites (CM 1; Fraser, 1997: 18).

Therefore there was substantial work intensification as staff numbers were cut by 24 per cent, from 1994 to 1999, without a reduction in required work output (Fraser, 1997; Ryan, 2007b). This resulted in a doubling of the numbers of cleaners working unpaid overtime between 1993 and 1997, with workers citing fear of dismissal as their motivation for doing extra unpaid work (Fraser, 1997). Fraser (1997) concluded that privatisation had not resulted in net cost savings after service quality, cost of administration and costs borne by the workers were taken into consideration. Fraser's (1997) findings are not consistent with a quantitative study by Domberger, Hall and Li (1995), which found no evidence of a reduction in quality of service across 61 cleaning company contracts. It is worth noting that the data for Domberger *et al.*'s (1995) study came from CTC Consultants, the company that was instrumental in the NSW government's competitive tendering promotion and implementation (Quiggin, 2002).

Fraser's (1997) findings were consistent with those of other scholars from *Chapter 2*, Sub-section 2.2.2, that privatisation and contracting-out strategies are used to cut costs by targeting the cost of hiring vulnerable workers (Cope, 1995; Paddon and Thanki, 1995; Svensen and Teicher, 1998; Quiggin, 2002; Walsh, 2004; Peetz and Preston, 2009). Cope (1995) found the cost-savings declared by the local government in Kent, England, had been realised by the cleaners themselves in reduced pay and

working conditions. More recent research by Ryan (2007a) has shown that the contracting-out of most cleaning services across Australia since the 1990s has resulted in rapid growth in the number of companies, employees and the rate of worker turnover. As a consequence cleaners are poorly managed, undervalued and earn minimal wages as companies compete for contracts in a 'race-to-the-bottom' (Ryan, 2007b). Competition for contracts in the cleaning industry has resulted in cleaners' experiencing increasingly intensified work schedules coupled with short and irregular shift times (Campbell and Peeters, 2008). Therefore, vulnerable workers bear the costs through reduced labour standards and workload intensification when governments cut costs by contracting-out cleaning services (Paddon and Thanki, 1995; Quiggin, 1996; Fraser, 1997).

Women and NESB workers are particular subsets of vulnerable workers who have suffered more than most as a result of the contracting-out of low-skill services (Paddon and Thanki, 1995; Fraser, 1997; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009).

*Many of the services selected for contracting out and competitive tendering have been those which women employees predominate. As an unintended consequence of the 'occupational segregation' that characterises labour markets, women employees are thus likely to have been disproportionately affected. (Paddon and Thanki, 1995: 31)*

When the GCS was privatised approximately 77 per cent of the employees were female (Fraser, 1997: 14). Thus, the privatisation of the GCS meets the concerns raised by Paddon and Thanki, with women being disproportionately affected. Interestingly, women now constitute only 50 per cent of the NSW government school cleaners (UV 1). As will be elucidated in the following sections in this chapter, a position as a school cleaner is one of the most secure, reliable and long-term cleaning positions available in

Australia. This could explain why more males have been attracted to work as school cleaners, even though most of the cleaning industry is dominated by females. With only 50 per cent of school cleaners being female, this thesis opts not to view the research questions through a gendered lens. This, however, does not negate the potential for female school cleaners to be unevenly impacted by the problems associated with contracting-out cleaning services. Instead the approach taken in this thesis sets aside issues arising from gender to focus on answering questions about how labour is regulated through the combination of labour law and procurement contracts when services are contracted-out.

The impact of the privatisation of the GCS can be summarised in the words of one school principal, who was interviewed for this thesis:

*In 1994 when the GCS was sold the people who had previously worked as cleaners for the GCS suffered a considerable loss of paid working hours under the private sector contracts. Over time the contractors have continued to try to scoop more profits by cutting back the paid hours for cleaners. Now cleaners are allotted less than 3 minutes per room, to clean each room they clean. Successful cleaning relies heavily on the goodwill of the cleaning staff because they've been there a long time. In the three schools I've had a management role in since 1994, not only have the cleaners been there since prior to contracting starting in '94, but they have a personal pride in the school and so will do other things besides cleaning, such as, looking after gardens and that sort of thing. They believe in the school, they've been a part of the school for a long time so they have that sort of relationship. (SP 1)*

This quotation highlights two significant findings that recur throughout this thesis. The first is the importance of goodwill for the schools: because cleaners are given less and less time to complete their tasks the schools increasingly depend on cleaners' goodwill as they take pride in doing the job well. The second finding is the longevity of school cleaners' employment, with cleaners working in schools for multiple decades. This has implications for pride in workmanship, union membership (long-term cleaners

tend to have remained active union members as well), and the confidence cleaners feel to speak up for themselves.

Thus far, this section has demonstrated that a primary impact of privatising the GCS on school cleaners' labour standards was intensification of workloads. The correlation between augmenting cleaners' workloads and worsening OHS practices was identified in *Chapter 3, Section 3.4* (refer to Fraser, 1997; Johnstone *et al.*, 2001; Quinlan *et al.*, 2001; Alcorso, 2002; Aguiar and Herod, 2006; Seifert and Messing, 2006; Sogaard *et al.*, 2006; Ryan, 2007b). As will be illustrated in the following section, the NSW and Commonwealth government departments have taken extensive measures to address OHS problems that have arisen from the contracting-out of school cleaning services.

## **6.2 NSW government cleaning contracts and OHS**

### **6.2.1 Monitoring and reporting on OHS in NSW government cleaning contracts**

The contract specifications and Code of Practice used for the NSW government cleaning contracts are used across all NSW government procurement. Accordingly there is an emphasis on the construction industry, as this is an area where the most problems have been encountered (NSW Government, 2005: 13). The Code of Practice's emphasis on the construction industry detracts from its applicability and ultimately accountability for sound industrial relations practices in other industries, such as the cleaning industry.

*They talk about how we have to comply with all these guidelines like OHS and quality management and systems, you know there are all these guidelines but they are all for the construction industry so it's extremely frustrating to try and comply with the guidelines that are for another industry altogether.... some of it is over the top and really is hard to interpret what they could mean by that in our industry. (CM 3)*



To this end, the cleaning contracts place the onus on contractors to provide comprehensive reports (NSW Government Procurement Guidelines: Service Provider Performance Management, November 2007: 5). Although this system of performance assessment was developed with the building and construction industry in mind, the terms also apply to cleaning contractors. Cleaning contractors are required to conduct inspections of Quality Monitoring and OHS every four weeks for most schools (DEC, March 2006). Contractors must also organise one meeting with the school principal each term and provide minutes of this meeting. Matters to be discussed include cleaning issues, schedules, working hours and any general matters. The DEC conducts regular audits to review reports from inspections and minutes from meetings as well as whether any issues that have been raised were rectified (DEC, March 2006). In addition there are three-monthly meetings between the DEC, the DFS and contractors to review and consider all relevant aspects of the contracts. Then there is an annual review of the contractor conducted by the DEC and the DFS and the results of that review are documented in the contractor's performance review.

The contractors are also required to keep folders with detailed documentation at three locations: on-site; at the contractor's office; and online via WEBClean. These documents include a cleaning register detailing the areas to be cleaned and the cleaning staff hours. There should also be a cleaning service manual with three volumes, including cleaning schedules, Quality Monitoring Inspection reports, OHS reports and the cleaning communication book. One former contracted cleaning company manager explained that the onerous reporting requirements are needed because it and the inspectorate system are the 'only real ways for the DEC to know what's going on' (CM 1).

## **6.2.2 Skills training and certification**

A matter closely related to OHS is skills training and certification for cleaners. Cleaning industry leaders recognise that skills training and development are required to improve the quality of services offered in the cleaning industry. Some analysts, however, suggest that the bigger issue for the cleaning industry is recruitment and retention, rather than skills shortages (Construction & Property Services Industry Skills Council, 2010: 23). In any case, the attainment of cleaning qualifications for cleaners is being driven in part by private and government sector tender specifications, including provisions that workers have a minimum requirement of Certificates II and III in Asset Management (Cleaning Operations) (Construction & Property Services Industry Skills Council, 2010). An additional driver is the Australian Government Training Contribution of between \$750 and \$4,000 to employers who have their unqualified cleaners complete Certificates II and III in Asset Maintenance (Cleaning Operations). There are no requirements to give cleaners paid leave or time during work hours to complete this training, and training practices vary widely from company to company. These government incentives for employers are administered by the Australian Business Limited Apprenticeships Centre. Training offered in these traineeships typically combines practical experience at the workplace with on the job training and practical assessments (Australian Business Limited, 2011).

Training must be administered by a certified training body in order for the company to qualify for the bonus payment. Most companies hire private training companies, but some have established their own internal, certified, training processes. Cleaners of all ages and experience levels have completed these traineeships over the past few years, primarily because the Australian Government Training Contribution

provides an attractive incentive for employers. One company manager noted that in their best year they cleared \$1 million in profits from the training contribution bonuses, having had thousands of cleaners around Australia complete their qualifications (CM 1). It should be noted that even though cleaners who are completing these traineeships are technically 'trainees', companies have not been paying the lower rate for trainees because the administrative complexity outweighs the cost savings. All school cleaners, regardless of whether they have worked 1 day or 40 years, or whether they have Certificate IV certification or no training at all, are paid the same wage rate as prescribed in the EBAs (CM 1).

### **6.2.3 NSW school cleaning and OHS management**

OHS management is covered extensively in the school cleaning contracts and supporting documents. The contracts require contractors to put in place an OHS system, which demonstrates commitment to 'continuous improvement and best practice performance' of OHS management, workplace injury management, workplace practices and training management (NSW Government, 2005: 4). To this end the contracts require that OHS be monitored through monthly inspections and reported to the DEC through the online WEBClean system. OHS compliance must also be detailed in the three monthly reviews with the DEC and the DFS and the annual contractor review meetings with the DEC and the DFS. Principals can also choose to participate in the four weekly OHS inspections.

Be that as it may, the monitoring and compliance of OHS by DEC staff sends mixed messages. As the agency managing the contracts, DEC's primary concern is to ensure the OHS safety of staff and students in the schools. So while the contracts provide for three monthly and annual OHS inspections, the focus of the DEC in their

inspections and monitoring is to minimise hazards or risks for school students and staff.

The DEC assumes that the contractors will monitor and enforce OHS for cleaning staff.

As far as workplace health and safety is concerned:

*No one is holding the main contractor to account. Only if something really bad happened, like a paedophile in schools or a really bad accident. (IC 1)*

This means that there is no monitoring or accountability for the OHS of the cleaners.

The DEC monitoring efforts centre on ensuring the students and staff are safe, for example by doing police background checks on cleaners to minimise the risk of students being impacted by cleaners' unlawful activities.

After the NSW GCS was privatised in 1994 the rate of injury, and therefore cost of workers' compensation rose. By the late 1990s these issues had increased to such an extent that the NSW government agency paid additional monies to the cleaning company contractors to assist them to cover the cost of increased insurance premiums (IC 1). In the 2006–2011 contracts the government agency offered financial incentives to contractors to minimise days lost due to injury (CM 1 and CM 3). This was:

*A specific bonus scheme to encourage or promote the concept of rehabilitation, it did not apply to people on sick leave, only if the days lost were through legitimate workers' compensation. It was about getting people back to work. (CM 1)*

This scheme also encourages preventative measures through regular OHS training and improved work practices.

The fact that NSW government agencies were sufficiently concerned about school cleaners' OHS to introduce the combination of comprehensive reporting requirements and a bonus scheme to improve OHS, accentuates the prevalence of OHS problems that have arisen for cleaners as a result of contracting-out. These measures

were taken by NSW government agencies in addition to the skills training and certification incentives offered by the Commonwealth government. Questions emerge, nevertheless, about whether school cleaners receive the intended benefits from the training schemes, bonuses and reporting of OHS processes. Findings from interviews with school cleaners in the following two chapters will address this issue. However, before delving into the results from the interviews with cleaners, a clearer understanding of the structure of the cleaning industry and cleaners in Australia is required in order to glean how NSW government school cleaners are positioned in the cleaning industry.

### **6.3 Characteristics of the cleaning industry in Australia**

*The real issue the cleaning industry needs to deal with is its appallingly low rates [of payment for contracts] and concomitant unsustainable margins. (InClean Magazine, August/ September 2009a)*

Cleaning businesses in Australia are polarised into large firms that dominate the industry or small family owned businesses (Ryan and Herod, 2006). The three largest cleaning businesses in Australia take up one quarter of the market share. These businesses are: ISS Facility Services Australia Ltd, with a market share of 11.8 per cent; Spotless Group Limited with a market share of 7.5 per cent; and Menzies International (Aust) Pty Ltd with a market share of 5.7 per cent (IBISWorld, April 2010). Not coincidentally, these three businesses provided contracted cleaning services in metropolitan Sydney for the NSW government throughout 2010 and early 2011. These three companies have thousands of employees in Australia, yet the average number of employees per cleaning business in 2009-10 was only 14.42 (IBISWorld, April 2010). This is indicative of the proliferation of small cleaning firms, or sole traders in the industry.

Small firms that employ fewer than five people constitute 60 per cent of firms in the industry, but only employ 10 per cent of the industry workforce and generate 11 per cent of the revenue (IBISWorld, April 2010). In contrast, companies with more than 100 employees employ just less than 60 per cent of industry workers, generating 55 per cent of the revenue and 23 per cent of the profits (IBISWorld, April 2010). The top 10 cleaning companies have 66 per cent market share, while the next 190 cleaning companies have only 30 per cent of the market share (Construction & Property Services Industry Skills Council, 2010). The dominance of the top companies in the industry affords those companies the best chances of securing public sector cleaning contracts and they have a powerful influence over wages and working conditions in the industry (Ryan and Herod, 2006: 492). Fortunately, the intensity of competition in the cleaning industry reduces opportunities for the dominant companies to pursue other oligopolistic practices like price setting (Jeffs, 2001).

Many of the smallest cleaning companies or sole traders operate at the fringes of the 'legitimate' economy, making it difficult to gauge the true size of Australia's cleaning industry. Subcontracting and sham contracting practices are rife in this industry (Jeffs, 2001; Fair Work Ombudsman, June 2011) and efforts to disguise illegal practices can result in multiple layers of subcontracted companies being created, many of which will be empty shells (UV 1). Cleaning businesses also change names regularly, and large companies with several subsidiaries are able to bid multiple times for the same job. The benefits of obfuscating and augmenting business identities are twofold. On one hand if a firm has earned a bad reputation on a contract it can elude this by changing the company name but not the operation (Ramia, Chapman and Michelotti, 2005). On the other hand an anomaly in the NSW Workers' Compensation system means that workers'

compensation premiums can be substantially reduced by creating smaller subsidiary companies. This has resulted, for example, in a large Australian cleaning company creating more than 60 registered subsidiary companies (Ryan, 2007b: 137).

Estimates of the number of cleaning businesses operating in Australia are widely disparate. IBISWorld estimates that there were 7,395 registered cleaning businesses operating in Australia in 2009–10 (IBISWorld, April 2010), yet the Fair Work Ombudsman conducted an education campaign with more than 15,000 cleaning businesses in 2010 (Fair Work Ombudsman, June 2011). Similarly, the value of the cleaning industry is disputed. The ABS valued it in 2000 at AU\$2.1 billion (ABS, 2000), but industry insiders estimated it was closer to AU\$3.5 billion for the year 1999–2000 (Jeffs, 2001; Ryan, 2007b). The industry has grown steadily over the 10 year period and in 2009–10 IBISWorld projected the industry would raise revenue of AU\$3.57 billion (IBISWorld, April 2010). It is likely that the real revenue level is at least 60 per cent higher than this (Ryan, 2007b). It is estimated that the government sector cleaning services constitute 24 per cent of the industry across Australia (IBISWorld, April 2010), but it is likely that other sectors, such as domestic cleaning services are underestimated, so the real government sector share of the cleaning industry could be lower.

The cleaning industry across Australia is subject to high levels of price-based competition (Jeffs, 2001; Ryan and Herod, 2006; Ryan, 2007b; Campbell and Peeters, 2008: 30). As a result of the tight competition the profits margins are low across the board in the cleaning industry – it is a low profit margin, high turnover industry (CM 1; Ryan, 2001; Ryan and Herod, 2006: 491). Most of the operators in the industry are small or medium sized business and their profit levels range from 3 to 4 per cent, dropping to 2 per cent during economic downturns (IBISWorld, April 2010). The large companies in

the industry operate on profits of 3 to 5 per cent or higher (IBISWorld, April 2010). Profits are estimated to be around 6 per cent for the school cleaning contracts, but some degree of variation would be expected between different areas, companies and even schools (CM 1). The slightly higher profits for the school cleaning contracts can be partly explained by the fact that only the major companies have the standing to deliver these services. It is noteworthy that when Transfield Services was awarded two additional five-year NSW government cleaning contracts in 2011 (they already held one contract in the 2006–2011 period), they published a projected profit upgrade for their shareholders (Transfield Services, 2011).

Typically, three quarters of business costs in the cleaning industry are labour inputs. Wages and salaries take up 61.4 per cent of revenue; labour on-costs (such as taxation and workers' compensation) constitute 8.9 per cent; and official subcontracting payments take up the remaining 7.8 per cent of revenue in the cleaning industry (IBISWorld, April 2010). Thus total labour related costs according to IBIS World (April 2010) are 78.1 per cent of revenue. Since labour is the foremost cost incurred by the cleaning companies, the only way to compete is to drive down labour costs (Jeffs, 2001).

The cleaning industry in Australia is characterised by extremely low profit margins and highly competitive entities that compete largely on the basis of the cost of labour. Due to the minimal margins in the industry there are only two ways that contractors can (and do) severely undercut other bidders: by intensifying cleaners' workloads or by lowering the existing labour standards (Quiggin, 2002: 93; Campbell and Peeters, 2008: 39; Crosby, August/September 2010: 26). The intensification of workloads for cleaners was discussed in *Chapter 3*, Section 3.4, where it was highlighted that this approach is closely associated with increasing OHS problems for cleaners.



Contracted cleaning companies favour using this strategy, because there are limited legal constraints to the augmentation of workload intensity (Campbell and Peeters, 2008: 40). A possible exception is the potential to apply occupational health and safety laws to the work loading for cleaners. As will be demonstrated in *Chapter 8*, the NSW government cleaning contracts include a number of provisions that are designed to harness workload intensification, but there is an absence of a fixed rate of square metres to be cleaned per hour. The Queensland and ACT government cleaning contracts do include a baseline fixed rate per square metre of cleaning, which allows for minimum wages and entitlements to be fulfilled (UV 1).

The Australian cleaning industry is known to be one of the most productive and innovative industries in the world (Ryan and Herod, 2006). The intensely competitive environment has facilitated worldwide innovations such as the backpack vacuum cleaners and rotary suction polishers. Australia is recognised as the leader in productivity rates in the cleaning industry, with companies claiming they can clean at rates as high as 1,000 square metres per hour (Jeffer, 2001). This compares with the North American productivity rate of only 300–400 square metres per hour (Ryan and Herod, 2006: 491). This rate of 300–400 square metres per hour also closely resembles the rate at which NSW government cleaning contracts are supposedly being performed. There is evidence to suggest that the high rate of productivity in Australian cleaning work comes at a price for workers in the form of highly intensive and poor working conditions, not to mention that the quality of work is compromised (Ryan and Herod, 2006).

The second strategy cleaning companies utilise to reduce the cost of labour is reducing or bypassing existing labour standards regulations. This is commonly done

illegally by subcontracting cleaning services out to organisations that pay cleaners cash-in-hand, or through 'sham contracting' where individual cleaners are typically pressured into operating as independent businesses, when for all intents and purposes, they are working as employees (UV 1; Campbell and Peeters, 2008: 40-42). Shaun Ryan's (2007) interviews with cleaning industry stakeholders and workers in 2001 and 2002 revealed that illegal subcontracting was common in general cleaning and was used to derive profit out of low-margin contractual arrangements by side-stepping award standards and driving down wages. While employees of medium and large cleaning companies are usually paid their minimum wages and working condition entitlements, employees of many subcontractors and even some lead contractors are paid less than these minimum rates and are unlikely to receive other entitlements, such as superannuation (Ryan, 2007b: 24).

Subcontracting rates are commonly as low as AU\$15 per hour in Australia, which is less than the minimum adult wage, and do not include any provisions for leave entitlements, workers' compensation, superannuation and other pay entitlements (Laws, 2010: 8). This compares to the minimum pay rate for casual cleaners in 2010, which was AU\$19.18 per hour (Fair Work Australia, 2010a). This is consistent with other scholars' findings that subcontracting is used as a strategy to undermine labour standards in order to minimise costs of labour and management (Aguiar, 2000: 73; Aguiar and Herod, 2006: 3-4; Ryan and Herod, 2006: 491; Campbell and Peeters, 2008; Wills, 2009: 443). Subcontracting has become endemic because competitive bidding for contracts has driven down profit margins to a point where it is not financially viable to provide the service in-house (InClean Magazine, August/ September 2009a: 16). Often contracts prohibit subcontracting but clients are not aware if it is taking place (Liquor,

Hospitality and Miscellaneous Union (LHMU) in InClean Magazine, August/ September 2009b: 20). United Voice oversees cases where cleaners have been paid cash in hand, which usually involves problems of wages being less than minimum standards, taxation obligations not being fulfilled, superannuation contributions not being made, and workers not being trained properly or covered by workers' compensation (LHMU in InClean Magazine, August/ September 2009b: 20-21).

*Subcontracting often exists purely as a means of circumventing legal and regulatory frameworks so as to reduce operating costs. (LHMU in InClean Magazine, August/ September 2009b: 20)*

These problems are less prolific in the NSW government contract cleaning industry for two reasons. First, only the major players can contract in this industry and they can quote at higher profit margins that enable them to afford to pay legal minimum labour entitlements. Second, the NSW government cleaning contracts are comparatively long-term and secure (typically lasting for at least five years) in an industry where twelve month contracts with one to two week termination notice periods are not uncommon (Ryan and Herod, 2006: 496).

These factors reduce the problems associated with subcontracting, however, due to the NSW government's emphasis on best value for money, the cleaning contracts have not been immune to problems with subcontracting. It is estimated that 10 per cent of NSW school cleaners are subcontracted, and provided with less than their legal minimum entitlements (UV 1). For these reasons, answers to the fourth research question (what are the actual (as opposed to specified legal minimum) labour standards of school cleaners?) are likely to reveal actual labour standards for NSW school cleaners that are superior to those for most other cleaners in the Australian cleaning industry. In this sense, this thesis will be drawing conservative conclusions about the problems that

can arise when cleaning services in NSW are regulated through the combination of both labour law and contracts for services, when compared with other cleaners in Australia.

#### **6.4 Cleaners in Australia**

The cleaning industry is fragmented, with, on the one hand, a large proportion of owner operators who are likely to work part-time and earn around AU\$5,000 per annum (IBISWorld, April 2010). On the other hand there is a preponderance of employees working for a handful of large business. These employees are mostly casual or part-time and have an extremely high turnover rate as a result of unsociable working hours (IBISWorld, April 2010). Reliable statistics on the proportions of casual, part-time and full-time employment do not exist. The Building Services Contractors Association of Australia (BSCAA) contends that 75 per cent of the industry workforce is employed for less than 15 hours per week, while United Voice argues that 65 per cent of cleaners work part-time and one third work less than 15 hours in a week (Ryan, 2007b). The most recent ABS data<sup>7</sup> shows that almost 30 per cent of cleaners are casually employed, while just under 55 per cent are permanent part-time employees (ABS, 2000). Nevertheless, in 2004–05 it was estimated that cleaners working as employees for registered companies earned AU\$14,360 per annum, which was below the poverty line wage level of AU\$15,288 for the same period (IBISWorld, December 2004). Almost 50 per cent of cleaners in Australia have dependent children living at home and the majority of cleaners in Australia left school when they were 15 years old or younger (ABS, 2001).

Due to the high level of informal work taking place it is also difficult to accurately estimate the total number of cleaners working in Australia. Estimates range from

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<sup>7</sup> ABS ceased collecting this data after 2000.

113,954 (IBISWorld, April 2010) to 273,700 workers in the cleaning industry in 2009–10 (Fair Work Ombudsman, June 2011). The later estimate is equivalent to 2.5 per cent of the Australian workforce. It is known, however, that there are roughly 6,000 school cleaners working on NSW government cleaning contracts, with approximately 4,200 of these workers being members of United Voice trade union (UV 1).

## **6.5 NSW school cleaners**

### **6.5.1 Profile of NSW school cleaners**

In order to mirror the broader group of NSW government school cleaners all efforts were made to attract participants to the case study from a broad range of cultural backgrounds, locations around Sydney and working environments. It is difficult to compare the cleaners who participated in this research with the broader population because there is a dearth of accurate and up-to-date data on the cleaning industry. The most recent (and only) comprehensive study of the industry was conducted by the ABS in 1998–99 and published in 2000 and this data does not capture the informal aspects of the industry. Profiles of the types of people who work as cleaners are, therefore, predominantly based on anecdotal data. What follows is a consideration of how well the school cleaners who participated in the research mirror the broader population of school cleaners as well as cleaners across the industry.

The 38 participants in the research were divided equally by gender. This aligns with the 1998–99 ABS industry survey, which also found that there were equal portions of males and females in the industry (ABS, 2000). Anecdotally this is still the case in the NSW government contract cleaning sector (UV 1). Almost 60 per cent of participants were from a non-English speaking background. In 2001 it was estimated that between 40 and 45 per cent of cleaners across the industry were from non-English speaking

backgrounds, usually from European backgrounds, but since 2000 this sector is increasingly comprised of workers from Asian backgrounds (Jeffs, 2001). The literacy level of cleaners participating in the case study was observed; it was found that ten of the interviewees were not capable of reading and writing at the level required for their job. (It is assumed that school cleaners are able to read and write messages in a 'Cleaning Communications Book', as well as read OHS instructions, such as for the use of chemicals, or guidelines delivered with payslips.) Cleaning companies have no record of how well the cleaners speak, understand or write English (CM 1). United Voice also has no data on cleaners' proficiency in speaking and understanding English or English literacy levels. United Voice and the companies do keep records of countries in which cleaners were born, but that does not account for illiterate Australian-born cleaners, or highly literate and fluent English speakers who may be recent immigrants from a non-English speaking country (UV 1 and CM 3).

Half of the cleaners who participated in the research worked at primary schools (19 out of 38), while 15 worked at high schools and 4 worked at other government sites. This mirrors the broader population, in which 90 per cent of NSW government contracted cleaners are working in schools (UV 1). Although there are twice as many primary schools as high schools in NSW, there are many more cleaners working at each high school.

For this research most cleaners were recruited through the trade union, so 35 of the 38 participants were union members. While union membership of NSW government school cleaners is high, at 66 per cent, the union membership for the group interviewed is exaggerated in comparison to the broader group of these cleaners. The high level of union participation among school cleaners is remarkably rare and can be explained by

the high level of collectivism prior to privatisation (in the early 1990s, 98 per cent of school cleaners were union members) and the longevity of employment for cleaners working as NSW government school cleaners. An original purpose of the GCS, when it was established in 1915, was to provide employment for war widows (Fraser, 1997: 14). Typically these ladies lived across the road from the schools and were active members of the school and thus the local community (SP 1). Schools are unique workplaces because they tend to engender a strong sense of community and therefore commitment (SP 2). This goes some way to explaining the longevity of employment of NSW school cleaners. This explanation will be expanded upon in the following subsection on cleaners' longevity of employment and goodwill. This is linked to the high level of union participation, which is noteworthy because typically union members who are covered by union collective agreements, like these school cleaners, are substantially better off than other workers (Cooper, 2010: 5).

The average age of the participants in this research was 55 years and interviewees ranged from 20 to 66 years of age. Of the cleaners interviewed, three had worked for one year, with the longest period of employment being 35 years. The more mature and longer-term cleaners were more likely to be active in their trade union than the more transient younger cleaners in the sector (UV 1). Full-time and part-time cleaners are guaranteed continuation of employment when contracts change hands, so longevity of employment was not impacted by contractors changing. The average length of employment for cleaners who participated in this research was 14.6 years. In an industry with an average annual turnover of 50–60 per cent (UV 1 and CM 1), 15 years of employment in the same job is a long time. Similarly, the cleaners interviewed tended to have been working at their sites for longer than would be expected across the

industry, with the average time at the current location being 11.4 years, the longest time being 31 years and the shortest time being 4 months. Therefore, this is an understated study of outsourced cleaners who are in a better position than most due to their high level of union participation and longevity of employment.

### **6.5.2 NSW school cleaners' longevity and goodwill**

Most of the cleaners who participated in this research were highly committed to their work and had been for a long time. Two cleaners who had been working in the same school for 20 and 30 years respectively were interviewed together. They elucidated not only how their longevity was the product of the strong attachment they felt to their community, but also how the retirement of the long-term cleaners will be increasingly problematic for the NSW government cleaning industry:

*All us cleaners, we turn up every day and we do our eight hours work... the new cleaners, they don't stay like we stay. (C5)*

*They're not loyal like we are, because you know, we love the school, I've been there since it opened. (C4)*

*People say, "How did you stay so long?" We say, "Because we like the staff, we like the people we work with". (C5)*

Another cleaner also made clear where his allegiance was:

*My connection is with the school, that's where my loyalties lie. (C15)*

Indeed, many cleaners talked about how they felt they were an important part of the community they worked in and how much they enjoyed being a part of that community.

*I'm not just the cleaner at my school, they call me by name, they say I'm the most important person in the school. (C29)*

*Some of the teachers say we are part of the family. (C35)*



Cleaners also talked about how much they appreciated the on-site staff they worked with, and how good the staff were to them.

*I try to do my best.... the principal is very nice, he says hello to me. The office girl says hello to me....there are nice ladies, they're always helping me because my husband is sick. (C9)*

As a result of this strong connection within the communities at their work sites, there emerges a strong sense of duty towards their working communities and the service they provide for that community:

*I did a perfect job, the principal came and saw and she put her hands to her face and she said, "Gerry,<sup>8</sup> beautiful!" and all the teachers were clapping. From that day I keep the school very clean. (C6)*

Turnover for school cleaners is not as high as other cleaning sectors, with a significant number of NSW school cleaners having worked continuously in this area prior to when the NSW GCS was outsourced in 1994. This goes some way to explain the high rate of union participation. The situation is changing however, as the population of school cleaners is aging, and it is expected that many will be retiring in the next few years. As many as 60 per cent of school cleaners may retire in the next four years (UV 1). From the schools' perspective this is particularly problematic as the retirees will be the long-term cleaners who have been at the schools for many years and provide an enormous amount of goodwill towards their schools (SP 1). One school principal explained how much schools rely on cleaners having this sense of duty and goodwill towards their school communities:

*In the last school that I was at one of the mothers was a cleaner there, and her children had all been through the school, and she had been through the school, and she had a great belief in doing the best possible job. It's there that you pick up that the cleaners have a relationship with the school that is beyond any*

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<sup>8</sup> A pseudonym name is used here to protect the anonymity of the cleaner.

*contractual arrangements. If that ever gets damaged then you're done and dusted. (SP 1)*

Twenty of the cleaners who were interviewed talked passionately about the strong connection they had with their working communities:

*My principal is good, she says, "George<sup>9</sup> you don't work for [the company], you still work for the school." I respect the staff and the staff respect me. (C16)*

*I feel like one of the staff here. (C1)*

*It's really nice to have people consider me part of the family. (C34)*

*I feel like I don't work for [the company]; my commitment is to the school. (C15)*

Many long-term cleaners willingly do extra tasks, overtime or during shifts, to help the staff in the communities in which they worked:

*I could leave if I want to. I stay because I enjoy the work. I enjoy the company.... See you're only supposed to clean windows once per year, you get a date to do it. I do mine every term. I like to keep them clean.... I go down there if security comes.... [the principal] said, "How can we reimburse you?" I said, "Consider it my donation to the school." (C2)*

And it supports the cleaners having great pride in the quality of work they achieve.

*The floors at my school are like mirrors. (C29)*

*I actually blow the whole [outdoor area of the] school out every morning and it looks wonderful. (C28)*

A school principal explained the importance of this goodwill to the schools:

*If you don't have them [cleaners] on board and have a good relationship with them, then they won't do those little bits for you. There is nothing that can put a value on that, but it's there and it's what keeps public education, public schools, going. It's there, it's that goodwill. In business there would be a price on it, with the school goes \$45,000 of goodwill, but we don't explicitly value this in schools. (SP 1)*

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<sup>9</sup> A pseudonym name is used here to protect the anonymity of the cleaner.

From the cleaning companies' perspectives the dissolution of goodwill as long-term cleaners retire is also problematic. It is difficult to replace long-term cleaners who are willing to work both morning and afternoon shifts and take their annual leave on prescribed dates during school holidays (UV 1).

### **6.5.3 NSW school cleaner work schedules and tasks**

Most of the cleaners were working eight hour 'split shifts', meaning that they typically worked four hours in the morning and four hours again in the evening. Morning shifts were typically between 5am and 9am, while afternoon shifts typically ran between 2pm and 7pm. Cleaners had a certain degree of autonomy in choosing the time they would work their shifts within this time frame, though they had to consider first the requirements of the on-site managers (usually school principals), and secondly the hours of their colleagues. For cleaners who worked shorter hours (four hours or less), most only worked one shift in the morning or afternoon. In two of the schools included in the research there was a cleaner who stayed at the school during the day, starting the shift around 6am then finishing around 2pm, but this was unusual and discouraged by the DEC. The DEC assumed that 'day cleaners' were less efficient as time was wasted working around student schedules. The working hours of cleaners who participated in the research are summarised in Table 6.1 below This table shows that the range of working hours are captured well by the sample of cleaners who participated in the research:

**Table 6.1 Hours worked by cleaners participating in the research**

<b>Number of hours</b>	<b>Number of cleaners</b>
<b>3 hours single shift</b>	1
<b>4 hours single shift</b>	5
<b>4.5 hours split shift</b>	1
<b>5 hours split shift</b>	1
<b>5.5 hours split shift</b>	2
<b>6 hour split shift</b>	6
<b>6.5 hours split shift</b>	1
<b>7 hours split shift</b>	1
<b>7.5 hours split shift</b>	3
<b>8 hours split shift</b>	17
<b>Total</b>	<b>38</b>

Cleaners in this research mostly worked at only one site, with only two of the cleaners working at multiple sites. Four of the cleaners were also called upon to do extra short shifts from time to time at other sites. All but three of the cleaners were employed on a permanent basis, meaning they were entitled to holiday, sick leave and other entitlements. Minimum labour standards for the cleaners are determined by United Voice enterprise bargaining agreements (EBAs), which have minimal variations between companies. School cleaners are paid an hourly rate prescribed by the EBAs, based on whether they are part-time or full-time. Variations can also occur if cleaners work at sites other than schools, or if they work full day or night shifts, rather than split shifts. The EBAs include provisions for salaries to be augmented by 13 different allowances. Allowances are payable for various reasons, the most common being for leading hand (supervisory) duties, broken shift allowances and toilet cleaning allowances.

School cleaners working in NSW government schools do not have the freedom to choose when to take their holiday leave; their holidays are dictated by the school holiday schedule. The EBAs set out a complex system of calculating rostered days off

(RDOs) and an hourly pay-rate specifically designed to accommodate cleaners working predominantly during the school terms. School cleaners work their morning and afternoon split shifts 40 weeks of the year during the school term. Regular school cleaning during the term includes: vacuuming and mopping floors; wiping desks; dusting surfaces; cleaning sinks; clearing cobwebs and 'blowing' leaves in outdoor areas. These tasks are supposed to be completed daily, although typically this is not possible in the time given, therefore these tasks are completed 2–3 times per week on a rotational basis. Rubbish bins are emptied and toilets and bathrooms are cleaned every weekday.

During school holidays cleaners are told which weeks they are doing 'vacation cleaning' and which weeks they are on holiday. Cleaners have more autonomy over which hours they can work during vacation cleaning and typically choose to work one full day shift, starting early in the morning. Vacation cleaning tasks include: window cleaning; cleaning surfaces over three metres high; stripping and sealing resilient floors; and cleaning blinds and window coverings. The contracts state that these tasks are to be completed once per year on a rotational basis.

## **6.6 Discussion**

The latter three sections of this chapter were largely contextual, yet vital to understanding the case study of NSW government school cleaning contracts that is used to answer the research questions of this thesis. These sections included outlines of the characteristics of the cleaning industry, a profile of cleaners and a more specific profile of NSW school cleaners. The cleaning industry is characterised as being highly competitive and sustaining low profit margins with the majority of company costs being labour related (at least 70 per cent), which places downward pressure on labour

standards for cleaners (Ryan and Herod, 2006: 492; Ryan, 2007b; Campbell and Peeters, 2008: 30). The profiles of cleaners reveal that school cleaning is unique; having lower levels of staff turnover and significantly higher rates of trade union participation than other sectors in the cleaning industry. School cleaners have immense attachment to their school sites, which feeds longevity of tenure as well as building valuable levels of goodwill towards the schools they work in.

The characteristics of the school cleaners who participated in the case study research were included in Sub-section 6.5.1. These characteristics of the cleaners mirror the broader school cleaning community. The cleaners in the case study represent a broad spectrum of localities, ages, genders, cultural backgrounds and longevity in the workplace and can be relied on to illustrate the actual labour standards of school cleaners. There is however, a bias towards school cleaners who are proactive trade union members, who know their workplace rights and are capable and willing to speak up for themselves. In this sense the research gives an understated account of whether the combination of contract and labour law mechanisms are able to ensure compliance with prescribed labour standards.

The impacts on the cleaners of privatising the NSW Government Cleaning Service are more pertinent to the central argument of this thesis and were addressed in the first two sections of this chapter. These cleaners experienced dramatic workload intensification, which resulted in OHS concerns for the government agencies overseeing the contracts. The intensification of workloads was consistent with other scholars' findings from Section 3.4 of this thesis, that cost-reductions achieved through privatising government services were attained by transferring the costs onto the workers themselves (Quiggin, 1996; Quiggin, 2002; Ryan *et al.*, 2005; Quinlan, 2006).

The resultant erosion of OHS standards has also been echoed in other research by Quinlan *et al.* (2001), Johnstone *et al.* (2001), Alcorso (2002), Seifert and Messing (2006), Sogaard *et al.* (2006), Aguiar and Herod (2006) and Ryan (2007b). Government agencies have taken measures to redress these increasing OHS problems for cleaners. The Commonwealth government oversees a training contribution scheme, which pays employers a fee when their staff complete particular training requirements, and is designed to encourage the training and certification of cleaners. Meanwhile the NSW government departments that oversee the contracts have included provisions for monitoring OHS through comprehensive reporting and a bonus scheme for companies to be encouraged to minimise cleaners' days lost due to injury.

## **6.7 Conclusion**

NSW government cleaning contractors are subject to cost reduction pressures resulting from the highly competitive contract cleaning industry and government budgetary pressures. This ultimately impacts on labour standards of the cleaners because more than 70 per cent of operating costs are labour related (Ryan and Herod, 2006; IBISWorld, April 2010). NSW government-contracted cleaning companies and cleaners have not been immune to these pressures. As will be discussed in *Chapters 7 and 8*, this has resulted in the intensification of workloads with repercussions for OHS, as well as problems associated with illegal subcontracting.

## Chapter 7

### Labour Law and Contract Provisions for Labour Standards

#### Introduction

The results of the case study of NSW government school cleaning contracts, conducted in order to understand how labour standards are regulated when services are contracted-out by governments, are presented in this chapter and in following chapter. The case study includes interviews with 38 school cleaners as well as government representatives, cleaning company managers, school principals, teachers, and representatives from the Teachers' Federation and United Voice. The ways in which labour law and labour standards clauses in the NSW government cleaning contracts are being regulated, monitored and enforced are examined in this chapter. Compliance with other specifications in the cleaning contracts that impact upon labour standards for school cleaners will be explored in *Chapter 8*. Analysis of data obtained in the case study of NSW school cleaners is used in both this chapter and the next to answer the fourth and fifth research questions:

4. What are the actual (as opposed to specified legal minimum) labour standards of school cleaners?
5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?

Labour standards that are prescribed by labour law have the potential to be monitored and enforced by the Fair Work Ombudsman and United Voice, as was explained in *Chapter 5*, Sub-section 5.1.1. Labour standards provisions in the NSW government cleaning contracts are theoretically monitored and enforced by the



government agencies and the State Contracts Control Board that oversee the contracts in the manner outlined in *Chapter 5*, Section 5.2. The evidence presented in this chapter shows that, in spite of the dual regulatory enforcement mechanisms of labour law and contracts for services, there are many problems with compliance with prescribed labour standards. It also shows that although United Voice plays an integral role in reporting labour standards infringements and pressuring government agencies to enforce the labour standards components of the contracts. However, the union is limited in its capacity to enforce cleaners' labour standards.

This chapter begins with a discussion of compliance with the core minimum labour standards set out for cleaners. These include minimum legal pay and leave entitlements, as well as freedom of association rights. The problems with labour standards compliance that arise when contractors subcontract cleaning services out are highlighted in Section 7.2. Subcontracting is not illegal in and of itself, but it is strongly discouraged by the government agencies overseeing the contracts because minimum labour standards are commonly undermined by subcontractors (see Aguiar, 2000: 73; Aguiar and Herod, 2006: 3-4; Ryan and Herod, 2006: 491; Wills, 2009: 443). The connection between contracting-out of cleaning services and heightened OHS problems that was identified in *Chapter 3*, Section 3.4 is also highlighted in this chapter. This finding mirrors other studies that conclude there are negative impacts on cleaners' OHS when cleaning services are contracted-out (refer to Fraser, 1997; Aguiar and Herod, 2006; Seifert and Messing, 2006; Sogaard *et al.*, 2006; Campbell and Peeters, 2008: 37). The regulatory impact of the Australian Government Training Contribution, which was introduced in the previous chapter, Sub-section 6.2.2 is explored in Section 7.3. Compliance with OHS standards, including ongoing OHS management, safety measures,

management of injuries and bullying and harassment are examined in the final Section, 7.4.

## **7.1 Pay and leave entitlements**

Pay and leave entitlements are broken into compliance with minimum pay entitlements, the incidence of unpaid overtime, compliance with minimum leave entitlements and adherence to freedom of association requirements in labour law and the contracts. The case study of NSW school cleaners revealed instances of non-compliance in each of these areas. Therefore each issue warrants attention to understand overall compliance with pay and leave entitlements.

### **7.1.1 Minimum pay entitlements**

In spite of comprehensive labour law entitlements covered by federal legislation and EBAs, and in spite of the fact that the minimum legal pay entitlements are underpinned by the contracts, 12 of the 38 cleaners experienced some problems with receiving their minimum legal pay entitlements. This left 26 cleaners who experienced no problems with their pay entitlements. Of the 12 cleaners who experienced problems with their pay entitlements, three worked for subcontractors and received well below their legal minimum entitlements (C24, C25 and C30), three cleaners had worked extra shifts, but not been paid for those (C3, C29 and C34) and six had experienced significant delays in receiving pay (C3, C4, C5, C8, C9 and C13).

The six cleaners who had difficulties receiving their legal minimum pay had recently undergone two to four month delays in receiving their pay entitlements. For these workers there was little recourse other than personally requesting that the pay problems be corrected. The issue of underpayment or non-payment of wages was the subject of discussion at four of the eight ROC meetings observed, with school cleaners

talking about how it is degrading to have to ask for your pay entitlements. In some cases the cleaners asked the trade union to help place pressure on the company to meet the shortfall. In other cases cleaners were more articulate or felt more confident to speak on their own behalf to pressure the company to correct their pay (C4, C5 and C8). There were also likely to be instances where cleaners did not want to bother the union or the company to correct their pay and kept quiet, but the interviewees in this study tended to be proactive union members and therefore talked about taking action to correct their pay.

Other problems arose with delays in pay entitlements because there are 13 different allowances payable to cleaners. Six of the 12 cleaners who experienced problems with their pay entitlements had experienced delays in part or all of their salaries being issued that required multiple requests for the salary to be paid (C4, C5, C6, C9, C10 and C18). For instance, the toilet cleaning allowance was only \$2.91 per day (from February–December 2010), but some companies went to the effort of taking away the allowance when a cleaner took sick leave. One cleaner remarked that if you are sick for one day:

*They take your toilet allowance for a day, for a lousy couple of dollars for a day!  
They cut that off and then they muck up your pay when they do that and you  
have to keep ringing them to fix it. (C10)*

Three of the cleaners interviewed had longstanding problems with unpaid salaries (C3, C29 and C34). Two had been asked by their supervisors to work an extra shift and neither had been paid for these shifts (C3 and C29). They had been waiting ten months to receive payment for the extra shifts and had made repeated requests to be paid. In spite of the outstanding payment, one of these cleaners had been asked to work an additional shift and declined on the grounds that he was still waiting for the

outstanding payment from ten months earlier. A third cleaner frequently worked extra shifts when requested to do so by her supervisor (C34). This cleaner kept close track of the hours worked and the payments received and frequently found shortfalls in pay entitlements. For example, she had been waiting for eight months to be paid for a three hour shift. It was not clear to the cleaner whether her supervisor, the accounts department or higher level management were responsible for these problems. In this instance she had made repeated requests to be paid for the shift, however she noted:

*I can't tell you how many times I have let them go for an hour because I just thought, "I can't be bothered fighting for that extra hour of pay." I just let it go.*  
(C34)

The final three cleaners who were receiving far less than their legal minimum entitlements were working as subcontractors (C24, C25 and C30). These cleaners were paid well below the legal minimum requirement and experienced many problems, deserving of attention. Accordingly, these subcontracted cleaners will only be mentioned briefly in this section, but will be discussed in detail in Section 7.2, on subcontracting.

### **7.1.2 Unpaid overtime**

In addition to receiving minimum legal entitlements for scheduled shifts, many cleaners were also found to be working unpaid overtime. Almost half (17) of the interviewed cleaners worked unpaid overtime. Of the 17 cleaners working unpaid overtime, 10 were undertaking duties that resulted in them working small amounts of unpaid overtime regularly, such as not taking breaks, or staying back to solve particular problems like cleaning up children's vomit, or waiting for teachers to leave so they could lock the gates (C3, C15, C22, C23, C26, C28, C31, C32, C34 and C35). The

remaining seven cleaners worked a great deal of unpaid overtime (C2, C6, C16, C24, C25, C29 and C30).

It is useful to note that while some cleaners were authorised by their supervisors to work overtime, but not paid for their efforts (C6, C16, C24, C25 and C30) other cleaners chose to work overtime at their own discretion (C2 and C29). Nonetheless, the reason for both scenarios is that there is insufficient time scheduled to complete the required tasks. The problem of workload pressures is unsurprising, considering the objective of contracting-out the NSW Government Cleaning Service in the early 1990s was to reduce the cost of cleaning by 20 per cent (Industry Commission Australia, 1995: 21; Fraser, 1997: 5; Quiggin, 2002: 90). Since labour related costs make up more than 70 per cent of cleaning company expenditures, the primary way to reduce costs is to have cleaners do more work in less time (Ryan and Herod, 2006; IBISWorld, April 2010). As a result seven cleaners (including the three subcontracted cleaners) were frequently working several hours unpaid overtime each week, coming in on weekends or staying back for an extra hour or two each night to finish their work.

Not only were these cleaners not being paid to work this extra time, but they were not permitted to sign on or off for the extra times they were working. The times a cleaner writes in the sign-on-sign-off book are important; they provide a legal record that the cleaner was on-site and working during those hours. If a cleaner is injured at work, during a time when they are not legally signed on to be working, they may have difficulty in making a workers' compensation claim as the insurer may argue that they were not working during their required shift hours (UV 1). There may also be an option to make a claim under the school's duty of care obligations to 'visitors', but it is unlikely cleaners are aware of this.

The cleaners' primary motivations for working unpaid overtime were to do a good job, fear of failing inspections or to simply get the job done. In most cases cleaners worked the extra time out of fear of reprisal or in the worst cases, fear of job loss. The incidence of working unpaid overtime motivated by a perceived fear of job loss has been evidenced in other studies by Simpson (1998) and Kodz (2003). Simpson (1998) denotes this tendency to stay at work beyond the required working hours as 'presenteeism'.

One cleaner explained that his supervisor had pressured him to add additional tasks to his already unmanageable daily schedule by threatening to move him from the worksite and community he had been working in for eight years to another worksite (C16). Another cleaner told how his supervisor pressured him to work extra hours and complete tasks that were not even covered in the contracts by alluding to terminating his employment, for instance the supervisor had told him to repay his salary:

*[The supervisor] called me pathetic and told me I should return every penny I got paid since I worked for this company because I don't deserve it.... That is a bigger problem too because I'm 64 years old and if I make a problem here and the boss sacks me where would I find another job? Never. So I feel like I can't make trouble and I have need to keep quiet. (C3)*

A subcontracted cleaner was working at least two unpaid hours per week as well as coming in on weekends to complete work. He felt immensely fearful of losing his job if he did not complete the work. He also felt powerless to speak about his workload with his supervisor as he was dependent on having the job:

*If I speak anything against him, you know he will immediately take action upon me, I don't know what, he might sack me, but he will never decrease my work. (C24)*

This speaks to the management issues that will be discussed later in this chapter, in Sub-section 7.5.4. In another case though, the cleaner worked an average of one extra hour unpaid overtime per day, as well as going in on weekends, because of the profound sense of duty she felt towards her school community and the enjoyment she gained from being a long-term member of that school community.

*I don't mind going down and doing a bit extra here and there. If the teachers are having a special day I go down and sometimes do an extra good job for them. That doesn't worry me. I used to do canteen in the middle of the day too.*  
(C2)

### **7.1.3 Minimum leave entitlements**

The strong sense of duty many cleaners feel towards their on-site communities also has implications for the way they take their leave entitlements. For school cleaners holiday leave days are dictated by the contracts to coincide with school holidays. Therefore, the only autonomy cleaners have in deciding when to take leave is if they take sick, compassionate or long service leave (or leave without pay). Even then, cleaners' reluctance to use these leave entitlements arises for a number of reasons. Many cleaners in this research were averse to taking leave because of a strong work ethic. Of the cleaners who were interviewed, 13 said they took their leave whenever needed (C2-C6, C10, C16-C18, C20-C22 and C32). A further 10 cleaners said they never took sick leave: seven of those chose not to take sick leave because they said they would far prefer to be working than sitting at home (C1, C7, C8, C9, C27, C31 and C37). While three cleaners were subcontracted, did not have any leave entitlements and expected to lose their job if they were absent for one day (C24, C25 and C30). A further 15 cleaners chose to take sick leave only for major problems, such as a death in the family or if they were hospitalised (C11-C15, C19, C23, C26, C28, C29, C33-C36 and C38). There was a

sense that if they took any leave other than scheduled holidays they would be abandoning the staff and communities where they worked.

*I will just get my long service leave paid out, I don't think they would appreciate me taking time off. (C37)*

Some cleaners tried to take long service leave or leave without pay during school term to visit unwell relatives overseas, but were met with a great deal of resistance from their employer (C11, C15, C22, C23 and C27). They were pressured to take the long service leave during the summer school break, but this was not viable for some as the travel costs are so much higher at that time of year. In a couple of instances supervisors had instructed cleaners to formally resign in order to take the leave they needed to visit dying family members, giving them verbal promises that upon return they would be reinstated (C11 and C15). These cleaners had not understood what they were committing to when they signed a formal resignation and as a result lost their accumulated entitlements. The greater loss, however, was when they were not reinstated at the sites where they had built a relationship with the community and instead were moved to new, or multiple sites.

On the whole, most cleaners were reluctant to take leave because they shared a strong work ethic and high attachment to their workplace community, or they experienced difficulties with the company management in trying to access leave. Cleaners also cited reasons why it was difficult to take sick leave for the odd day here or there, as needed. Some talked about how the work was not done to an adequate standard if they were not there to do it themselves (C2, C14, C27, C29, C31, C34 and C37).

*Even when I am sick I would rather be at work to do the job properly. (C29)*



This typifies the pride the cleaners feel in the quality of work they do, although another factor is at play here. There are problems with cleaning companies not placing relief cleaners at the sites when a cleaner is sick, particularly if they are absent for a short time. The use of relief cleaners is a contractual requirement which impacts on working conditions, and will be discussed in detail in the next chapter.

The cleaners' reluctance to use their sick leave entitlements when they judged themselves to be unwell has been addressed in broader scholarly literature on 'sickness presenteeism'. Sickness presenteeism occurs when workers attend work in spite of poor health (Johns, 2009). The pressure to attend work while unwell can arise from the accumulation of workload during an absence and from fear of repercussions for colleagues or for the recipients of the services being provided if a worker is absent. (Virtanen, 1994; Johansson and Lundberg, 2004: 1859, 1866; Hansen and Andersen, 2008: 957; Schreuder, Roelen, van der Klink and Groothoff, 2013: 266-267). In particular, when workloads are high and there is little prospect for replacement by another worker during absence, workers prefer to attend work unwell, as was the case for these school cleaners (Aronsson and Gustafsson, 2005: 959; Schreuder *et al.*, 2013: 266-267). Importantly, sickness presenteeism is more likely to occur when workers, like cleaners, have a weak position in the labour market or fear for their job security (Johansson and Lundberg, 2004: 1859; Hansen and Andersen, 2008: 958, 963).

Pressure from supervisors not to take sick leave was another reason for cleaners' decisions to avoid taking sick leave. In fact, some felt harassed by their supervisors if they tried to take a sick day. Two cleaners said their supervisor insisted on them coming to work if they were unwell so the supervisor could assess for themselves whether that cleaner was sick enough to take a day off (C7 and C8). Four of the cleaners felt they were

not trusted and respected enough to be able to take sick leave when required, and many objected to the requirement to provide a doctor's certificate for short absences (C3, C16, C19 and C32). One cleaner stated:

*Even if they see you coughing and spitting blood they say go home and get a doctors' certificate. We are not respected as workers or as humans. (C19)*

In the worst case, a cleaner was threatened with dismissal for taking sick leave:

*I tell my supervisor I am sick and not coming in for three days. Straight away he asks me why. I say, "Because I am sick." And he says, "What is the reason?" I give him a doctor's certificate and the doctor explained to him why I am sick... I tell him it's a private reason. Why does he ask me even though he still sees the doctor's certificate? It's private, I can't tell him, "This is my body! This is my body!" He said to me, "If you take too many sick days I will sack you." He says that to me often. (C16)*

Fortunately these extreme problems are the exception. Most cleaners had no problems in taking sick leave when they required it. Doctors' certificates are usually a requirement for taking sick leave, but not all cleaners were concerned about this. Three of the cleaners, in fact, said they were very happy with the company they worked for because there was no problem taking sick leave when required, and their supervisors were supportive if they were having problems (C4, C5 and C9). One cleaner articulated this:

*When I rang my boss to say I can't come for one week because I'm depressed, he said, "No worries, look after yourself. (C9)*

To summarise the cleaners' attitudes to their leave entitlements, two thirds of the cleaners said they never or rarely took sick leave and only did so for major problems, such as a death in the family or surgery. There was a reluctance to take leave for a range of reasons. The first reason was that most cleaners interviewed were highly committed to their work communities, they felt a strong sense of duty toward their

work sites and many also had a strong work ethic and preferred to be working rather than 'sitting at home'. The second reason why cleaners preferred to go to work instead of taking sick leave was because there were problems with being replaced by relief cleaners, so they preferred to go to work sick than leave the work not done (or not done to their standards). The third reason for cleaners' reluctance to take sick leave was due to pressure and harassment from their supervisors not to take leave, and in the worst case being threatened with dismissal. On the other hand, one third of the cleaners took sick leave whenever they needed to do so, and three cleaners in particular stated that their supervisors were supportive of them if they needed to take sick leave. Problems arose when cleaners wanted to take extended leave (either long service leave or leave without pay) to visit relatives overseas.

## **7.2 Freedom of association**

Of the 38 cleaners interviewed for this research, 35 were employed directly by a lead contracting company and all these cleaners were trade union members. There are historical reasons for the high level of union membership, with 98 per cent of GCS cleaners in the early 1990s being trade union members and two thirds of school cleaners continue to be members of United Voice (Fraser, 1997: 20). The high level of union membership amongst school cleaners is significant because workers who are covered by union collective agreements are typically substantially better off than those who are not (Cooper, 2010: 5). The high level of union participation also provides opportunities for United Voice to have a continued role in monitoring and enforcing labour standards for school cleaners. If problems arose in their employment relationship cleaners talked about asking United Voice for advice on what their rights were and for support with claiming those rights. None of the cleaners interviewed

mentioned being referred to the FWO for advice or support in claiming their legal entitlements. This brings to the fore the significance of the role the trade union plays in monitoring and enforcing labour standards, or at least in assisting workers to claim their legal minimum entitlements.

The Code of Practice governing the cleaning contracts states that trade union membership is lawfully permitted and 'victimisation, through any mechanism' is not permitted (NSW Government, 2005). Nevertheless, two cleaners talked about being pressured not to be union members by their colleagues (C18) or supervisor (C13). One cleaner was victimised by her cleaning colleagues because she was the only United Voice member on site.

*I'm in the union but the others are not in the union so they make comments about me. If I write anything in the [communication] book they say, "She's just doing that because she's in the union."... Now they have a war against me. It's like I'm going in a battle. When they have coffee in the morning they talk in their own language and they keep me on the outside. I am an outsider... (crying)... I don't want to have a problem but sometimes I feel like maybe I have a disease, I look at myself and I think there is something wrong with me. (C18)*

While this particular cleaner was being ostracised partly because she was from a different cultural background to her colleagues, her trade union membership was a key reason for her isolation and victimisation by cleaning colleagues. This was in spite of the fact that the contracts explicitly state that she has a right to be a union member without victimisation and this is one of the general protections under the Fair Work Act. The Fair Work Australia General Protections state that:

*A person must not take adverse action against another person because they engaged in or proposed to engage in industrial activity (such as belonging to or participating in a union). (Fair Work Australia, 2009:3)*

This cleaner did not feel there was anyone she could turn to for support with this problem. She was also unaware that this treatment was prohibited by labour law and contracts.

### **7.3 Subcontracting**

As discussed above in Sub-section 7.1.1 cleaners working directly for lead contractors experienced some problems with receiving their pay and leave entitlements. These difficulties were far more acute when cleaners did not work directly for a lead contractor. Three of the 38 cleaners interviewed worked as subcontracted cleaners (C24, C25 and C30). In fact, all three of them worked for a subcontractor, of a subcontractor, of a subcontractor. One had received one payslip, but this had the company name of the first subcontractor on it, not the name of the third subcontractor, who actually employed them (C25). Thus, as predicted by Quinlan (2006: 24), this elaborate contracting-out arrangement obfuscated the employment relationship, causing ambiguity about which entity was responsible for the cleaners' labour standards.

It is noteworthy that at face level these cleaners were indistinguishable from other cleaners working for the lead contractor, because they were allocated uniforms and identity badges from the lead contractor. However, they were paid \$11.25 per hour at a time when the legal minimum wage was \$18.18 for part-time or \$18.00 for full-time (broken shift) NSW school cleaners (Fair Work Australia, 2010b). No allowances, no superannuation, no workers compensation, no taxation and no leave entitlements were paid. Their pay was administered by a manager from the subcontracted company, who came to the site with cash in an envelope at irregular intervals. The cleaners continuously called him to ask to be paid more regularly.

*Sometimes he comes and pays half the money and sometimes the full money and sometimes he keeps us waiting for six or seven weeks. I always ring to see where the money is and he always says, "Next week.... next week.... next week." He always postpones the time like that. We are working hard, we should be paid on time. (C30)*

*Once I was not paid for seven weeks and on the eighth week he paid me for just four weeks and he said, "Okay, I'll pay you for the other three weeks later." He never paid me for the extra week...I can't fight with him because I don't have any proof so I just have to shut up my mouth. (C25)*

*He's very rude. He abuses me sometimes, he says, "If you need the money on time you can leave the job and find another one. Why do you ask me for money all the time?" He never understands. (C24)*

These three subcontracted cleaners were working 40 hours per week, even though they were all international students and this breached their student visa requirements. They were being paid \$450 cash per week for working a 40 hour week. Their visas permitted them to work 20 hours per week. Interestingly, if they had worked 20 hours and been paid correctly, their net pay after tax, would have been \$350 per week, 52 weeks of the year. If paid correctly they would have received holiday pay and paid RDOs according to the school schedule, so they would actually have been better off financially, even though they were working less hours.

The subcontracted cleaners were also hesitant to report their problems, because they feared being dismissed if seen to be complaining.

*Sometimes [the supervisor from the lead contractor] comes on site and asks us, "Are you guys being paid properly?" We used to make a complaint and we have to tell them not to let them know, not let [the subcontractor] know that we are complaining like this. We should complain, we have to complain about these things, but we have to hide our identity. (C24)*

*There is no security of the job. Anytime they could say you are finished from today and we don't need you tomorrow, they could say that anytime. (C25)*

*They said that to me once, they said, "Don't come to work tomorrow." Without any proper reason he said, "Don't come tomorrow, I'm going to sack you." But he didn't sack me, but he can make threaten all the time. (C24)*

The ever present fear of dismissal impacts on subcontracted workers in a number of ways. One impact was that cleaners avoided taking days off if they were unwell.

*I never took sick leave and they never provide sick leave. If I take sick leave they would deduct pay from that so it is better not to take sick leave. (C24)*

The subcontracted cleaners also did not apply for workers' compensation. One of the cleaners suffered an injury while at work, for which he spent \$400-500 out his own pocket on doctor's expenses (C25). It is common for international students working contrary to their visa limitations to be reluctant to make workers' compensation claims for fear of discovery of the breach of their visa (Quinlan, 2004: 34). Additionally, the fear of dismissal if they complained of unmanageable workloads resulted in two of the cleaners attending their site on weekends to keep up with the workload (C24, C30). One was told by his manager at the subcontracted company:

*You didn't finish your work, you have to go in on the weekend otherwise I will sack you and get another worker. (C30)*

Weekend work was unpaid. This was in addition to the eight hour days they were working during the week for \$11.25 per hour. They felt they had no power to question their workload. When asked in the interview how he might approach his supervisor to discuss workload issues, one cleaner responded:

*Nothing! If I speak anything against him, you know he will immediately take action upon me. I don't know what, he might sack me, but he will never decrease my work. I have to clean those 40 rooms and that's it. You are paid \$90 a day, and whatever the work is, you have to do it. The work is always loaded heavy. The work is always more work. You know, 40 rooms, you can't do that in eight hours. You have to work under pressure; you have to rush every time. (C24)*

Even the supply of adequate equipment to perform the required duties is problematic for the subcontracted cleaners. These cleaners had a manager at the subcontracted company they could call to ask to send supplies, such as petrol for the outside blower. Nevertheless they could usually only leave messages and typically never heard back for two or more weeks. The maintenance of equipment was even more problematic. One cleaner had been without a working vacuum cleaner for two weeks. After the second week he called his supervisor at the subcontracted company:

*He replied, "Just hang on, I've already spoken with [the lead contractor]. They're going to fix up your vacuum cleaner and what do you want from me? Do you want me to come and pick those rubbish for you?" He spoke very rudely like this to me. I felt very bad. I had to run here and there just getting a vacuum cleaner.... He is always rude. (C24)*

When these cleaners started the job they were each required to work a minimum of three full days, unpaid, prior to starting as paid cleaners. These unpaid days were called 'compulsory training'. However, they were given no training or instruction on how to do the tasks required. Due to the lack of guidance they spent their early days on the job finding their own ways to do the work and asking cleaning colleagues what was required of them.

The most egregious of the problems these cleaners experienced extended beyond the workplace, to the living arrangements for one of the cleaners in particular.

*We are forced to live in a garage. Not by my wish. I am forcefully put in a garage. If I want to work, if I want a job, I have to stay in this garage. (C24)*

Moreover, this cleaner was required to pay \$100 per week rent to live in this garage with four other cleaners, who were also each required to pay \$100 rent per week. The owner of the garage was a manager at one of the lead contracted cleaning companies. Prior to this appointment the 'landlord' had been:



*A government [DEC] inspector. And when he was a government inspector he used to go for an inspection in the school and if he found any cleaner from [the subcontracting company] he straight away passed the school, "Okay clean enough." If any school had a cleaner from [the subcontracting company] he said, "Okay nice work" and passed the school. If there was anybody else from a different subcontractor, then that school would not pass, and that was how he used to get it. Now he is in [the contractor company], so now he has more power than he used to have before. (C25)*

This raises questions about the effectiveness of government department efforts to achieve probity in management of the contracts. In this instance practices by one government department employee have a profound impact on the labour standards, as well as the quality of life for subcontracted workers providing cleaning services for the government.

To summarise, the employment of subcontracted workers who were hired illegally, paid cash in hand, less than the legal wage, and received no other employment entitlements was a blatant infringement of the labour laws and breached the contract terms. This was consistent with the experience identified by other scholars, evidenced in *Chapter 3* (Aguiar, 2000: 73; Aguiar and Herod, 2006: 3-4; Ryan and Herod, 2006: 491; Ryan, 2007b; Wills, 2009: 443, 445). The fear of dismissal felt by these subcontracted workers on account of their international student visa status and difficulty in finding alternative work arrangements rendered them vulnerable to exploitation. This was also consistent with other scholars' findings (Aguiar and Herod, 2006; Seifert and Messing, 2006: 142; Elton and Pocock, 2008; Masterman-Smith *et al.*, 2008; Baird *et al.*, 2009; Standing, 2009: 71-74; Wills, 2009: 445). There was no evidence found of the Fair Work Ombudsman inspecting labour standards for school cleaners. Nor was there any evidence of the government agencies that oversaw the contracts monitoring compliance with these contract terms. United Voice was monitoring labour standards and therefore was aware of the infringements. During this

study United Voice was in the process of pressuring the government contracting agencies to take notice of the problem.

#### **7.4 Skills training and certification**

Interviews with the 38 cleaners highlighted how far-reaching the Australian Government Training Contribution has been, with 33 of the 38 interviewees having attained a minimum of Certificate III in Asset Management (Cleaning Operations). As explained in the previous chapter, Sub-section 6.2.2, employers have an incentive to offer training in order to receive a payment from the federal government. There was no evidence of cleaners being proactive about seeking training for themselves; all undertook the training because their employer registered them for the training programme. Of the five cleaners who had not received the training, three were subcontractors (C24, C25 and C30). The companies that hired these subcontracted cleaners were not eligible to receive the government training contribution because these workers were not formally employed. One other cleaner had prior training in another industry that precluded the company from receiving the government contribution for him (C31). This left only one out of 38 cleaners who had missed out on the training for no apparent reason (C33).

Twelve of the cleaners who had been trained had worked for the NSW GCS prior to its being privatised and had received comprehensive training (C2, C4, C5, C9, C10, C13, C17, C23, C26, C29, C32 and C38). The remaining 21 cleaners had completed their Certificate III training while this Australian government programme was in place. In fact, six of those cleaners mentioned that the company they worked for had passed on a \$200 bonus to them for completing this training (C1, C3, C6, C15, C17 and C36). Seven cleaners also talked about the training being helpful, and that they had an improved

knowledge of their work since completing their Certificate III (C3, C6, C15, C16, C27, C36 and C37). Some of the cleaners were in fact very proud of attaining their certificates and really enjoyed the training programme; for these cleaners the programme has been a success (CM 1, C1, C15 and C27).

Unfortunately, there is evidence that the Australian Government Training Contribution is being undermined by some companies. Ten of the 21 cleaners who completed Certificate III training under this scheme talked about how they had not learnt anything from the training, and were cynical about the company receiving the government contribution without actually carrying out any training (C7, C8, C12, C14, C18, C19, C22, C28, C34 and C35). For these cleaners documents had been signed by trainers who had come to the workplace and asked a couple questions during work hours, but the cleaners said they did not gain any knowledge.

*I've got a certificate saying that I can do it and no one has seen me do it at all. All he did was look at the floor and say, "Did you do that floor?" (C14)*

*There is no training at all...The companies have some training companies and the government pays, but what they do is deliver you the papers and the papers just get signed in the school, but they never give you any training. (C8)*

One cleaner was issued her Certificate III while standing in the street outside her worksite. The trainer simply asked her some questions, ticked some boxes on a form but never actually taught her anything (C34). Another cleaner was trained to use the buffer machine by an unqualified colleague during their normal working hours (C35). She then received the Certificate III, although she said she had not learned anything from that process. Shortly after this she suffered a serious injury while using the buffer machine.

The Australian Government Training Contribution has resulted in the widespread certification of school cleaners, but the benefits for the cleaners in most

companies are negligible. Qualified cleaners are not paid at a higher rate or offered opportunities for advancement, and many said they learned very little from the 'training' they did receive. The Australian Government Training Contribution provides another level of regulation in the sense that government is seeking to shape and steer behaviour through certification. This process provides incentives for contracted cleaning companies to certify and improve the skills and knowledge of their cleaners. The research found that this programme was poorly implemented for most cleaners and made little difference for the cleaners, except for the fortunate few who had received hands-on training. Importantly, the certification had little impact on cleaners' career prospects, job security or pay entitlements. At best, the cleaners who were fortunate enough to be well trained had a better understanding of how to work safely.

## **7.5 Occupational health and safety**

### **7.5.1 Ongoing OHS management**

OHS management includes ongoing training that is conducted by the contracted cleaning companies. This process of continuously updating knowledge, and reminding cleaners of ways to ensure their safety and health in the workplace, is different from the Australian Government Training Contribution certification programme. The more professional contracting companies have teams of active trainers who visit sites all year around and conduct individual training. One company manager explained:

*Currently we have six trainers in our division working on government contracts. So [they are] going around all the time and training people, doing toolbox talks, doing safe work practice training.... This works for a lot of things, it helps us with productivity, it helps us with safety.... Everything is competency-based, so our trainers, when they're doing safe work practices, will watch a cleaner doing something to make sure they are doing it properly. So it's all about seeing is believing. (CM 3)*

Only six of the 38 cleaners stated that OHS trainers from their employer regularly visited them, and their visits were informative and helpful (C1, C9, C15, C22, C32 and C37). It should be noted that not all cleaners are amenable to being trained, or reminded about workplace health and safety issues. Three cleaners remarked that they knew everything they needed to know and so ongoing training was unnecessary (C12, C19 and C23). Most cleaners however stated that they did not receive regular on-site training like this. Eleven of the cleaners who were interviewed noted that they only received written information (C6-C8, C13, C14, C17, C18, C29, C31, C34 and C38). Worksheets with OHS updates were dispersed with each payslip and some cleaners were regularly instructed by their supervisors to sign sheets of paper to say they had read an OHS update.

*They just come around with a piece of paper and say tick this and sign that and it's done. You get OHS papers with your payslip, but it's not very useful really.* (C34)

*We're supposed to read [OHS material] but [the supervisor] just pointed and said, "Sign."* (C38)

This raises questions about the levels of literacy of the cleaners if they are expected to have read and understood the written material. One of the cleaners included in the case study was unable to speak, understand, read or write in English (C26). It is estimated that a further nine cleaners were not able to read or write English, or at the minimum had great difficulty in reading and writing (C1, C3, C9-C11, C16, C18, C20 and C33). Illiterate cleaners often have a sense of embarrassment in admitting this, and consequently there is no accurate data held by government, cleaning companies, United Voice or elsewhere to indicate what portion of cleaners are illiterate. For those who are illiterate, one of the contracted companies includes as many pictures as possible in written training material (CM 3).

For cleaners who do not speak or understand English, the issues are similar, but the implications for addressing the problem are different. For the cleaner in this research who was non-English speaking, none of the training or OHS materials was translated into a language she could understand. Her perception of OHS management was that if anything went wrong then she would be held liable. For example, she feared being suspended from employment if she mixed the chemicals wrongly (C26). The contracts do not include funding for translators to assist non-English speaking workers. Another cleaner explained:

*The company never explains anything for how to use the chemicals...When we're showing new cleaners how to use chemicals they're too embarrassed to say they don't understand the English, so they just say, "Oh yeah, we understand." But you can tell they don't understand. (C8)*

Aside from literacy and communication issues, another key issue that arose with OHS management was the disconnection between OHS training messages and daily management practices. Five of the cleaners mentioned that they had been instructed to use the wrong chemicals or take an action that contravened OHS standards (C4, C5, C7, C8 and C17).

*Our supervisor told us to clean the drinking bubblers with floor stripper because all the other chemicals had run out. When we told her you can't [because it is a toxic chemical for stripping back floors and shouldn't go anywhere near where children are drinking water] she just said, "Use whatever you've got." (C5)*

*Our supervisor comes with a piece of paper and says, "Sign this." and it's an OHS paper to say we know we can't stand on chairs. Then five minutes later they say, "Oh look, there's a bit of dust up there, you'll have to stand on a table or chair to clean it." (C17)*

Another cleaner talked about her supervisor's lack of regard for her personal safety:

*They ask cleaners to clean high areas, up to two metres, they say, "You need to clean that." But they know that there's no tool to reach there, so they push you*

*to climb on a table or chair or whatever. But if you have an accident then they say, "It's your fault because we told you don't climb there." (C8)*

This is demonstrative of the cynicism that some cleaners have developed around OHS training. Many cleaners viewed OHS training as a way for the companies to protect themselves from claims for workplace injuries, rather than as an approach to protecting workers.

### **7.5.2 Safety**

One of the primary issues in regards to protecting cleaners is the identification of efforts to ensure workers' safety. Regulations set out in the *NSW Occupational Health and Safety Act 2000*, which is reinforced in the EBAs and the contracts, state that employers must take measures to ensure workers' safety in the workplace. In this research 26 of the 38 participants worked early mornings or late evenings, often alone and in the dark. This research investigated whether these cleaners had adequate lighting to avoid tripping or falling in the dark, or a plan of action if they were approached or threatened by an intruder.

Ten of these 26 cleaners did feel safe because efforts had been made by company supervisors or site managers to improve their safety (C4, C5, C9, C10, C12, C13, C15, C22, C33 and C36). Two of these cleaners carried personal alarms with them, which were devices they could turn on to make a very loud noise if they were in danger (C15 and C36). These ten cleaners also worked on sites that were well lit with sensor lights or lights left on during times they worked in the dark. Activities such as walking around the perimeter of a school to unlock gates or collect rubbish were done in groups of two or more people to ensure everyone's safety. A further six cleaners said that although no provisions had been made to ensure their safety they did feel safe on their site (C17,

C27, C30, C31, C32 and C37). Some areas where the cleaners work around Sydney are more dangerous than others, however these cleaners were moving around poorly lit sites, so at a minimum they had a higher risk of tripping and falling.

The tasks of locking and unlocking gates and arming and disarming alarms were not allocated to any educational or administrative workers at schools during the 2006–2011 contracts. Principals and deputy principals objected to having another task added to their already overwhelming workloads, so in most cases the tasks fell to the school cleaners (SP 2). Conveniently, cleaners are usually first on the site and last to leave. This not only creates justification for them having the added tasks of locking up and arming/disarming alarms, but in most schools it means that cleaners form an informal, untrained and unarmed security force, keeping watch over the sites in the early hours of the mornings and late into the evenings.

*They'll often report things to me on the Monday, as a deputy, when I'm in there early. They're the first ones you see, they're the last ones you see when you leave of a night-time. And they take it really seriously, they'll tell you if there's something happening around the school, if they suspect something illegal is going on, they'll let you know.... It extends the security." (TF 1)*

One contracted cleaning company manager explained that the contracts include neither provision for the time taken to walk the perimeter of the school to open and close gates each day, nor provision for the OHS risks for cleaners walking alone in the dark to perform this task (CM 3). The impact on cleaners is twofold:

*The cleaners aren't meant to do it and it takes up to an hour a day, but we're not getting paid for them to do it. We keep telling them not to do it because while they're doing that then they're not cleaning and then an inspector comes along and says you haven't done this and then we get into all sorts of trouble.... From an OHS point of view the opening and locking of gates helps task variation but it's not a good thing because we have to consider workplace violence.... They're meant to lock themselves in the school and in the buildings*



*and this is a huge issue, we have been caught out a couple times and we don't want it to happen again. (CM 3)*

The contracted cleaning company manager's note about being 'caught out a couple times' is a reference to workplace violence; when cleaners are left isolated and unprotected, some have been assaulted in some way. It is likely that the fact that this task was not included in the 2006–2011 contracts had at least as much to do with government not wishing to address the workplace violence risks for cleaners, as it had to do with government's disinclination to pay more for the time taken to do this. This task was only added to the 2011-2016 contracts on the basis that principals were able to negotiate to add this task if they reduced another task. The impact on cleaners' workloads of not including required tasks in the contracts will be explored in more detail in the following chapter on the impact of contract provisions for cleaners' labour standards.

In terms of cleaners feeling safe on their worksites, ten cleaners commented that they felt unsafe while they worked as no provisions were made to improve their safety (C1-C3, C6-C8, C14, C16, C26 and C35). Most cleaners knew that if they felt threatened by an intruder the recommended procedure was to lock themselves into a room and call security. No cleaners or other interviewees mentioned the possibility of calling police. In situations where security had been called, they took between half an hour and four hours to arrive on the site. One cleaner talked about how unsafe she felt on her site without an alarm (C23). She said there was an incident when she was confronted by an intruder, but there was nothing she could do except shout and luckily he ran away. Another time the same cleaner had seen her colleague being chased by a male intruder on the site and she ran to her colleague and was able to lock them both safely in a building, keeping the intruder on the outside (C8). Some cleaners recounted harrowing

stories of intruders threatening them as they sat shaking inside locked buildings, and some knew of colleagues who had been assaulted while working (C3, C22, C26, C29 and C33). Another cleaner said she had never been told what to do if there were intruders, and when she was approached by drunken intruders she had had no idea what steps to take to protect herself (C35).

Other cleaners were unhappy with the way their supervisors and school staff had little regard for their safety. One cleaner recalled his first time on a new site:

*I remember being handed a set of keys and being sent off into the pitch black of the morning somewhere and having no idea, absolutely no idea. (C15)*

Not all requests for better protection or lighting were taken seriously. One male cleaner asked for broken sensor lights to be fixed so he could see in the dark because he found his site 'scary' (C1). His supervisor belittled his requested, saying,

*There's a lot of women working with the same company, they do the same job and they never have any problem. (C1)*

Three of the cleaners asked their site managers repeatedly for adequate lighting, but had particular problems with school staff refusing their requests on the grounds that lighting was too expensive to operate (C4 and C5) or, in one instance neighbours complained about lights being on (C7). For one male cleaner this meant:

*The school is pitch dark and I'm on my own in the dark in the morning. This is a big issue because I have no way to defend myself. (C7)*

Another male cleaner was working in a high risk area, and when asked if he felt safe on his site he replied:

*No I don't really feel safe at all. The security won't come at night time because it's too scary. (C14)*

In summary, supervisors and on-site staff did not always take their cleaners' safety seriously. Some cleaners felt belittled or ignored when they requested better protective measures. Failure to ensure the safety of workers is a breach of both labour law and the contracts for services.

### **7.5.3 Injury management**

Cleaning is often considered to be low impact work that is natural and undemanding for women (Seifert and Messing, 2006: 130) and by this rationale cleaning is even easier for men. Three of the male cleaners who participated in this research actually explained that they became professional cleaners because they had health problems when doing more strenuous manual jobs and needed to find low-impact work. However, the physical demands of cleaning are usually underestimated (see Seifert and Messing, 2006; Sogaard *et al.*, 2006). This is borne out by more than two thirds of the cleaners involved in this research having suffered injuries in the course of their work. Of the 38 cleaners, 27 had been injured at work, and 17 of those cleaners had suffered multiple injuries from cleaning. Injuries that arose included repetitive strains to backs, shoulders, arms and knees as well as injuries from falls at work.

A troubling finding was the reluctance of nine cleaners with injuries to report their injuries and claim workers' compensation to assist with their rehabilitation (C2, C6, C7, C8, C12, C25, C31, C34 and C34). This typifies the way in which vulnerable workers, like these school cleaners, are 'especially vulnerable to implicit/explicit pressure not to make workers' compensation claims' (Quinlan, 2004: 34). Two cleaners explained that they were fearful of reporting their injuries because they had seen other cleaners do so and as a result:

*The company starts pushing them to go because they are injured... The next contract, the next company doesn't want those people. (C7 and C8)*

One cleaner explained that she had claimed workers' compensation for an injury some years earlier, but that injury had returned and she was reluctant to claim because she was fearful of her job security if she made multiple claims (C11). She was scared she would be told not to go to work if she claimed. Furthermore, she did not like the idea of sitting at home doing nothing and wished the workers' compensation would simply compensate her medical bills, while allowing her to continue working:

*I like to work, I not want to sit home. I want to just claim physio. (C11)*

Another cleaner explained that although she had suffered multiple repetitive strain injuries to her back as well as slipping at work, she did not like the idea of not going to work (C2). To minimise the risk of slipping on the tiles at her work she purchased a new pair of shoes every month. If she took time out from work she only ever claimed sick leave and never reported the injury. She stated:

*I prefer to work than stay at home, so I don't. (C2)*

The nine cleaners who had suffered injuries from their work but not made claims said they were scared to report the injury as they wanted to be perceived as good workers who were doing a good job. There were underlying fears amongst many of the older workers that they would be managed out of their jobs if management perceived there was a risk of them being invalidated from the work and claiming long-term workers' compensation (C6, C7, C8, C12 and C31).

*We're scared to report minor injuries because we will lose our job and we don't like to take compo for big injuries because the company will push us to go. (C6)*

Another deterrent to claiming workers' compensation was the adverse experiences cleaners and their colleagues had when dealing with staff from the workers' compensation company.

*Workers' comp whinges and whinges. They don't like to pay and they ask why I go. It's very hard to get workers' comp. (C16)*

*When you are on compo they push you, they ring you at home. Most of the pressure is from the insurance company. (C7)*

*The insurance company rings you all the time and says, "Get back to work." (C8)*

For NSW government contracted cleaners there is a high level of commitment to their work, with the cleaners in this research working an average of 15 years as school cleaners. The long term effects of repetitive work loading stress onto shoulders, backs and arms is evidenced by the high number of cleaners who have multiple injuries. The fear that they will be forced to opt for early retirement because of their injuries is evident in their reluctance to claim workers' compensation to rehabilitate these injuries. Sogaard *et al.* (2006: 150) also found that most cleaners suffered injuries that invalidated them out of their profession or forced them to retire early. The cleaners in this case study who had claimed workers' compensation typically had negative experiences and felt bullied to return to work.

#### **7.5.4 Bullying and harassment by company supervisors**

The inclusion of bullying and harassment provisions in the state and federal labour law legislation has been outlined in *Chapter 3*, Sub-section 3.1.4. Bullying and harassment are prohibited in the workplace under the *Occupational Health and Safety Act 2000 (NSW)*, which is reinforced by the EBAs and the contracts. This legislation states that the employer is obliged to ensure the health and safety of all employees, which includes prevention and protection from bullying and harassment.

Bullying and harassment by company supervisors was one of the most pervasive problems that emerged during the interviews with cleaners. Earlier research identifying a correlation between contracting-out of services and the increased incidence of bullying and harassment was included in *Chapter 3, Section 3.4* (see Fraser, 1997; Quinlan *et al.*, 2001; Ironside and Seifert, 2003; Hutchinson, 2011). The majority of cleaners in this research (25 cleaners) talked about their company supervisors using fear and intimidation tactics to threaten cleaners to comply with their demands.

Contracted cleaning companies acknowledge that bullying and harassment is a big problem. One company offers a freecall telephone number for cleaners to call and talk about any workplace problems, such as bullying. This company also has a company ombudsman, and cleaners are all given the direct mobile telephone contact number for a high level company manager whom they can call anytime of the day or night to air their workplace problems. This is an innovative way to give cleaners an avenue for expressing their issues, while providing management with a 'safety valve', a way of identifying problem areas or problems with supervisors before these issues get out of hand (CM 1). In spite of these efforts by one company, a former contracted cleaning company manager explained why bullying and harassment was so widespread from the perspective of the companies.

*Yes, it happens, it has always happened because I think that most of the supervisors are male and many of the supervisors are from countries where there is a male dominance. So the males are used to getting their way, or used to giving orders, or used to being obeyed, that's particularly so in many countries, which is a cultural thing. (CM 1)*

Four of the cleaners talked about how the best strategy for dealing with their company supervisors was to keep out of their way as much as possible (C14, C15, C17 and C37).

*The culture is keep your head down, the less you see of them the better. (C15)*

Another cleaner explained that she kept clear of her supervisor after a bad experience. She had asked her supervisor for assistance, as colleagues stood by to watch her doing heavy lifting on her own, but he had declined to help:

*The supervisor said to me before that he'll move me from [my site] and put me at another [site] if I didn't be quiet.... It's not fair because you're working hard and then if you say something then the boss says, "You do it all, or you'll be moved to another school" for no reason. You have to shut up and say nothing. (C20)*

Many cleaners talked about being threatened with relocation to another site or even redundancy if they spoke up to their supervisor or asked for help (C13, C16, C20, C24, C25, C30, C32 and C38). One cleaner who questioned his workload said that:

*They threatened to sack me.... they made me drive out to [head office] in my time and didn't pay me. (C32)*

Other cleaners had supervisors who resorted to bullying and harassment to assert their power over their cleaners:

*My [supervisor] would be nasty and belittle me.... he'd ring me at home and tell me he'd been at the school and it was dirty. (C32)*

*That's a problem that we have here with some of our management, they speak to you like you're a pig. (C34)*

Another cleaner had a supervisor she thought of as a 'male chauvinist pig' who was degrading, and along with his boss, would threaten to sack the cleaners if they complained (C29). Sometimes on-site staff would interject to protect the cleaners from their supervisors. One cleaner talked about how her supervisor was a bully and her school principal had seen that so would not allow the supervisor to come to the school because, 'He doesn't want us upset' (C17).

When supervisors wanted to move cleaners to different sites they could also use intimidation to 'persuade' the cleaner to move sites. One cleaner explained what had happened to her:

*He said, "I want you to come up to [head office]." I said, "No, I can't do that, I have things to do at home, I can't do it." He said, "You better be there." Mind you they don't pay you, but you have to be there. I said, "What's it all about?" And he said, "It's an OHS issue or something like that." I said, "I've done all the paperwork." Like they were making out they were going to train me or something. I got up there and both of them railroaded me into signing papers and transferred me out of there. It was full-on and after you've been working, you've been up since 2.30am, you don't want to listen. So I went up there in the middle of the day and they didn't pay me and they just said, "They don't want you back there at [the school], so we're transferring you and you're not to go back." I didn't get a chance to go back and speak to any of the teachers, no nothing. One day I just disappeared, they took my keys. (C38)*

The experience was varied and not all cleaners had these kinds of problems with their supervisors. Other cleaners talked about having a good working relationship with their supervisors, finding them supportive and helpful (C2, C9, C19, C27, C33, C35 and C36).

*My supervisor's a good man, he doesn't come to me and say, "You have to do that." He just says, "Try to do this." He's a good man, I like him. (C9)*

*If my supervisor finds fault it is with good reason and he praises a job well done. (C35)*

However a common sentiment was that most supervisors did not encourage or appreciate the cleaners. Many cleaners said they would just like their supervisors to speak nicely to them, to praise them for work well done, and show them respect.

*They don't appreciate what you do for them. They don't say thank you. They just say, "You didn't clean that properly." (C34)*

*They seem to always try to keep you down rather than lift you up. (C28)*



There are grievance procedures included in the EBAs for these cleaners, but the cleaners are unaware that the EBAs give them the right to seek conciliation with the assistance of a union (or other) representative. Cleaners gave examples of where supervisors used threats, instead of following the grievance procedures prescribed by the EBAs:

*The first supervisor doesn't solve the problem and then the next supervisor should come here and solve the problem. Now they leave the problem. They say, "If you don't like it, go home." (C16)*

This cleaner explained that he felt powerless because he had limited alternative work options. He felt his only option was to just put up with this treatment.

In instances where supervisors were held to account by the union or the on-site staff, they did not always respond well:

*He used to come there bullying all the cleaners and say, "You have to do this otherwise you go home. If you don't do this you lose your job." (C22)*

Clearly, grievance procedures were not being followed at workplaces where bullying and harassment was occurring. Instead, there were numerous instances where on-site managers or staff were stepping in to conciliate or protect the cleaners. Cleaners working in isolation typically have limited understanding that bullying is prohibited by law, let alone know the grievance procedures to follow when bullying occurs. Acceptance of bullying by supervisors is also consistent with the cleaners' fear of losing their jobs because they have limited alternatives and are dependent on the income, as was mentioned earlier in this chapter. The prevalence of bullying by supervisors, found in this study, is consistent with findings from other studies that have reported an increased incidence of bullying when services were contracted-out (Quinlan *et al.*, 2001: 348), and in particular, when the GCS was privatised (Fraser, 1997).

## 7.6 Discussion

This chapter has identified that there is poor compliance with minimum labour standards for school cleaners. Three of the cleaners were employed by subcontractors, who paid well below the legal minimum wage and failed to meet other labour standards obligations for these cleaners. Pay and leave entitlements were undermined, bullying and harassment were rife and fear of dismissal weighed heavily in decisions about asserting their workplace rights. The precarious nature of being employed illegally exposed these cleaners to the dark underside of contracted cleaning, where corrupt practices gave employers undue power over how these cleaners worked and lived. This constituted a serious breach of contract and a serious breach of the labour law. By contrast, small breaches occurred for cleaners who were employed directly by the lead contractors. These cleaners experienced difficulties from time to time in receiving their correct wage entitlements and small amounts were left unpaid. Furthermore, almost half the cleaners were working unpaid overtime and the majority of these did so for fear of reprisal or job loss.

There was no evidence of the FWO monitoring labour standards for school cleaners. Nor was there evidence of the FWO using labour law enforcement mechanisms such as on-site inspections, civil proceedings, or other court based actions to compel or even encourage employers to comply. The FWO 2010–2011 campaign to improve compliance in the cleaning industry, which was discussed in *Chapter 5* Sub-section 5.1.1, did not encompass school cleaners because the level of complaints the FWO receives from NSW school cleaners is low compared to other cleaners. This is not to suggest that the large companies holding NSW government cleaning contracts would not have been exposed to the FWO awareness campaigns – they could have experienced auditing in

other sectors they were working in. In this sense the FWO campaign would have had an influence on the behaviour of the contracted cleaning companies. The campaign did not, however, directly impact on NSW government cleaning contracts, in spite of the egregious problems experienced by subcontracted cleaners. Nevertheless, NSW school cleaners are thought to be in a much stronger position than other cleaners in Australia because of their longevity of employment and high level of trade union participation (UV 1 and IC 1).

Furthermore, school cleaners taking part in this research did not consider the FWO as a 'port of call' if problems arose in their workplace. Indeed, none of these cleaners considered lodging complaints with the FWO when labour standards were breached. This speaks to the findings of Weil and Pyles (2005) from *Chapter 5, Sub-section 5.1.2*, that vulnerable workers are less likely to report infringements for fear of retaliation, or simply because they are not aware of their rights. United Voice was the principal source for advice and support when labour standards issues arose for school cleaners, demonstrating that the union plays an important role in monitoring and enforcing labour standards for school cleaners. More significantly, the role played by United Voice in monitoring labour standards for school cleaners emphasises the salience of Weil and Pyle's assertion that trade unions are required to facilitate workers exercising their rights. This is also consistent with the responsive regulation model, which promotes the importance of involvement from trade unions to build a participative and communicative regulatory environment to effect improvements to labour standards (Howe and Landau, 2009: 586).

Similarly, there was little evidence of government agencies that oversee the contracts monitoring or enforcing labour standards provisions in the contracts. Even in

the case of extreme breaches of minimum labour standards for the subcontracted workers, there was poor evidence of government agencies, or the SCCB, using contractual enforcement mechanisms to improve compliance. The Cleaning Communications Group described in *Chapter 5*, Sub-section 5.1.2 provided an opportunity for United Voice to inform the government agencies overseeing the contracts of the problems with subcontracted workers. Therefore the agencies and the SCCB were aware of these problems (UV 1).

Reasons for government reluctance to use the threat of contract termination in the case of breaches of labour standards clauses in the contracts were evinced in *Chapter 2* Sub-section 2.2.3. In particular, labour standards clauses are considered extraneous to the contract and therefore unlikely to be legal grounds for contract termination. *Chapter 5* Sub-section 5.2.2 showed that even when the DEC was dissatisfied with the quality of service and tensions had arisen with one company in 2009, there was trepidation about not renewing expiring contracts for fear of litigation. Nevertheless, contracts with this company were not renewed and litigation was not pursued. The point, however, is that government agencies, with the support of the SCCB, did renew contracts at that time with a company that was known to be subcontracting to companies that illegally hired and underpaid workers. In fact, government agencies and the SCCB awarded the new 18 month contract in 2009 to the company that was breaching labour standards. This was a clear sign that these government bodies were not concerned about enforcing compliance with labour standards through contractual mechanisms.

It must be noted however that the company that was subcontracting to undermine minimum labour standards was not awarded a new contract for the

2011–2016 contract term. This was largely the result of pressure from United Voice, rather than investigations into allegations conducted by government agencies involved with the contracts (UV 1). So ultimately contracts for cleaning services with this company were withdrawn, but government agencies and the SCCB never admitted that labour standards infringements were the reason for not awarding this company cleaning contracts. Moreover, the non-renewal of contracts with a company that had a poor relationship with school principals was treated with more urgency than the non-renewal of contracts for a company that was using subcontractors to undercut labour standards for the cleaners. A logical conclusion of this is that poor quality of cleaning services for the schools, and troubled relationships with school principals and the trade union, is a more serious matter – more deserving of sanctioning ongoing contracts for services – than breaches of labour standards for the cleaners providing those services.

Meanwhile, the monitoring and enforcement of OHS standards for cleaners was also found to be problematic. The regulation of OHS for the cleaners is conducted through a range of conflicting messages. Stringent OHS requirements in the contract and supporting documents target the construction industry, with poor applicability for the cleaning industry (as was elicited in *Chapter 6*, Sub-section 6.2.1). OHS management is complicated by the fact that cleaners work on isolated sites, where they rarely see their direct supervisors, but frequently see the clients who have a role in managing the work they perform. Ryan (2007b) and Alcorso (2002) also found that OHS problems are accentuated for cleaners because of the isolation of their workplaces. This case study found that OHS can be divided into matters that can only be managed on-site and matters that can be managed externally by the company supervisors.

Measures like outdoor lighting to minimise tripping hazards in the dark and security fences to protect isolated cleaners from intruders can only be managed by on-site managers. Yet, on-site managers are not the employers and are not focused on upholding OHS standards for cleaners. This research found that principals are understandably focused on managing their own staff and students. The DEC also made clear that their primary focus is on OHS for staff and students and quality of cleaning. Cleaner's OHS standards are expected to be managed by the contracted companies. This is an example of where the complexity of cleaners' working relationships means that the client has a bearing on OHS standards for their service providers. This is consistent with other scholars' findings that contracting arrangements obfuscate the employment relationship and have a deleterious effect on OHS (Johnstone *et al.*, 2001; Alcorso, 2002; Lobel, 2005: 1092-1095; Johnstone and Quinlan, 2006: 275; Quinlan, 2006: 33-34).

The other way OHS can be managed is externally, by the company supervisors. Companies seek to improve OHS and implement training largely because there are economic incentives to do so. This is a curious situation where, in spite of external regulations of OHS standards by the NSW government and financial incentives for companies to minimise days lost (due to the dual impacts of costs of replacing lost days and increased workers compensation premiums), government adds an extra layer of financial incentive through the bonuses for minimising days lost due to injury. The federal government then adds another layer of financial incentive through the Australian Government Training Contribution. The result is somewhat perfunctory OHS management for most cleaners, with few cleaners perceiving they gain any benefit or knowledge from OHS management and training. From the cleaners' perspectives, the minimisation of days lost due to injury was the result of dual pressures from workers'

compensation companies not to claim and fear of being retired early if they were seen to be injury prone. Many cleaners had a cynical view of OHS training and management being little more than a mechanism for employers to protect themselves, rather than their employees.

Bullying and harassment was also found to be rife. There was an unfortunate frequency with which supervisors resorted to intimidation and fear tactics in place of good communication and negotiation to manage the demands of their cleaners as well as their clients. Twenty one of cleaners recalled instances where they were bullied or harassed by their company supervisor. Cleaners were fearful of repercussions if they reported bullying, in spite of the fact that bullying is outlawed under the OHS legislation and reinforced by the contracts and the EBAs. Indeed, if adverse action is taken against a cleaner as a result of them lodging a bullying and harassment complaint they can make a claim under the Fair Work Act general protections. However, none of the cleaners were aware of these rights, nor were they aware of the grievance procedures included in the EBAs. Cleaners tended to keep their heads down and try to stay out of trouble, and when problems arose they often relied on on-site managers or staff to step in and speak up on their behalf or even ban the supervisor from entering the site. This is consistent with Quinlan and Johnstone's (2009: 439) suggestion included in *Chapter 3*, Section 3.4, that workers are increasingly reluctant to report OHS problems like bullying and harassment as workplaces become less collectivised.

## **7.7 Conclusion**

This research has shown that there was minimal monitoring, poor enforcement and consequently rare compliance with both labour law and labour related contract conditions for NSW school cleaners. The FWO was conspicuously absent in the

enforcement of labour law, considering there was an FWO campaign underway to improve cleaning industry labour standards for the duration of this research. This highlights the need for trade union involvement in facilitating vulnerable workers, like cleaners, to understand and assert their workplace rights. For school cleaners, United Voice played a seminal role in monitoring labour law regulations and reporting problems. The trade union's capacity to enforce labour standards was impeded by having limited measures available for enforcing labour standards through labour law mechanisms. These minimal labour law regulatory mechanisms for unions to enforce labour standards were illustrated in the responsive regulation pyramid, Figure 3.2 in *Chapter 3*. Instead, the union relied on applying pressure to the employers and government agencies overseeing the contracts.

The inclusion of provisions in the contracts to protect cleaners' labour standards also fell short of effective regulation. Government agencies that were overseeing the contracts showed no interest in monitoring compliance with labour standards provisions that were included in the contracts. There was an expectation that contracted companies would comply because they had a financial incentive to do so if they hoped to be awarded future contracts. In practice, however, the serious infringement of labour standards provisions was not treated with the same degree of severity and urgency as rumoured problems with quality of service or troubled relationships with school principals and the trade union. Trade unions were integral in reporting labour standards issues to the government agencies overseeing the contracts and they were formally enrolled to play this regulatory role through the Cleaning Communications Group.



## Chapter 8

### Contractual Terms and Conditions of Employment

#### Introduction

The NSW government cleaning contracts reinforce the labour standards that are prescribed through labour law by including provisions that refer directly to upholding relevant state and federal labour related laws, including modern awards and EBAs. In the previous chapter, it was demonstrated that the government bodies overseeing the contracts show little interest in monitoring and enforcing the labour standards provisions included in the contracts. United Voice is, again, the primary body monitoring these aspects of the contracts and pressuring the government bodies to enforce the labour standards. United Voice has limited measures for directly enforcing both labour standards and labour standards provisions in the contracts, and is reliant upon government agencies, the SCCB and the FWO, to respond to pressure to enforce labour standards.

In this chapter, the exploration of how labour standards are regulated through the contracts is expanded beyond clauses that directly pertain to conditions of employment. Much of the focus will be on contractual regulations that have an impact on the cleaners' working conditions; which are the more flexible conditions of employment (Murray, 2008: 132). These regulations include contractual requirements for monitoring and reporting cleaning processes, specifications for the supply of adequate equipment and materials and the suitability of contracts for school cleaning services. Compliance with NSW government cleaning contract specifications will also be examined in this chapter, highlighting the extent of problems with augmented workload

pressures for cleaners. The problem of compounding workloads and intensification of work pressures was foreshadowed in *Chapter 6*, Section 6.1. Efforts by federal and state government agencies to redress the resultant impacts on OHS were outlined in Section 6.2 and the effects of those measures have been discussed in the previous chapter. A discussion of compliance with clauses that have been added to the contracts to harness workload intensification, and uphold the quality of cleaning services is also included in this chapter.

This chapter is divided into four sections. Compliance with various contractual requirements that involve monitoring and reporting cleaning processes is explored in Section 8.1. These requirements are designed to improve the quality of cleaning services; largely by increasing accountability of the contracted cleaning companies and ensuring they are giving cleaners adequate time to complete their required tasks. Compliance with contract specifications for companies to supply their cleaners with adequate materials and equipment is examined in detail in Section 8.2. The suitability of the system of contracting for the school cleaning sector is addressed in Section 8.3. In this section the difficulties that arise from fitting a wide range of cleaning sites into a one-size-fits-all cleaning contract are elucidated. One contract cannot and does not succeed in meeting the nuanced requirements of each individual site. Finally, we will return to the most pervasive problem this research has found for school cleaners, with a broader analysis of the intensification of workload pressures for school cleaners in Section 8.4.

### **8.1 Monitoring and reporting: Contract requirements**

There are many ways in which the NSW government school cleaning contracts have been modified to include provisions to protect cleaners from increasing workload

pressures. These provisions have been included in part as a result of trade union pressure on the government agencies overseeing the contracts to restrain companies from pressuring cleaners to perpetually increase their productivity (UV 1 and T 1), and also as a result of pressure from school staff and their representatives to uphold the quality of school cleaning (T 1, TF 1 and TF 2). These two objectives are closely linked, because if cleaners have sufficient time, materials and support to perform their tasks, then they are likely to perform better quality cleaning.

The first measure explained in this section, with the objective of upholding the quality of school cleaning, is the DEC inspections, covered in Sub-section 8.1.1. The second measure, is the online reporting system, called WEBClean, used by the DEC to remotely monitor contract compliance at each site. WEBClean was introduced in this thesis in *Chapter 5*, Sub-section 5.2.3. The cleaning communications book is another measure to improve communication between the cleaners and parties to the contracts, and this measure is described in Sub-section 8.1.3. The cleaning communications book was first introduced in *Chapter 6* in the profile of NSW school cleaners, Sub-section 6.5.1. Companies are also required to submit regular reports to the DEC on the cleaning processes and outcomes and these are described in Sub-section 8.1.4. The final Sub-section, 8.1.5, examines the requirement that cleaning companies replace absent cleaners with relief cleaners in order to meet the contract requirements.

### **8.1.1 Department of Education and Communities' Inspections**

The introduction of the DEC inspections from 1996 and subsequent phasing out from 2010 was explained in *Chapter 5*, Sub-section 5.2.4. These inspections provided a system to monitor cleaning quality and frequency (DEC 1). For the period of this research the DEC inspections still occurred a few times per year at selected sites, but

inspections at most sites had ceased. Cleaners who participated in this research were intensely aware of the inspections and focused on these as primary mechanisms for monitoring their work. From the cleaners' perspective the DEC inspectors did little to support them in their work. Almost one in three cleaners in the case study felt victimised by the inspectors. Cleaners felt that ultimately they were the end of the line and were held responsible if cleaning was not up to standard, regardless of the reasons for the cleaning being substandard. This was in spite of the fact that it was DEC policy to deal directly with the area supervisor or higher levels of management for the contractor to resolve problems with cleaning quality. The DEC had an official policy to never 'blame' the cleaners (DEC 1). In practice, however, feedback from inspectors was seen by the cleaners and sometimes used by supervisors, as a form of threat or punishment (C6, C14, C16, C19, C30-C32, C34 and C36-C38). A former deputy principal commented that the DEC inspections were a source of great stress and fear for the cleaners at her school.

*The cleaners were in fear of him, it was interesting to watch the dynamics of what was happening within the school. They were very fearful that he would actually be critical of what they'd done. (TF 1)*

Company supervisors also use the DEC inspection outcomes to pressure cleaners more and made it clear that they were to blame for failures, without taking into account other factors, such as inadequate allocation of cleaning hours or equipment for the tasks required (C3, C13, C14, C16 and C32).

*When we failed the inspection here the supervisor was blaming me for everything that was wrong here. (C3)*

Many cleaners indicated that they took the comments written by the inspectors very personally:

*I hate him! Whenever he comes out he always finds something.... he's gonna find fault, it doesn't matter how much good work you do. (C36)*

*It's very bad, they complain about everything, they write all these pages: 'This is not good', and then the supervisor push push push – very bad. (C16)*

Many cleaners lamented that they wanted to be treated with respect by the inspector (C1, C16, C23, C34, C36 and C37). They did not appreciate the inspectors only coming when they were absent from the site and leaving them notes. They would prefer to have them come during the cleaners' shifts and treat them with dignity and respect.

*I want them to come and just talk nicely to us and ask us how we're going. (C23)*

And some of the demands made by the inspectors were unreasonable or peripheral at best (C10, C34, C35 and C37):

*I used to have a bloke who would tell me to clean the rafters on the roof. (C10)*

Cleaning rafters is not part of the regular work schedule for school cleaners. This view was corroborated by both a school principal and a deputy school principal (SP 4 and SP 5). The deputy principal explained that inspectors were oblivious to his day-to-day requirements in running the school, like toilets that needed to be cleaned twice daily, focusing instead on irrelevant or peripheral matters, such as dust on the top of architraves (SP 5).

One cleaner made the comment that the inspectors never made efforts to understand the reasons why sites may have failed inspections or took measures to redress those issues:

*The inspector comes out and fails [the site] then they just re-inspect in a few weeks time but there is no real looking at why it failed. If there was a proper quality assurance mechanism in there then companies would know that they had to increase hours, but there isn't. (C31)*

To illustrate this point, in a number of cases cleaners had genuine problems with excessive workloads (C6, C14, C16, C19, C27, C31, C32 and C34), but inspectors made no allowance for this. Instead inspections added to the pressure and the level of disempowerment cleaners felt over their workload requirements. In one instance the cleaner and his colleague at the site were both working an extra one and a half hours each evening, unpaid, to finish the work required (C6). The inspector did not take into account the inadequate hours being allocated to the site; instead the inspections compounded problems for this cleaner:

*He came and wrote the comments, this is not clean, this is not clean. When he wrote the comments I told the principal we cannot do the job because there is not enough time. She understands... She asked the inspector and the inspector said we cannot do anything because the contractors are given the job. This is a contract problem because they are given the hours. We are paying money for the contractors, certain money... The contractor is not giving on the hours they are being paid for... What can we do now? We do not want to lose the job or make trouble. We are scared so we did the job after the inspector wrote comments. We did everything, [the supervisor] brought the printout and she gave me, [saying] "[Do this] within one or two weeks time. Try to finish this." I did this during the same working time and I also go on Saturdays to do the polishing and everything... The principal told the inspector, "These two cleaners are already working too hard and they do not have enough time to do the job." The principal told the inspector but they [the DEC] did not take any action. (C6)*

In another instance the inspector focused on peripheral areas, such as the underside of louvres. The staff working on the site saw this and beseeched the inspector not to 'pick on our cleaner'. Then when the inspector met the cleaner during her shift he approached her and said,

*Just because they [the on-site staff] like you, doesn't mean you're a good cleaner. (C34)*

The cleaner was devastated by this quip. She felt like all the work she did (both paid and extra unpaid hours) was not appreciated. The inspector had also not taken into account

the number of cleaning hours allocated for that site and instead just personally attacked the cleaner.

Problems arising from the power that inspectors hold over cleaners were apparent in a number of instances. In four cases cleaners explained that the staff on their site stepped up to 'protect' their cleaner from the inspector (C6, C17, C19 and C34). There were two instances where the school principal had banned the inspector from entering the site to do an inspection for fear they would upset the cleaner (C17 and SP 1). With the phasing out of the DEC inspectors in 2010/11, problems of this nature will not continue. Cleaners who felt victimised or pressured by the DEC inspections are relieved to have this added source of pressure removed. Some school principals (such as SP 1 and TF 1) share this view with cleaners, that the DEC inspections were an extra source of stress and pressure and not necessary. Another school principal who was interviewed held a different view: that the inspectors could explain the terms of the contracts to principals and help them understand if a complaint was reasonable (SP 3). From the perspective of this school principal, the DEC inspectors play a valuable role in liaising between contractors and on-site staff. How cleaners and site managers are impacted by the phasing out of the DEC inspection system remains to be seen.

### **8.1.2 On-site monitoring of contract requirements**

The dissolution of the DEC inspectorate system means that the responsibility for monitoring and enforcing cleaning performance standards and safe work practices for on-site staff and students falls to school principals and other on-site managers. As a result on-site managers are also responsible for understanding the terms of the contracts that they are monitoring. With the cleaning contracts came a preponderance of

guidelines for school principals or deputy principals to read and understand in order to manage the school cleaning contracts on a day-to-day basis. School principals did not find this at all constructive:

*It was a huge paper overload of instructions and decimal points and counting centimetres. It was just – I refused to read any of it. I don't relate to bits of paper. I relate to people. (SP 2)*

*Our job is to be in the schools working with the kids. (SP 3)*

All but one of the school principals and deputy principals in this research had arms' length relationships with their cleaners. Only one of the five principals and deputies interviewed knew who the cleaners were at their school, what hours they worked and any personal information about the cleaners. Yet principals and other on-site managers can play a key role in monitoring cleaners on their site. This causes difficulties from the perspective of the contract cleaning company managers:

*We see a lot of where the principal tells them they love them and then tells us to get rid of them and then it's really hard when the cleaner comes to you and says, "But the principal loves me." There's a lot of that going on. (CM 3)*

As representatives of DEC, which is the 'client', school principals hold a great deal of power in the employment relationship:

*In the contract the principal can tell us to get rid of someone on the site and if the principal is unhappy with someone then that's exactly what they do. (CM 3)*

One cleaner explained that his school principal knew there was too much work for the cleaners at the school to do in the time they were given (C6). This cleaner added, however, that the principal complained immediately to the company if there was a problem and the cleaners were blamed for it. In another instance a cleaner was instructed by the principal to do extra cleaning for outside users of the facilities. (C23).



When the cleaner refused, saying it was outside the contract requirements, the cleaner was abruptly moved to another school.

WEBClean provides a forum for schools to report problems, view quality monitoring reports, OHS reports, periodic schedules and to log requests for emergency or optional cleaning (DEC, March 2006: 5). WEBClean enables school principals to lodge complaints about cleaning work; contractors can then see those complaints and address them. The DEC is simultaneously able to oversee all complaints and follow up overdue complaints or problems such as high volumes of complaints about one company. Nominally it is the responsibility of DEC staff to oversee the resolution of complaints made via the site. Cleaners do not have access to this website, nor are they privy to information contained on the site, it is a site designed for managing the cleaners. If cleaners wish to make a complaint or report a problem they are restricted to writing in the Cleaning Communications Book covered in the following Sub-section 8.1.3.

An important function of WEBClean is to keep a record of the cleaning hours that are being worked at each school, based on the agreed number of hours per week that the DEC pays the contractor to provide. According to the contracts:

*If the contractor wishes to reduce the number of hours worked at a school, the contractor must have the approval of the SCCB. (DEC, March 2006: 15)*

The contracts also state that:

*If, due to an increase in the size of a school the contractor is required to provide additional hours at the school, the contractor must not load up cleaners with more duties without any adjustment of their hours worked. (DEC, March 2006: 15)*

The case study research for this thesis found little evidence of compliance with these provisions. In practice the number of cleaner hours being paid for at each site is

poorly documented and rarely understood. The number of hours on the WEBClean system (taken from the contracts and representing the hours being paid for by the DEC) rarely match the number of hours cleaners are working in the schools. The system of checks and balances put in place by the DEC and the DFS to oversee this is inadequate, at best. This problem was brought to light when an audit was begun in early 2011 by the DFS and the DEC to check if the cleaning hours listed on WEBClean matched the hours being worked by the cleaners. DEC staff had visited 25 sites before they found one site where the number of hours being paid for matched the number of hours being worked in the school (UV 1).

*You would think that if you were managing any kind of business that you would want to know what you're getting is what you're paying for. (UV 1)*

When the hours being paid for under the contracts exceeds the number of hours of cleaning being delivered by the contractor, this has obvious repercussions for cleaners' workloads. The lack of clarity is exacerbated when companies record inaccurate hours in the on-site register of cleaning hours:

*[Our supervisor] told us to put more hours than we had worked in order to make the school think they were getting all the hours in the contract. (C5)*

This has an impact on the cleaners' workload pressures, whereby they are being pressured to perform more tasks in a shorter period of time by their company supervisors. Meanwhile, representatives of the client, such as school principals and site managers expect a standard of cleaning that is representative of what they are paying for the service, while remaining ignorant to the actual number of cleaning hours being delivered.

It is the responsibility of the contractor to provide a register of the numbers of cleaning staff and their hours to the DEC at the end of each contract year (DEC, March 2006: 13). Technically the SCCB should approve any reductions in hours. In practice there was some evidence of a government approvals process for changing the hours worked, but this was only used by the most compliant companies. A cleaning company manager remarked:

*They tell us we can't change things on the site without permission.... For example the hours worked, we can't change them.... I think it's good because then contractors can't come in and cut hours without being able to justify how they're doing that.... It's very controlled from their point of view. I think, in a way it seems to keep the good companies honest but I don't know that it's doing anything for the contractors that aren't so compliant.... Other contractors seem to do a lot of things that aren't within the contract and get away with it and I don't understand how that happens. (CM 3)*

Another cleaner, who was working as the leading hand at her site, explained the problems that arise from poor monitoring of cleaning hours being delivered under the contracts (C22). She talked about how all the cleaners' hours had been reduced recently, yet they had exactly the same workload. The union fought successfully to get their hours reinstated, but five weeks later the company reduced the hours again and pressed the cleaners to do even more tasks. The leading hand advised the cleaners not to do the extra tasks because she said they did not have time. She then added:

*But most of them are scared so they shut up and do it. (C22)*

There is another fundamental practical problem with school principals and site managers being responsible for using WEBClean to monitor the workloads of cleaners and ensure the government is receiving the cleaning hours they are paying for under the contracts. This problem is that no more than five per cent of school principals are using WEBClean (UV 1). Most principals refuse to use it because they passively object to

the volume of administrative tasks dealt out to them by the DEC (UV 1, SP 2, SP 3, SP 4 and TF 2). In fact, when WEBClean was introduced the Public Service Association placed a work ban on it to protest against the excessive workload demands placed on school principals and deputy principals. It is likely that many school principals do not realise this ban has been lifted (UV 1). When one school principal was asked whether he used WEBClean the response was

*What's that? Is that a sufficient answer? I couldn't care; it has no bearing on my practice. (SP 4)*

### **8.1.3 Cleaning communications book**

In addition to communicating through WEBClean, on-site managers are expected to communicate directly with cleaning staff about daily matters concerning cleaning. There are two ways this can be done: either by speaking with the cleaners and their supervisors; or by writing remarks in a cleaning communications book kept on the site. The cleaning communications book is mandated in the contracts. It is required to be kept on-site for cleaners and other parties to the contracts to communicate with each other about day-to-day matters concerning cleaning. Cleaners are expected to monitor the cleaning communications book daily. Typical items might include principals notifying cleaners of student free days, DEC or DFS comments on cleaning standards or cleaners communicating with their supervisors about details of work done. It is intended to be a two-way communication book, for principals and supervisors to record issues such as notification of functions affecting cleaning schedules or cleaning issues, and for cleaners to record issues such as damaged facilities, required maintenance or security or safety issues.

When asked about the use of the communications book, one school principal noted:

*I have a communication book and I never use it. If I can't say to the cleaner, "There's a problem in this area" that wouldn't be right. (SP 1)*

Three of the cleaners expressed similar opinions, saying they always prefer to talk directly to people where they can (C2, C7 and C8). However, the majority of cleaners in this case study did use their cleaning communications book (23 of the 38 cleaners). Other cleaners were suspicious about how comments in the book were received by their supervisors. Four cleaners noticed that their supervisors ripped out pages if they wrote something the supervisor did not like, such as not having materials required to clean (C4, C5, C17 and C22). Three cleaners took photocopies of their communications book and kept the second copy off-site (C4, C5 and C17). Five cleaners also asked their school principals to co-sign comments they wrote in the communications book (C7, C8, C10, C17 and C38):

*I photocopy what I put in my communications book and the principal co-signs because the supervisor used to come in and steal pages out if they were incriminating. (C17)*

Because ten of the cleaners interviewed were unable to communicate in English, or were likely to be illiterate, they could not use their communications book unless they had assistance. One illiterate cleaner would ask family members or on-site staff to write comments for him and then asked the principal to co-sign the comments (C10). The subcontracted workers also never used their communications book because they preferred to keep a low profile (C24, C25 and C30). Another cleaner expressed fear of using the communications book because they did not want to 'make trouble' (C20). Another commented that colleagues had ominously advised her to 'never touch that!'

(C18). Indeed one cleaner called it the 'complaint book' and he too kept a wide berth from it (C30). One other cleaner mentioned that his on-site managers objected to him writing in the book and threatened to move him to another site for doing so (C19).

The success of the communications book is questionable with only 15 of the 38 cleaners using the communications book in the way it was intended to be used, as a two-way communication tool to report problems and communicate matters. The use of a communications book is problematic for two reasons: more than one quarter of cleaners taking part in this study were unable to read and write in English; and the communications book could be used as a tool to punish workers by, for example, threatening to move them to another site for reporting issues.

#### **8.1.4 Reporting by companies**

With the phasing out of the DEC inspections in 2010/11 monitoring of contract requirements has been replaced with on-site monitoring by principals and other on-site managers and staff, as well as self-reporting by the cleaning companies. This subsection considers the onerous reporting demands placed on contractors through the contracts. As explained in *Chapter 6*, Sub-section 6.1.1, this comprehensive and demanding reporting system raises questions about the efficiency of managing the contracts in these ways. One contracted cleaning company manager commented that:

*They tell us how to do everything basically. I must wonder sometimes why they've even bothered to contract-out. (CM 3)*

With multiple government agencies managing the contracts it is common for multiple parties to be duplicating and overlapping the management of reports. Information must also be provided to multiple parties in different formats:

*We have to provide.... ten hard copies.... we also had to provide CDs.... and all of this information was also entered into their WEBClean site. (CM 3)*

These reporting requirements have increased with each successive contract term, and companies have needed to hire more administrative staff to meet the growing reporting requirements. From the cleaners' perspective, the contracts are weighted heavily in favour of administrative staff working for the cleaning companies. This compounds workload pressures for the cleaners because:

*They seem to spend too much money on the administration. They should have these guys down on the work front doing the job. (C28)*

Another reporting requirement for the contractors is the inclusion of cleaning schedules for each cleaner to be kept in a folder on the site (CM 3). Cleaning schedules are an important tool for cleaners. A sound work schedule sets out a manageable workload, maximises task variation and optimises safe work practices. In practice, work schedules are not always provided for the cleaners. Only one company involved in the cleaning contracts provided workers with cleaning schedules, in spite of trade union pressure for more schedules to be provided. One cleaner stated:

*I asked the company for a proper work schedule and they said, "No, we can't do that." They knew as well as I do that if you divide up the amount of work I have to do in the amount of time, that it's impossible. (C33)*

### **8.1.5 Relief cleaners**

The provision of relief cleaners when a cleaner is absent is another contract condition which impacts on workloads and labour standards for school cleaners. In the previous chapter, Sub-section 7.1.3 it was discovered that many cleaners were reluctant to take their leave entitlements because they were not confident the work would be done by relief cleaners in their absence. It is a contractual requirement for the

contractors to monitor when cleaners are on leave or absent and make up any lost working hours with replacement cleaners. Failing that, the onus falls to the on-site manager to monitor any cleaners' absences and request the contractor to make up any lost hours. None of the school principals or deputy principals, who were involved with this case study had ever kept track of relief workers or requested missing hours to be made up.

When a cleaner is on leave and is not replaced by a relief worker the other cleaners are placed under extra pressure to complete their own work and that of the absent cleaner. One cleaner explained that the company has a rule that they only replaced cleaners if they were away for more than two days (C30). This is in spite of the fact that they are contractually required to replace every lost hour of cleaning.

*They say if someone is sick they wait two days to replace them, so we have to do their work. (C30)*

Three cleaners in the research said that if they took time away from work they were not replaced at all (C3, C12 and C35). A further nine cleaners complained that if a relief cleaner was sent they were not given the same amount of time to complete the work (C6, C7, C14, C18, C22, C26, C28, C31 and C34). For example, one cleaner who was interviewed said when she worked as a relief cleaner she was given one and half hours to do a five hour shift (C34). Five cleaners talked about the inadequate training of relief cleaners (C11, C14, C21, C23 and C35). Cleaners also talked about how relief workers were usually subcontracted and did not know how to do the work (C6, C14, C22, C23 and C32). As a consequence the relief cleaners would do things like bring small children to work with them, turn on alarms when entering buildings, empty sanitary bins that are managed by outside contractors because of their specific hygiene requirements, use the



mops and buckets for wet areas to clean classrooms, and in a couple of cases the relief cleaners just sat in a room and waited for the shift to end.

The result is that cleaners left at the sites bear the brunt of problems arising from relief cleaners being poorly trained and being given inadequate hours to do the work, if they were provided at all. The obligation to initiate the new cleaners and monitor their work usually falls to the cleaners at the site. One cleaner talked about the difficulties of training eight new relief cleaners within two weeks, in addition to completing his regular work commitments each day (C33).

To conclude, this section on the monitoring and reporting components of the contracts has highlighted a number of ways in which cleaners' workloads are adversely impacted when these contract provisions are not complied with. In Sub-section 8.1.1 it was demonstrated that although some school principals found DEC inspectors helpful, the cleaners were pressured to work harder as a result of the DEC inspections. In Sub-section 8.1.2 it was discovered that the number of hours the DEC was paying for were not being delivered by the contracted cleaning companies, which had obvious repercussions for the workloads of the cleaners. The success of using a cleaning communications book, described in Sub-section 8.1.3, was brought into question given the high number of cleaners who were incapable of reading and writing, and the risk of sabotage by cleaning company supervisors.

The requirements for reporting by companies were onerous, and in part designed to control workload pressures for cleaners. Specifically, the contracts require cleaning companies to provide cleaners with work schedules, which set out workloads for the cleaners that are manageable, but there was poor compliance with this requirement. Finally there was also poor compliance with this contract requirement to

recruit relief cleaners when a cleaner is absent from work. This resulted in school cleaners having higher workloads when colleagues were absent from work, and feeling pressured not to be absent themselves when they were unfit for work, as was evidenced in the previous chapter.

## **8.2 Supply of equipment and materials**

The cleaning contracts state that:

*All equipment and materials must be of commercial grade and quality. The contractor and cleaners must have a complete understanding of equipment and materials used so that optimum cleaning standards are achieved. (DEC, March 2006: 15)*

These terms were added to the contracts as a result of concerns that inadequate equipment, such as vacuum cleaners bursting into flames or being held together with tape, was contributing to the reduction in cleaning standards since the NSW Government Cleaning Service (GCS) was privatised (T 1). This thesis found problems with both the supply of materials, such as chemicals and cloths, and the supply of equipment, such as brooms, mops, vacuum cleaners and outdoor blowers. The next two sub-sections explore the issues for cleaners arising from non-compliance with the requirement for contractors to supply adequate materials and equipment.

### **8.2.1 Supply of materials**

The biggest problem that cleaners have with the supply of materials is that there are simply not enough; 23 cleaners said they did not have sufficient or adequate materials to do their work. Fourteen of these cleaners said the equipment they were given was of poor quality, which made it difficult to perform their tasks (C1-C3, C7-C9, C15, C17, C18, C23, C28, C34, C35 and C37).

*I like to do my job properly, why don't they bring me nice chemicals so I can clean the toilets properly? (C23)*

Twelve cleaners in this thesis spent many of their working hours sending faxes to order materials or calling their superiors repeatedly asking for materials to do their work (C2-C5, C10, C16, C23, C28, C29, C31, C35 and C37). Many also commented that begging for materials was tiresome and degrading (C3-C5, C10, C18, C23, C28, C35 and C38):

*When you do the order they cut it in half or they say, "I don't have it, get it to you later." And you have to ring the supervisor three or four times until it drives you nuts. (C10)*

Some cleaners developed strategies to get around this. Five of the cleaners had secret stockpiles where they kept a spare bottle of each chemical and rubbish bags (C2, C10, C17, C28, and C29). They found this strategy empowering and were proud of the way they had overcome this difficulty.

*I learned to store [laughs]! I have a secret stash. That way if something is not available at the time, I go to the secret store and use that, but then replace it when it comes back. (C2)*

Six cleaners bought materials with their own money in spite of many cleaners saying they were threatened with punishment, ranging from suspension to a \$1,000 fine, for bringing their own chemicals (C2, C17, C18, C28, C29 and C34). One of these cleaners bought her own materials because she felt fearful of asking repeatedly for supplies – she did not want to be seen to complain (C18). Most of these cleaners, however, bought their own materials as a kind of subversive behaviour; a way to assert their autonomy and take pride in doing work of high quality to spite their superiors.

*If they would provide us with good quality equipment and chemicals our job would be so much easier and we would be providing a better service and a better finish to what we are doing.... They try to stop us from cleaning.... Every*

*cleaner I know brings their own stuff in secretly. I do it, I take in Ajax because they don't give us an abrasive cleaner, they just give us the cream cleanser and there's some stains on hard floors that you can't get off. (C28)*

On the other hand, the cleaners who complied with company directions felt demoralised and disempowered by the inadequate supply of materials.

*Now they say, "Oh we are up to our budget, sorry, we can't order anymore." They are the cleaning contractor! It's not our fault they don't have any money. It's not our fault. (C4)*

The inadequate supply of materials limits cleaners' capacity to meet the contract requirement of achieving 'optimum cleaning standards' (DEC, March 2006: 15). Instead chemicals are being used incorrectly as a matter of necessity.

*They say, "Clean the tables", but we don't have stuff to clean the tables, so we use what we use for the toilets. (C22)*

One cleaner complained that there are never enough chemicals; the supervisor did not even supply floor sealer during the vacation cleaning period until they had only six working hours left to clean before students returned (C3). Once the materials arrived all the cleaners at the site helped to try to get the floor stripped and sealed on time, but the supervisor still got angry with the cleaners for not finishing on time.

Two cleaners had particular problems with their supervisors using the supply of materials as a way to antagonise and bully them (C3 and C22). One cleaner was threatened with termination and accused of playing games when he asked for sufficient chemicals to perform the required tasks during the vacation cleaning period (C3). Another cleaner waited several months for materials to arrive, saying that:

*When I ask for equipment the supervisor jokes, "Are you going to pay me?" and every time he brings something he throws it on the floor. (C22)*

## 8.2.2 Supply of equipment

The cleaning contracts state that:

*All equipment used by cleaners must be in good order and condition and fit for the purpose for which it is intended. (DEC, March 2006: 15)*

These conditions were added to the contract as a result of pressure from school staff to improve the quality of cleaning services in schools (T 1 and TF 2). The supply of equipment was also a problem for the cleaners involved in this research. Almost two of every three cleaners (22 cleaners) stated that the equipment they were supplied with was inadequate. Nine of these cleaners said they did not have sufficient equipment to safely and efficiently do their work (C7, C8, C17, C18, C23, C26 C31, C32 and C34). For these cleaners, this meant carrying vacuum cleaners up and down stairs and between buildings in the rain. Cleaners who had adequate equipment tended to be more articulate; they received their equipment if they repeatedly asked:

*Usually you can get stuff if you pester them enough. (C10)*

In contrast, one cleaner who was unable to speak English had particular problems with not being supplied adequate equipment:

*There is definitely not enough equipment and cleaning supplies to be used. There are never enough things, like brooms and wipes and mops are insufficient.... A big problem is there is only one polishing machine and I have to carry it up and down a flight of stairs. (C26: translated quote)*

The polishing machine that this cleaner was carrying up and down a flight of stairs on her own was a bulky machine that was likely to weigh at least 60 kilograms. Another cleaner spoke of how his site had recently failed an inspection due to cobwebs, but he had not been supplied with a cobweb broom, had inadequate buckets for mopping and all the equipment on-site was very old and run-down (C34).

The safety of cleaners was also a concern after a spate of old vacuum cleaners burst into flames while being used. One cleaner in this case study recounted how her backpack vacuum cleaner had burst into flames while she was wearing it and she had been fortunate to get it off her back before she was badly burned (C4). As a result additional clauses were added to the contracts dictating that general use equipment, like vacuum cleaners must be assessed annually, updated regularly and replaced every three years at the most. Furthermore:

*It is not acceptable to have vacuum cleaners with hoses or fittings taped-up or otherwise held together in an unprofessional and unsightly manner. (DEC, March 2006: 15-16)*

This research was conducted towards the end of a contract period and as a result the majority of vacuum cleaners had been in use since the contract commenced – that is for more than five years. One cleaner had vacuum cleaners that were 20 years old (C31). Old vacuum cleaners and hose fittings were usually held together with tape.

Taped together vacuum cleaners may be unsightly or even unprofessional, but few of the cleaners were concerned about it. The cleaners' workloads were impacted upon more greatly by their vacuum cleaners frequently breaking down. When equipment broke down some supervisors would quickly replace the broken equipment with a spare one and get the broken one fixed. Other supervisors were slower to respond, some taking months to fix broken equipment (C3, C16, C23, C24, C31, C34, C35, C37 and C38). These cleaners struggled to get their work done to the same standard when they had to borrow vacuum cleaners from colleagues in other buildings. Where no vacuum cleaners or outdoor blowers were available to replace the broken ones cleaners had to make do without them. Two cleaners frequently used old carpet sweepers when their vacuum cleaners were out of service (C16 and C31). Another cleaner pushed the

broom around the outside areas for four weeks while waiting for the blower to be repaired (C24).

*In a meeting with the company they said, "If the vacuum is not fixed in 24 hours then don't do the job".... They said that was the rules.... But now the supervisor says I must sweep the carpet with a broom. (C16)*

The quality of equipment was also an issue, with cleaners struggling to do their tasks with poor quality brooms, mops and blowers in particular (C18, C28, C29, C31 and C37). In one instance a school funded the purchase of equipment when the company did not provide adequate equipment. In this case the school purchased a high quality blower for the cleaner to blow clean the outside areas. The cleaner explained how this was a reflection on him and the high quality of service he provided:

*The school bought it for me because they appreciate me cleaning the grounds the way I do. (C28)*

In conclusion, the inadequate provision of materials or equipment for school cleaners is a breach of the contract conditions, yet most cleaners were required to work with insufficient or inadequate materials and equipment. This was demoralising for the cleaners and increased the pressure they felt to perform their duties. Invariably the quality of cleaning would also be affected when there are not sufficient materials and adequate equipment to perform cleaning duties.

### **8.3 Suitability of contracts for school cleaning**

In *Chapter 3*, Section 3.4 it was explained that when services like cleaning are contracted-out it is unlikely that all the informal and invisible aspects of the tasks that cleaners perform can be accounted for in the contracts (Quiggin, 2002: 51; Seifert and Messing, 2006: 135; Ryan, 2007b: 32). In *Chapter 6*, Sub-section 6.5.2 an example of these invisible aspects of cleaners' work was given: that of the goodwill cleaners offer

the school communities they work in. In this section, findings from the case study reveal three specific ways in which the contracts fail to encompass all the tasks the school cleaners perform. These three omissions from the 2004–2011 NSW school cleaning contracts were high density sites; day-to-day school security, such as unlocking and locking gates around the perimeter of schools; and cleaning after outside users have used school facilities. All of these extra tasks resulted in cleaners being required to perform extra duties, for which they were not allocated extra time.

### **8.3.1 One-size-fits-all contract**

There is complexity and variation between each site in the NSW government cleaning contracts, which is difficult to capture in one overarching cleaning services contract. For instance, a school with buildings that are more than 50 years old will have different cleaning requirements to a school with buildings less than 10 year old. A school that is spread out over many acres, with long distances between classrooms will be very different to clean from a school that is contained in one multi-storey block. A former contracted cleaning company manager explained:

*The school could have a very large area of playing fields or outdoor areas, but if the buildings are the same it will be the same price as a school which has no outdoor areas and no mud or grass. In theory the contract would make some allowance for that but in practice it is done purely on square metre area. (CM 1)*

Another cleaning company manager explained that two schools with disparate numbers of students but similar grounds will also have different cleaning requirements, but be quoted at similar prices.

*We quote by floor surface mostly.... It doesn't matter if the school has 500 kids or 2,000 kids.... There is no consideration given really to that. (CM 3)*



Obviously, 2,000 students generate more cleaning work than 500 students in a school. These nuances are not captured in the contracts, nor are the differences between cleaning high schools, preschools, TAFEs, police stations and government offices. The method for seeking and writing quotes for all NSW government cleaning contracts is simply done on the basis of square metres to be cleaned, with some allowance for variations in floor surface or the amount of furniture or computers on desks in the room. This lack of sophistication in the calculation of cleaning rates is surprising considering the contracts being examined were in their sixteenth year and third contract cycle.

The oversimplification of the cleaning contracts used in government procurement into a one-size-fits-all contract for all sites has important impacts on cleaners' workloads. Rarely are all the cleaning requirements and expectations for each site captured in the contract. As one former school principal explained:

*There are huge lots of grey areas that can't ever be nailed down in a contract.*  
(SP 2)

The grey areas for schools that are not included in the contracts include: locking and unlocking classroom doors and windows; arming and disarming alarm systems; locking and unlocking perimeter gates; picking up papers from the floor of classrooms; cleaning up vomit in classrooms; locking windows; cleaning graffiti on desks and classroom walls or toilets; cleaning canteen food preparation areas; cleaning of driveways; and the list goes on. There is provision in contracts for emergency cleaning, for instance where there is vandalism, storm damage or vomit or other bodily fluid or matter to be cleaned. The principals are instructed to use the WEBClean site to log the need for an emergency clean. There was scant evidence of principals knowing this

option was available to them, let alone registering a call for an emergency clean. It was more likely that the cleaners would clean it up themselves before anyone else came to the site, even though they were not supposed to do so:

*If you've got a kid who has vomited on the floor [they] leave the bucket on the floor all weekend, full of spew for me to clean on Monday... You'll come in one weekend and every window in the school's been broken, they just throw rocks through them. Well, of course that's our job to clean that up before the kids get to them. (C2)*

One Teachers' Federation official explained that even the daily duties that cleaners had been performing before the cleaning services were outsourced were not included in the contracts:

*Before it was contracted-out the opening and locking [of doors and windows] was shared out between the GA [the school general assistant] and the cleaners. The cleaners would open up and usually lock up. With the privatisation of the school cleaners, suddenly it was nobody's job to lock and unlock the school. Whose job is it? It's not in the cleaner's contracts; it's not in teachers' contracts either. (TF 2)*

This leaves cleaners working at sites where their employer may instruct them not to do certain tasks that are not specified in the contract, yet their clients, whom they see and interact with on a daily basis, are instructing them to do these tasks. As one former school principal noted:

*Most cleaners just do clean it up because they like the teachers and they like being part of the community and feeling valued. You will find on a lot of these things that relationships are with people, not with contracts and bits of paper. (SP 2)*

The role of the DEC school principals is to manage the tensions that arise over these grey areas, to come to a compromise on who will lock up doors, windows and gates and unlock them all again (SP 3). In practice, however, few principals have read or understood the specifications of the contracts, and so are unaware that when they

instruct a cleaner to perform these types of duties, they fall outside the contract requirements. One school principal's view was:

*I don't care what's in the contract, I just want a clean site. (SP 4)*

Two particular requirements of schools that were outside the contractual specifications came up again and again during interviews with cleaners: the locking and unlocking of doors and gates around the school and cleaning up after school facilities had been used by outsiders.

### **8.3.2 School security: Locking and unlocking gates and doors and setting alarms**

Over the last decade, most NSW government schools have had tall fences with locked gates installed around their perimeters. Although the schools are better protected from vandalism and intruders, someone is required to unlock and open the gates each morning and lock and close the gates each evening. This task usually falls to the cleaners, even though the contracts do not allow time for them to do this. Walking around the perimeter of the school to lock and unlock all gates can take 20–40 minutes each day. This research found 26 out of the 38 cleaners were required to undertake this task on a daily basis. One of these cleaners was given additional time and paid additional money by the school to do this (C10). This was an extremely unusual situation where the school paid the cleaner directly. In all other cases the cleaners did this task during their regular working hours, reducing the time they could be cleaning, or doing it as unpaid overtime (C1-C3, C6-C9, C12-C17, C22, C23, C25-C27, C30, C32, C33 and C35-C38). Only two of the 38 cleaners refused to do this task on the grounds that they were not paid to do it and it was not part of their job requirement (C4 and C5). This left only ten cleaners who were not required to add the task of locking and

unlocking gates to their daily work schedule (C11, C18, C19-C21, C24, C28, C29, C31 and C34).

Cleaners in this research tended to feel responsible for caretaking as well as cleaning duties on the sites. They felt a strong sense of duty to not only clean the sites, but also watch over them in a security role. Many cleaners also worried they would be held accountable if anything went wrong, particularly if anything went missing, since they were the first to arrive and last to leave the site:

*It's a big responsibility because usually you are the last person to leave. It's happened before that doors have been left unlocked not by myself but by someone else but I've been held responsible. But that's just part of the job. (C15)*

Teachers and on-site staff often take for granted that cleaners will be on the site late into the evening and will lock up after them, even if they have not communicated this with the cleaners. Several cleaners in this research found themselves waiting around at their site after their shift had finished so they could lock up after teachers (C2, C6, C13, C15, C17, C22, C32 and C36). So security vigilance and willingness to take on the responsibility for locking and unlocking gates could also be explained by cleaners' fear of being held accountable. One cleaner was pressured by his supervisor not to lock and unlock all gates and doors every day, yet he said he felt responsible for watching over the school, particularly when outside users came in of an evening and he wanted to be sure the site was secure after they left (C32).

It should be noted that the contracts that commenced in 2011 now include provisions for principals to negotiate with supervisors for cleaners to lock and unlock gates, that is, to reduce a pre-existing task and replace it with the locking and unlocking of gates. Given that few principals read the details of the contract requirements, the extent to which this change will help cleaners is questionable. Another consideration is

that contracted cleaning company supervisors have a role in explaining to on-site managers what the contract requirements are, and negotiating compromises where on-site managers have requirements that fall outside the specifications of the contracts. This research found little evidence of supervisors protecting their cleaners in this way. They were more likely to appease their clients by agreeing to meet these demands. This behaviour was particularly pervasive during the period in which this research took place because the government was in the process of assessing tender applications for the next round of contracts:

*They're saying if the school wants you to do it then just do it while they're still trying to win the contract. (C32)*

### **8.3.3 Cleaning schools when they are used by outside parties**

The contracts specify that when a school hires-out facilities to an outside user, that user incurs the cost of any extra cleaning if they are a paying user. It is common practise for schools to be hired-out to outside users, with 21 of the cleaners working at sites that were being hired-out to external users. The extra cleaning is done through negotiations with the cleaning contractor with separate invoices provided for the additional cleaning. The school is to be paid by the hirer, and in turn pays the cleaning contractor for those extra services (DEC, March 2006). If a community user hires school facilities free of charge the school must make an application to the DEC to cover any extra regular cleaning costs that may be incurred, based on a quote from the contractor (DEC, March 2006). For instance, there is a policy that community language schools can use government school facilities outside school hours free of charge. The DEC then allocates the school additional funding to cover the extra utilities, costs, and cleaning costs. One school principal explained that her school used the DEC funds to pay the contracted cleaning company for extra cleaning hours, and the cleaners were in turn

paid to work extra hours to clean after both school users and outside users had used the facilities (SP 3).

It was more common, however, for cleaners to be expected to clean-up after outside users in addition to their normal duties, without any extra hours being allocated to do this. Nearly one third of cleaners in this case study (14 cleaners) were cleaning-up after outside users as part of their daily routine (C3, C6, C7, C8, C11, C14, C15, C17, C22, C25-C28 and C38). This left only seven cleaners who worked at sites where the school arranged for outside users to clean up after themselves (C4, C5, C9, C13, C31, C32 and C36). In practice, a cleaning company manager explained, when schools are hired out to outside users the communication about this is poor and the added workload is inadequately accounted for:

*It's a bit like having a hundred kids at the school or 1000 kids in school, it makes a difference. So if you've got people who are there using the school of a night-time and the cleaners cut around them and they can only do it the next morning then it all has to be worked out in the work schedules again. I think one of the biggest problems is that we don't even know about it often. (CM 3)*

From the cleaners' perspective, outside users hiring school facilities often adds to their workload and workplace stress as they are required to keep the site clean for the students, but no allowance is made for extra mess created by external users. One cleaner was in a very difficult situation where she was responsible for cleaning a school hall that was hired to outside users every morning, evening and on weekends:

*When I come in on a Monday the rooms are absolutely packed with rubbish, and there is no cleaning done whatsoever.... They never wipe the tables and they leave chalk marks on the floor and the furniture is all not set out properly and it's quite frustrating.... One of the biggest problems I face on a Monday is the bathrooms in the halls – they are used by other ethnic communities who treat showers as toilets. There are only two toilets so they urinate in the showers because it is comfortable to squat in there. I have raised this with the supervisor but it has been ignored.... Then at the end of the year during vacation cleaning the stains on the grouting and white tiles in the showers were very difficult to*

*clean and I scrubbed them for a week. My principal says, "I'm sorry for you" but nothing changes. (C26: translated quote)*

This cleaner has been disobeying her supervisor's instructions not to clean the hall more than once per day. Instead she cleans the hall a few times each day because she worries that otherwise mess created by both the after-hours activities and the children using the hall will spread and make her task even harder. Her fear of reprisal and pride in her work are too high to consider simply following the supervisor's instructions and letting the principal and supervisor see the consequences. This problem is exacerbated because the cleaner is unable to speak English to communicate with her supervisor and school principal. Another cleaner explained that the school had no incentive to address problems arising from outside users creating extra work and instead blamed the cleaners for doing a poor job. This was because the school was keeping the money allocated for cleaning-up after outside users and allocating it to other teaching requirements.

In these cases the schools are being paid either by the parties hiring the facilities, or by the DEC on behalf of the outside users for the hiring of those facilities. In both cases the schools are not passing on the funds to cleaners who do extra work to clean-up after the outside users. By keeping the funding in the teaching and learning budgets, or by not charging outside users sufficiently to cover cleaning costs, principals are compounding workload pressures for their cleaners. Principals have the power to resolve the difficulties that arise for these cleaners by communicating better and passing on funding they receive for cleaning. Company supervisors also have the power to resolve this situation by communicating better with their cleaners about workloads created by outside users, and then negotiating better with the principals.

Most school cleaners are required to perform extra duties that are not accounted for in the contracts. This means that these cleaners are not allocated any extra time to clean the same area with a higher density of usage, to lock perimeter gates, or to clean-up after outside users. Even if the cleaners understand that these extra tasks are not included in the contracts, so they are within their rights to refuse to perform the tasks, they are in a vulnerable position and find it difficult to refuse. As was explained in Sub-section 8.1.2 school principals and other site managers can exercise tremendous power over the cleaners, demanding that they be moved to different sites if they are not happy with their work. The examples in this section demonstrated that principals do exercise this power to move cleaners. With cleaners' high levels of connection to their school community, described in *Chapter 6*, Sub-section 6.5.2, many cleaners are more likely to simply perform the extra tasks that fall outside the contract requirements than to speak up for fear of being moved out of their longstanding working community.

#### **8.4 The impact of contractual terms on workloads**

In contracting-out cleaning, the government seeks to minimise costs by simplifying the cleaning requirements, and squeezing a wide variety of sites into a one-size-fits-all contract. Combined with the mandate for private companies to maximise profits, and the fact that at least 70 per cent of the cost of providing cleaning services can be attributed to labour related costs, this results in downward pressure on the number of hours cleaners are given to complete the same tasks (Ryan and Herod, 2006; IBISWorld, April 2010). Cleaning companies have whittled down cleaners hours opportunistically. Where there was natural attrition the companies have resisted replacing staff, instead transferring the extra workload onto existing staff. When



opportunities did not arise through natural attrition, the companies created their own opportunities, as one former contracted cleaning company manager explained:

*If there were several schools in an area you would move people around like chess pieces on a chessboard and send them to a different school where they didn't really have the knowledge of what went before them. If they had been at their old school, now that was difficult from their point of view because if you had been at that school cleaning for ten years or five years you would know the place like the back of your hand and your area was your area and you took pride in it and you did it. When some new boss came along and said, "You have too much time, I'm going to cut you down because you had six hours before I want you to do it in four hours." Psychologically that is very difficult for anybody to handle. So one of the tricks of the trade, of course, is that you just swap people around. You move people from there over there and they go over there. So you jumble them all around, because if you move me to a new school I'm not exactly sure what the old routine was and that was a way of getting around it. (CM 1)*

One simple way to explore the extent to which cleaners' workloads are correlated with the length of time they have worked at one school is to compare the length of time all cleaners at one school are given to clean, per student attending the school. This helps to illustrate the impact of 'jumbling' staff from one school to the next. The following chart uses the experiences of cleaners participating in this research to compare the length of tenure at one school with the number of cleaning seconds allocated to that school, per student, per day.

**Figure 8.1 Relationship between longevity of employment and time allocated to clean per student**

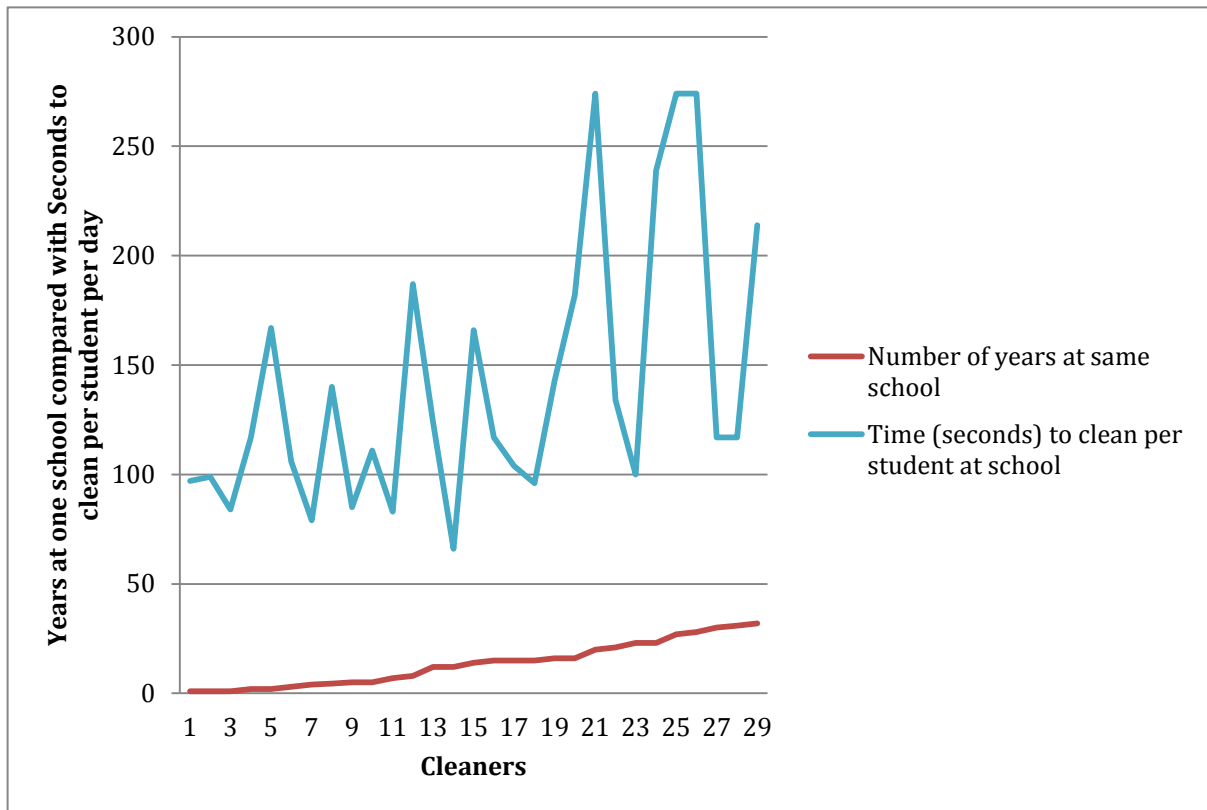


Figure 8.1 provides rudimentary evidence that as the length of time a cleaner works at a school increases, so too does the amount of time cleaners in that school are allocated to clean for students. Downward dips on the chart occur when a cleaner is unable to speak English, or when cleaners work at high schools where time allocated for cleaning per student is typically lower than in primary schools. High schools tend to have a greater number of students at each site than primary schools, therefore if cleaners are allocated on a per square metre basis, more cleaners will be allocated per student to primary schools than to high schools.

Only 29 of the 38 cleaners are included in this analysis, because only 34 cleaners worked in schools and in five cases data was not available. Given that this is such a small sample size, more research would be required to confirm whether the pattern is

consistent across NSW school cleaning sites. This is an overly simplistic approach to cleaners' workloads, as it does not take into account the characteristics of the area to be cleaned. However it goes some way to demonstrating that the longer-term cleaners who can communicate well are more empowered and have more manageable workloads than their colleagues. This analysis also adds weight to anecdotal evidence on the pervasiveness of the practice of 'jumbling' described by the former contracted cleaning company manager. That is to say, those cleaners who were able to remain at their site for a longer period of time tended to have lower workloads than cleaners who had commenced at their site more recently. This would be explained by the cleaners who had longevity at a site being more articulate and able to build stronger relationships, or perhaps because they kept quiet and did their work, or in some cases the cleaners were simply lucky.

For those cleaners who had greater workload pressures, they talked about running non-stop during their shifts, having no time to stop or take breaks, and finding it very stressful:

*We can't go home at 6 o'clock because there are more jobs, extra jobs, overload jobs. This is the main issue.... If we take a ten minute break in four hours to drink tea then we are losing time and the cleaning isn't being done. (C6)*

*Every room I'm given four minutes to do per day. That's not possible! (C16)*

*To get everything done I run from place to place. (C10)*

*I just rush rush rush and I get really stressed. (C23)*

Workload pressures are not just the result of supervisor pressure to do more in less time and 'jumbling' cleaners to reduce work time at each site. One cleaner gave an additional reason for workload pressures being ratcheted up over time:

*The hours aren't adequate because the previous company had teams they sent around to various schools to get it passing [for inspections only] but they didn't maintain the standard full-time. (C31)*

These practices meant that when the site was handed over to a new contractor the hours were maintained, but those hours were never adequate to keep the school clean. Therefore under the new contractor the cleaners are under more pressure to do the work in a constrained or reduced time period. Another cleaner added that workload pressures increase over time because:

*Times for new additions get allocated when the building is brand new and just needs a quick wipe down, but over time it gets harder to clean. (C29)*

Furthermore, the structure of the cleaning contracts means that cleaners are under pressure from three different groups of people. First there are on-site managers, including school principals. Second there are on-site staff, teachers, general assistants and even parents or customers at the sites and last they are directly managed by the company supervisors. In having multiple 'bosses', the pressure placed on cleaners is compounded, as articulated by this cleaner:

*They don't give me enough time, then they wipe everything with a finger and say, "Well you didn't do that." It's not just one lot of people doing that, but three lots of people – my supervisor, the [on-site] manager and the department inspector do it. (C34)*

Thus, the most pervasive issue that arose for cleaners in this research was workload pressures. There are many mechanisms for intensifying daily tasks required to be done by cleaners, while simultaneously minimising paid working hours. United Voice also found that 45 per cent of 400 members surveyed in 2011 viewed the allocation of time and workload as the most important issue to be campaigning about (UV 1). These findings are consistent with other scholars' studies of the cleaning

industry, which also found workload intensification to be one of the most permeating problems for cleaners (see for example, Fraser, 1997; Quiggin, 2002; Sogaard *et al.*, 2006; Ryan, 2007b; Campbell and Peeters, 2008).

## **8.5 Discussion**

The objective of privatising the NSW GCS was to reduce the cost of these services, by improving the efficiency and productivity of cleaners. This objective of reducing costs of the cleaning service for NSW government was discussed in *Chapter 2* Sub-section 2.2.2, where it was reported that Domberger, Meadowcraft and Thompson (1987) had contended privatisation of non-core services, like the GCS, could realise cost savings in the realm of 20 per cent. Opponents of privatisation had argued at the time that cost savings would, in reality, constitute a transfer of costs from the government to the cleaners themselves, who would bear the weight of the efficiencies gained through work intensification and reduced labour standards (Paddon and Thanki, 1995; Quiggin, 1996). Indeed, studies of the privatisation of cleaning services have identified intensification of workloads as a key problem for cleaners (Cope, 1995; Fraser, 1997; Quiggin, 2002; Walsh, 2004; Ryan, 2007b).

After 17 years of contracting-out there is a view that the NSW government cleaning services have reached what a cleaning company manager described as an 'equilibrium point', whereby efficiencies have been maximised and costs minimised, while maintaining acceptable service levels (CM 1). Notwithstanding this, companies need to maximise profits for their shareholders, and efforts to continue minimising costs are unsurprising. At the same time, NSW government departments have a mandate to find cost savings and reduce their budgets by three per cent each year (IC 1). In an effort to minimise the risk of these budgetary constraints encroaching on

cleaners' workload pressures the contracts state that any reduction in cleaning hours must go through a stringent approval process. In practice, however, the number of cleaning hours being worked at each site is rarely monitored and poorly understood.

Therefore, it is unsurprising that one of the most pervasive impacts of privatising the NSW school cleaning services has been and continues to be augmented workload pressures for school cleaners. One way this has occurred is by adding contract specifications that accidentally increase the pressure on cleaners to work harder. One compounding effect is that by instituting provisions to increase the accountability of contracted companies, companies are focused on meeting reporting requirements in ways that are visible to the client, to the detriment of supporting cleaners. Another effect on cleaners' workload pressures arises from having one-size-fits-all contracts, which are a poor fit for many sites, and cleaners bear the weight of unaccounted for complexities on individual sites.

Specific measures to improve the quality of service include restrictions on reducing cleaning hours (approval is required from SCCB), and the addition of clauses in the contracts specifying that equipment and materials must be adequate and well maintained. This research found that these contractual requirements were largely ignored by contracted cleaning companies, because they were not monitored or enforced by the government agencies overseeing the contracts. The adequate supply of appropriate equipment is also a safety matter for the cleaners. For this reason, as well as concerns raised about the standards of cleaning, clauses specifying minimum standards for equipment were included in the 2006–2011 contracts. These clauses were observed more often in the breach than in compliance. Cleaners who suffered the most

from contractors only supplying aged and inadequate equipment and materials were those who were too afraid, or unable, to speak up and ask for more.

DEC inspections were intended to improve the quality of service by holding the contracted cleaning company managers to account (DEC 1). The DEC made it explicit that these inspections were not intended to hold cleaners to account personally or place added pressure on the cleaners. This was not the experience shared by cleaners who felt victimised by the DEC inspectors and took inspection remarks very personally. Indeed, some inspectors made extremely personal remarks, targeting cleaners rather than monitoring all the contract requirements that could have resulted in less than acceptable cleaning standards. There was no evidence that DEC inspectors monitored whether there were sufficient staff and cleaning hours on a site, or whether equipment was adequate and well maintained. Clearly, the DEC was not monitoring any of the prescribed contract terms that were designed to improve the quality of service. From the cleaners' perspectives all responsibility for passing inspection was placed squarely on their shoulders and they were powerless over whether there was adequate paid time, equipment or materials to deliver quality service.

Another aspect of the contracts that compounded workload pressures for the cleaners was measures to improve accountability of the contracted cleaning firms. School principals and other on-site managers had no interest in or capacity to monitor contract requirements in ways that would help cleaners deliver better quality services. The introduction of the WEBClean system was a measure designed to improve monitoring and compliance, but it was ineffectual because it was not used by all parties. The on-site managers failed to provide the necessary checks and balances for the WEBClean system to be effective for many reasons. Less than five per cent of school

principals used the website because it was one of countless extra administrative tasks imposed on them by the DEC and their union initially imposed a ban on using it. Also principals were unaware of the need to monitor, or did not have capacity to monitor undelivered cleaning hours lost and push for those hours to be made up by the contracted cleaning company. Most principals preferred to focus on relationships within their school community, leaving management of cleaning contracts to the DEC. Consequently, the absence of efforts by on-site managers to monitor and report on WEBClean the provision of correct cleaning hours, work schedules and adequate equipment and materials makes the website a hollow tool for improving accountability.

Reporting by contracted cleaning companies is a strategy used by government to enhance accountability (DEC 1). Reporting requirements for the cleaning companies are onerous, with a requirement that they deliver reports on both OHS and cleaning standards to the various government departments in many formats every 4 weeks, 3 months and annually. This places the company's focus on delivering these reports because they are highly visible to the client. Meanwhile, other requirements such as work schedules for cleaners or relief cleaners to fill lost cleaning hours go undelivered and unnoticed. Similarly, the cleaning communications book was a contractual requirement, designed to support cleaners by helping them accommodate varying school activities and to communicate with their supervisors. As the constructiveness of communication in these books was rarely monitored by on-site managers they became counter-productive. If cleaners were capable of reading and writing they typically saw the books as a tool of punishment; something to be fearful of and best avoided.

The final compounding effect on cleaners' workload pressures that was covered in this chapter was the inadequacy of the one-size-fits-all contract. The model of



responsive regulation advocates 'tailor-made' rather than one-size-fits-all responses to regulatory challenges (Howe and Landau, 2009: 586). The cleaning contracts were uniform across approximately 4,000 different sites and were not altered to accommodate variations across those sites. Furthermore, tasks that were commonly performed by school cleaners before privatisation were not included in the contracts. Thus cleaners were not allocated time during their work hours to lock and unlock gates, doors and windows, to set and disarm alarms and to clean-up after outside users at schools. The usual outcome was that cleaners would perform these additional tasks, which intensified their workload pressure and stress.

## **8.6 Conclusion**

Cleaners' workloads are being nudged upwards as a result of the dual impacts of government seeking to minimise costs and companies seeking to maximise profits. Government agencies oversimplify the contracts by not including provisions for activities that regularly occur, such as locking and unlocking gates, doors and windows and cleaning after outside users. These findings mirror those of other studies that have found that when outsourcing occurs, contracts may not account for all the tasks that took place when the service was provided in-house, often leaving out the informal aspects of the roles (Quiggin, 2002: 51; Seifert and Messing, 2006: 135; Ryan, 2007b: 32). Contracted cleaning companies opportunistically whittle down staff numbers or cleaning hours, or create opportunities to do so. The cleaners who suffer most are those with poor capacity to communicate or speak up for themselves. On-site managers and supervisors do little to assist cleaners as it is not a priority to read or understand the terms of the contracts, or negotiate on cleaners' behalf to reach compromises where additional duties are required.

This chapter has exposed the lack of monitoring and enforcement of contractual elements that impact on labour standards in NSW government cleaning contract. The result is an intensification of workload pressures for school cleaners. Instead of monitoring contract specifications that are intended to maintain service quality by reducing workload pressures for cleaners, the only monitoring that occurred was of the quality of cleaning outcomes. The DEC wash their hands of any monitoring of the other contract terms, content in the knowledge that these terms are included in the contracts and therefore they assume these terms are adhered to. United Voice has some capacity to step in and push for enforcement of these contractual terms. However, they do so with little or no support from the DEC or the DFS. In the absence of a feedback loop connecting inadequate cleaning hours or equipment with poor cleaning standards, the blame for poor cleaning services ultimately falls on the shoulders of the cleaners, who have no power to solve the underlying problems.

## Chapter 9

# Responsive Regulation of Labour Standards through Contracts and Labour Law

### Introduction

The previous two results chapters exposed the dearth of monitoring and enforcement of labour standards regulations and contract requirements that impact on labour standards and working conditions for NSW school cleaners. Seemingly perpetual intensification of workloads, in the highly competitive cleaning industry, saw most cleaners identifying workload pressures as their biggest workplace problem. The predicted ramifications for OHS were brought to fruition, with inadequate on-going OHS training, little regard for cleaners' workplace safety and bullying and harassment, in particular, being commonplace.

In *Chapter 5* it was seen that six entities play a part in regulating labour standards for the NSW school cleaners. This degree of collaboration and participation from three government agencies, a statutory authority, the government inspectorate and the trade union invokes the participative and collaborative elements of the model of responsive regulation. In the conclusion of *Chapter 3* the question was asked as to whether the regulation of labour standards through the combination of labour law and contracts reinforced each other, protecting the labour standards of workers, or whether they pull in different directions, destabilising established protections in the labour market? The accounts of actual labour standards experienced by school cleaners in *Chapters 7 and 8* brought into question whether formally enrolling related parties in the regulatory process contributed to better compliance with prescribed labour standards.

In this chapter, there is an expansion of the analysis of how well the regulation of labour standards for school cleaners satisfies the requirements of responsive regulation. In Section 9.1 the requirements of responsive regulation are reviewed. Then in following sections analyses of the participative and collaborative elements of both labour law and contracts in defining (Section 9.2), implementing (Section 9.3), and monitoring and enforcing (Section 9.4) labour standards are provided. In the final section the applicability of the enforcement pyramids of both labour law and contracts that were introduced in *Chapters 2 and 3* are examined. Finally there is an analysis of how well labour standards are being enforced by each of the regulating parties, including government bodies and trade unions.

### **9.1 Requirements of responsive regulation**

As was discussed in Sub-section 2.1.3, to meet the responsive regulation requirements, regulation should be collaborative, with involvement from interested parties in defining, implementing, monitoring and enforcing labour standards (Ayres and Braithwaite, 1992: chapter 3; Cooney *et al.*, 2006: 223-224; Howe, 2008: 53; Hardy, 2012: 118). To successfully deter non-compliance a responsive system of regulation needs a wide array of both 'light touch' measures, to pursue compliance based strategies, and harsher deterrence enforcement strategies, with many others in between (Ayres and Braithwaite, 1992: 41; Maconachie and Goodwin, 2010b). In this way regulation can be responsive to different contexts by applying the enforcement tool to suit the severity of the situation (Ayres and Braithwaite, 1992). The success of responsive regulation is contingent on the credibility that a 'big stick' style punishment will be used for the most severe infringements (Ayres and Braithwaite, 1992; Freiberg, 2010; Goodwin and Maconachie, 2011). The analyses reported in this chapter lead to

the conclusion that the participative and collaborative elements of the regulation of school cleaning are necessary but not sufficient conditions to ensure compliance with labour standards, as regulatees perceive no credible threat of sanctions for serious infringements.

In this chapter each of the four stages of regulation are examined in turn: defining standards, implementation, monitoring and enforcement. These stages of regulation were first introduced in this thesis in Sub-section 2.1.1, defining regulation. This chapter provides further answers to the final two research questions:

5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?
6. How well does the regulation of labour standards for school cleaners meet the requirements of responsive regulation?

## **9.2 Responsive regulation in defining labour standards**

It is common practice for governments to include clauses requiring contractors to uphold minimum labour standards, with a view to reinforcing the effectiveness of the labour law regulation (Howe, 2006a: 172-173). The Code of Practice and supporting documents constitute the primary contractual mechanism for protecting pay and leave entitlements of employees who provide services for NSW government contracts. Both the Code of Practice and supporting documents arose out of trade union pressure on NSW Labor governments (IC 1). Furthermore, trade unions play an integral part in negotiating for clauses to uphold labour standards to be included in contracts. United Voice uses the contracts as a mechanism for collaborating and communicating on a range of labour related issues. United Voice was fundamental in ensuring basic labour

standards were upheld when the cleaning contracts were first privatised. Since then the union has negotiated for additional clauses to be included in the contracts to help support labour law regulations (UV 1).

In terms of regulation through labour law, United Voice has an important role in negotiating the EBAs for school cleaners. Minimum wages underpin the remuneration agreements reached in the EBAs. In essence, labour law regulation of NSW school cleaners has elements of responsive regulation in so much as United Voice is a non-state actor that is enrolled to participate in defining labour standards. The inclusion of stakeholders, like trade unions, in the process of defining regulation goes some way to addressing the compliance based requirements of responsive regulation (Ayres and Braithwaite, 1992).

The Code of Practice for NSW contracting designates EBAs as a tool for ongoing improvement to both labour standards and workplace productivity. The Code states that EBAs have the potential to: incorporate individual enterprise requirements; connect improvements to remuneration with productivity, as well as enhance productivity; improve OHS practices; provide better training opportunities; and build 'cooperative, flexible workplace arrangements, relationships and practices' (NSW Government, 2005: 14). In practice, however, government has never encouraged the use of EBAs in cleaning; the use of EBAs to improve labour standards or working conditions is left entirely in the sphere of trade unions (IC 1).

The specification that EBAs should 'improve remuneration and working conditions, based on quality of work and productivity' (NSW Government, 2005: 14) suggests that there is some possibility of a reciprocal linkage between productivity and remuneration. There was no evidence in this research that EBAs or minimum wage

reviews were successful in keeping wages tracking with productivity. The analysis of precarious work in *Chapter 3*, Section 3.4 showed that cleaners' CPI adjusted wages across Australia have remained fairly constant over this time (see Holley and Rainnie, 2012). Meanwhile, as was highlighted in Section 6.1, the workloads of school cleaners have increased substantially since 1989 (Fraser, 1997; Ryan, 2007b: 46), with the attrition of cleaner numbers from 12,500 in 1989 to 6,000 in 2010.

A simple conclusion to draw from this is that the cleaners working in NSW government schools increased their productivity dramatically over this time, but there were inadequate wage increases to reward those productivity increases. A collaborative and responsive approach to defining regulation would ideally be able to deliver on the promise of the Code of Practice to keep wages more closely correlated with productivity improvements. This calls into question the responsiveness of labour regulation at this stage of defining labour standards. The capacity to deliver wages that are commensurate with increases in productivity is hindered by the objectives of contracting-out. Governments contract-out in a bid to increase the efficiency and reduce the cost of service provision (Domberger *et al.*, 1987). This is most evident in the prioritisation of 'best value for money' in the tendering process (CM 1; Seddon, 2009). United Voice is thus formally enrolled to define cleaners' labour standards by negotiating the EBAs, but is constrained in its capacity to negotiate for wage increases to correlate more closely with productivity gains.

Instead, as was outlined in *Chapters 7 and 8*, trade unions have negotiated for the contracts to include provisions that seek to redress the extreme pressures on workloads that arise as contractors progressively reduce paid working hours. In particular, United Voice has added provisions to restrict cleaning companies from reducing cleaning hours

without approval. Contractors must apply to the SCCB if they wish to reduce the numbers of hours worked at a school, and the changes must be approved by a panel of DEC, DFS, United Voice and contractor representatives. By the same token, when a building is changed and more cleaning is required, there is a provision to ensure that cleaners are not given additional work to do without increasing their paid hours. Other provisions have also been added to the contracts with the dual objectives of harnessing the augmentation of workload pressures and upholding the quality of service provision. These provisions stipulate that absent cleaners must be replaced with relief cleaners and materials and equipment must be adequate and sufficient.

Nevertheless, this thesis has shown that workload concerns have been a recurring problem for cleaners. School cleaners in this case study felt the pressure to perform their duties at increasing rates as their cleaning areas were opportunistically increased without extra time being allowed. Campbell and Peeters (2008) identified workload intensification as one of the primary strategies adopted to minimise labour costs in order to compete in the highly competitive cleaning industry. Cope (1995) gave a similar example of contracting-out cleaning services in the UK, which showed that the costs were borne by the cleaners themselves. Ryan (2007) also demonstrated how competition in the cleaning industry results in cleaners being poorly managed, and earning minimal wages as companies compete for contracts in a 'race to the bottom' on the basis of costs largely determined by the cost of labour.

The ideologically driven rise to prominence of the contracting-out of government services (see Dunleavy, 1986; Sullivan, 1997; Murray, 2001; Fairbrother *et al.*, 2002; Quiggin, 2002; O'Flynn, 2007: 355; Young, 2007; Pollitt and Bouckaert, 2011) has had a direct impact on NSW school cleaners. This has fundamentally changed how school



cleaners' labour standards are defined. This case study has demonstrated that where once trade unions would have concentrated their efforts on negotiating to improve labour standards through labour law mechanisms, now they negotiate to add contract clauses that expand measures to protect labour. This is achieved predominantly by adding specifications to the contract that are intended to harness workload pressures. The limits of compliance with these contract provisions are, however, highlighted by the encroachments on workload pressures evidenced in the previous two chapters.

### **9.3 Responsive regulation in implementing labour standards**

The Code of Practice determines that while the trade union and employer associations have a role in supporting their members to comply with the Code, it is the responsibility of the Agency, DEC, to 'implement the Code and monitor and report on Code compliance' (NSW Government, 2005: 2). It is essential that governments assume some responsibility for labour standards of contracted workers, by exercising what power they have over their contractor to uphold minimum standards (Cope, 1995: 42; Marshall, 2006: 553). This research found:

*There is instead a really cautious approach to drafting the contracts and then never using any enforcement. (IC 1)*

Government also relies on awarding contracts to large companies and then expects they will comply with the contract terms because they are large players and their reputation is at stake (IC 1). The problem with this approach is that there are no more than six companies that have the capacity to carry out these cleaning contracts, so there are few alternative choices for government if they want to contract-out large cleaning services contracts (IC 1, CM 3). Of more concern is the government emphasis on 'best value for money', which means that 70 per cent of the weighting for assessing

tenders is attributed to price (UV 1, Ryan and Herod, 2006: 491-492; Ryan, 2007b: 166). As three quarters of the expenditure for cleaning companies is labour related (Ryan and Herod, 2006: 494; Ryan, 2007b), when companies compete on the basis of price they are largely competing on the basis of minimising labour costs (Aguiar, 2000: 73; Aguiar and Herod, 2006: 3-4; Ryan and Herod, 2006: 491; Ryan, 2007b).

The temptation to undercut competitors by reducing labour costs often leads to situations like the subcontracting uncovered in this research (UV 1; Jeffs, 2001; Ryan, 2007b: 24; Campbell and Peeters, 2008: 40-42). Subcontracting-out of cleaning services can be seen as a strategy to prevent opportunities for collectivisation, with the ultimate goal of undermining labour standards without trade union opportunities to hold the employer to account (Dabscheck, 2001; Fairbrother *et al.*, 2002; Cooper and Ellem, 2008: 541; Wills, 2009: 443, 445). In the case of NSW school cleaners, this investigation found that the high degree of trade union participation enabled United Voice to play an integral part in pressuring for labour standards to be upheld and subcontracting to be minimised. This was done by informing government agencies of the incidences and consequences of subcontracting and pressuring the agencies to consider whether the price quoted for contracts would be adequate to uphold minimum labour standards. Critically, United Voice was formally enrolled to communicate with the government agencies on these matters through the Cleaning Communications Group. United Voice also played a role in educating the contracted cleaning companies about the labour related terms of the contracts. This role was predominantly carried out through ROC meetings – which were a United Voice initiative to regularly meet with and organise school cleaners who were union members.

United Voice seeks to align itself with the contracted companies at the implementation stage, in efforts to gain government commitment to spending more on contracts (Tarrant, 2011). Contracted companies and trade unions both have incentives to unite to pressure government agencies not to award contracts to lowest price bidders without consideration of labour standards practices. The number of cleaning hours per site and the cost of cleaners' time are known factors, so when assessing tenders government agencies should be able to simply calculate whether there is sufficient allowance to meet the minimum labour standards for cleaners. Companies can seek to minimise costs of management and administration, but the minimum cost of cleaning labour is predetermined. Similarly, companies can seek to minimise the costs of equipment and materials, but this too is constrained by the contracts. Consequently, there is minimal scope for innovation or variation between companies. The contracts lock down most variables that management could alter. This leaves few options for undercutting contract bids, other than illegally undermining labour standards.

To conclude, there is evidence of participation and collaboration from United Voice and the contracted cleaning companies in regulating the implementation of labour standards. A feature of responsive regulation is that it should be responsive to complex regulatory environments (Howe and Landau, 2009: 578). In the convoluted regulatory environment of NSW cleaning contracts, United Voice and the contracted cleaning companies have been able to respond to the problem of competitive pressures, resulting in the undercutting of minimum labour standards, by pressuring government to consider this when awarding new contracts. Ultimately this had some success because the company that was subcontracting-out work and undermining labour standards was not awarded a contract for 2011–2016. Conversely, there was little evidence of

collaboration or participation in implementing labour standards through labour law mechanisms. This was expected given the attacks on collective bargaining and trade union representation executed by the Work Choices and Fair Work changes to labour law legislation (Lee, 2006; Bray and Macneil, 2011; Cooper and Ellem, 2011). Standing (2009) argues that this is problematic because the effectiveness of labour law is undermined if not supported by trade unions.

It is clear that the implementation of labour standards for school cleaners centres on contracts, rather than labour law approaches. This is an important finding of this research. Dabscheck (2001) argued that ‘contractualist regulation’ has become the dominant paradigm in a bid to marginalise the regulatory impact of trade unions. This research goes a step further in demonstrating that ‘contractualist regulation’ has become the dominant paradigm for the implementation of labour standards for NSW school cleaners. United Voice enjoys a relatively high level of trade union participation from school cleaners, so the union circumvents the marginalisation of trade unions by concentrating regulatory efforts on the implementation of labour standards through contractual mechanisms, rather than through labour law mechanisms.

#### **9.4 Responsive regulation in monitoring and enforcing labour standards**

The results of the case study of NSW school cleaners have shown that United Voice is the primary entity monitoring labour standards for school cleaners. United Voice gathers information about the implementation of labour standards from cleaners attending ROC meetings. Direct observations of the ROC meetings, conducted as part of this case study, revealed that United Voice is alerted to the primary problems faced by school cleaners as they discuss their issues during the meetings. When an issue seems pervasive or important participants at the meetings gather further information to

understand the extent of the problem. This can be done by conducting surveys of other cleaners or on-site staff. Then the cleaners work together to write letters to their senior management detailing the severity and extent of the problems they have been investigating. These are innovative and effective ways of monitoring and enforcing labour standards, given the constraints within which the union operates. Namely restrictions to right of entry (Baird *et al.*, 2009; Fenwick and Howe, 2009; Hardy and Howe, 2009; Bray and Macneil, 2011; Goodwin and Maconachie, 2011) and the difficulty of communicating with cleaners working across thousands of different sites (Quinlan *et al.*, 2001: 355).

United Voice organisers also receive phone calls directly from the cleaners when issues arise, and cleaners can call the union call centre to lodge complaints or to seek clarification of their workplace rights. Cleaners are predominantly self-reporting problems; however by reporting to a union they have less fear of repercussions than if they reported problems to the inspectorate (Weil and Pyles, 2005; Quinlan and Johnstone, 2009: 439). The analysis above has demonstrated that the union also plays a vital role in educating cleaners about their rights so they know when there is a need to lodge a complaint.

Reflecting on the bipartite approach that the FWO and trade unions have played in monitoring and enforcement since the 1920s (Hardy and Howe, 2009; Goodwin and Maconachie, 2011), it is unusual for a trade union to retain such a strong role in monitoring labour standards. For most of the twentieth century unions were the default inspectorate body, because government inspectorate agencies lacked the resources and powers to fulfil this role (Hardy and Howe, 2009: 315). Indeed, the role played by trade unions for most of that century 'approximates that of the official regulatory agency'

(Goodwin and Maconachie, 2011: 63). Yet increasingly individualised and less collectivised approaches to labour regulation since 1996 (Bray *et al.*, 2001; Murray, 2001; Lee, 2006; Bray and Macneil, 2011: 152; Goodwin and Maconachie, 2011: 69), coupled with the decline of trade unions since the 1980s (Cooper and Ellem, 2011: 37) saw trade unions exchange places with a centralised government inspectorate body, and the FWO came to the fore of Australian labour law enforcement.

The FWO is well resourced and enjoys broader powers to influence workplace practices than its predecessors (Hardy and Howe, 2009: 328; Goodwin and Maconachie, 2011: 71), so would be expected to subsume the roles of monitoring and enforcing previously held by trade unions. There are a few explanations as to why United Voice has remained the foremost source of monitoring and enforcing school cleaners' labour standards, even though the national inspectorate body has risen to prominence since 2004. The first explanation is that two thirds of NSW school cleaners remain active trade union members, in spite of trade union membership across Australia declining dramatically since the 1980s.

The second explanation is that vulnerable workers, like cleaners, may be less likely to lodge complaints with the FWO than other workers. This may be because the approach taken by the inspectorate since the 1970s resulted in lowered expectations that complaints taken to the inspectorate would lead to a positive outcome for the complainant, and it is taking time for this perception to change (Goodwin and Maconachie, 2011). It may also be because vulnerable workers, like cleaners, may be deterred from lodging complaints if they do not know their rights or understand the complaints process and fear repercussions from lodging complaints (Weil and Pyles, 2005). Cleaners may also be deterred from making complaints to the FWO because, for

claims under \$5,000, they are required to independently pursue their own cases through the small claims court (Goodwin and Maconachie, 2011). An indication of this trend, toward individuals resolving their own disputes, was that of the 299 complaints received by the Office of Workplace Services in 2002–03, 296 were resolved by the employees themselves in the small claims courts (Bray *et al.*, 2001; Goodwin and Maconachie, 2011: 69). In all these cases, language or literacy issues could also be a deterrent to lodging complaints with the FWO and it is estimated that 40 to 45 per cent of cleaners are from non-English speaking backgrounds (Jefferies, 2001).

Consequently school cleaners have remained reliant on their trade union to perform the functions that are being taken over by the national inspectorate body for most other workers. Moreover, there was little evidence in this research of communication or collaboration between FWO and the trade union to provide feedback from monitoring. This is unsurprising given the legislated changes that have eroded trade union enforcement tools since the 1990s. Since that time, trade union powers to enter workplaces, to assert industrial pressure and to act as the sole employee representative in dispute resolution processes have all been reduced (Baird *et al.*, 2009; Fenwick and Howe, 2009; Hardy and Howe, 2009: 20; Bray and Macneil, 2011: 157; Goodwin and Maconachie, 2011; Hardy, 2012: 123). Trade unions now rely predominantly on negotiating with employers and if unsuccessful then they refer infringements to the FWO to enforce standards. The trade union finds itself in the position where it is no longer formally enrolled to participate in monitoring and enforcing labour standards through labour law mechanisms, but it remains the primary agency for monitoring and enforcing labour standards for NSW school cleaners.

This research did, however, find evidence of United Voice being formally enrolled in monitoring and enforcing the cleaners' labour standards through contractual mechanisms. The union uses the Cleaning Communications Group as a forum to communicate labour standards issues with government agencies and report on infringements. The inclusion of the Cleaning Communications Group in the NSW government cleaning contracts gives United Voice an implicit role in monitoring and enforcing cleaners' labour standards. Cleaning Communication Group meetings were found to be a forum in which the trade union could raise issues such as extreme workload pressures or the illegal subcontracting infringements by one company. The benefit of raising labour standards infringements in these meetings is that communication is 'on the record' and therefore harder to ignore (UV 1). This meant that government agencies were compelled to address concerns about subcontracting and ultimately resulted in the non-compliant company not being awarded a 2011–2016 contract.

The Code of Practice specifies that if there are breaches agencies have the option to submit comprehensive documentation and proof of breaches to the SCCB to apply for sanctions. There is no evidence of the SCCB putting sanctions in place for non-compliance with NSW government school cleaning contracts. Alternatively, the SCCB can establish a subcommittee to assess a breach independently of an agency recommendation (NSW Government, 2005). Unfortunately, according to one consultant to the industry, the government departments have no power or resources to enforce these guidelines. Therefore the 'big stick' of contract termination, found at the top of the enforcement pyramid for contracts in Figure 2.3 could not reasonably be expected to constitute a credible threat, which would entice companies to comply (Collins, 1999:



91). Seddon (2009: 18) suggests this is to be expected, given that labour standards clauses in government contracts are regarded as 'extraneous' and therefore contract termination is not justifiable. This limitation to the enforcement of government contracts for services will be explored in more detail in the following section.

There is a plethora of government regulatory entities enrolled to monitor and enforce labour standards for school cleaners. These include government agencies that oversee the contracts, the SCCB, on-site managers and staff where cleaners work, and the FWO. The monitoring function is, however, performed predominantly by United Voice. Unions have no power to enact measures to enforce contracts for services. The best they can do is place pressure on government agencies to take measures to encourage compliance with contract terms. The strong communication between United Voice and the government agencies that oversee the contracts resulted in responsive action when labour standards were breached. Importantly, this collaborative approach to enforcement was only applicable through the contracts and was not evident through labour law regulation.

#### **9.4.1 The role of United Voice in monitoring and enforcing labour standards**

This research uncovered many ways in which United Voice participates in regulating school cleaners' labour standards. It is worthwhile taking a closer look at how United Voice facilitates monitoring and enforcement of labour standards. For instance, the union empowers cleaners to understand their rights so they can speak up for themselves. The following table summarises the role of United Voice in regulating labour standards for school cleaners.

**Table 9.1 United Voice’s avenues for regulating labour standards**

<b>Cleaners</b>	○ Educating cleaners about their rights and duties per the EBAs and the contracts through mail outs and at ROC meetings.
	○ Call centre for cleaners to raise specific questions about their rights or problems.
	○ Legal assistance for employees with small claims to be made through the FWO (<\$20,000 in unpaid entitlements).
	○ Union organisers respond to phone calls from individual cleaners questioning their rights or understanding problems.
	○ ROC meetings provide a forum to define key issues, for example by conducting surveys to research the extent of specific problems.
<b>Contracted cleaning companies</b>	
<b>Contracted cleaning companies</b>	○ Negotiation of EBAs.
	○ Direct conversations with management in specific instances of disputes or general problems, including attending meetings between cleaners and their managers, often acting informally as mediator.
<b>Government parties to the contracts</b>	
<b>Government parties to the contracts</b>	○ Negotiation and implementation of Code of Practice.
	○ Negotiation of contract terms.
	○ Communications Cleaning Group meetings; conducted 3–4 times per year.
	○ Petitions, postcards, strikes and other forms of political pressure.

This table highlights the integral part played by United Voice in empowering cleaners to understand their own labour rights so they can monitor standards themselves and speak directly with management if there are infringements. The union also plays an important role in reminding cleaning companies about the terms of the contracts and the EBAs. United Voice officials have frequent communication with contracted cleaning company management, speaking directly with them if issues arise for an individual or group of cleaners. If infringements persist and need to be escalated United Voice registers those issues with the government agencies that oversee the contracts through the Cleaning Communications Groups. In the years leading up to this research the union also led petitions and strikes to improve labour standards for cleaners when direct communication with government agencies was not fruitful.

## 9.5 Enforcement pyramids and the enforcement of labour standards

Responsive regulation models are underpinned by a wide array of enforcement tools enabling an appropriate response to the severity of the non-compliance. These tools range from light touch enforcement tools to court-based 'big stick' style enforcement measures. In principle this requirement is met by the FWO as was evidenced in the enforcement pyramid Figure 3.1 in *Chapter 3*. This thesis did not, however, find evidence of these enforcement tools being used by the FWO to directly enforce labour standards for school cleaners. This was in spite of the fact that the FWO was conducting a campaign to improve compliance in cleaning services during the course of research conducted for this thesis. The first phase of the FWO campaign was prioritising education of employers about their workplace obligations. In the second phase of the campaign FWO pursued audits of companies that had been flagged in the initial phase as being non-compliant (Fair Work Ombudsman, June 2011). None of the companies delivering cleaning services under NSW government contracts were targeted under the campaign. At best, the contracted cleaning companies would have been indirectly influenced by the awareness efforts and exposure to the penalties for non-compliance placed on other companies in other sectors. This meant that the NSW government cleaning contractors were not as visibly non-compliant as the 366 companies selected for audits. This indicates that the infringements in school cleaning are minor compared to the rest of the cleaning industry (UV 1 and IC 1).

Another explanation for the absence of direct enforcement of the government contracted cleaning sector by the FWO is that there is an assumption by government agencies that the financial incentive of the contracts provides the motivation for contracted cleaning companies to comply (DEC 1). As was seen in *Chapter 5* these

contracts are amongst the largest contracts for services in the world and profit margins are higher for these government contracts than other cleaning contracts, therefore the financial incentives of the contract are substantial. This explanation follows that given by the DEC official; that contracted cleaning companies are assumed to comply with labour standards provisions because the contracts are lucrative and it is not worth the risk of losing them.

This research has demonstrated that monitoring and enforcement of labour standards that are prescribed by labour law are conducted by United Voice, instead of by the FWO. This is significant because United Voice is limited in its capacity to formally collaborate with the FWO to monitor standards or to implement a 'big stick' style of punishment in order to enforce these standards. As the enforcement pyramid Figure 3.2 in *Chapter 3* shows, trade unions are largely restricted to enforcement through information, awareness, education and advice. The compounding effects of increasingly individual employment relationships, reduced right of entry powers and less protection against employment termination resulted in unions having critically diminished power and resources to defend workers (Baird *et al.*, 2009; Fenwick and Howe, 2009; Hardy and Howe, 2009; Bray and Macneil, 2011; Goodwin and Maconachie, 2011). It is unlikely trade unions will be able to pursue court-based proceedings as an enforcement strategy because these are prohibitively expensive (Hardy and Howe, 2009: 330-331). There was also no evidence in this research of United Voice assisting cleaners with small claims, or pursuing civil proceedings on behalf of subcontracted or underpaid school cleaners.

In practice mechanisms for government to enforce labour standards clauses, illustrated in the contract pyramid of enforcement in Figure 2.3, fall short of having the

credible threat of a 'big stick' style punishment required for responsive regulation to be effective. Labour standards' clauses in government contracts for services are necessary, but may not be sufficient conditions to ensure that labour standards are protected; governments must also allocate resources to monitoring and enforcement (Quinlan, 2006: 37). Contracts for services as a regulatory tool suffer from a paucity of sanctions (Collins, 1999: 90).

From a legal perspective, accountability for contractual performance is reliant on remedies payable to compensate financial loss. Government contracts for services are less enforceable because it is difficult to call parties to account when remedies are not easily quantifiable. The remedies function of contracts is not applicable to contracts for cleaning services, indeed, the issue of remedies payable remains unresolved and unresolvable (Seddon, 2009). This leaves governments with little recourse, other than contract termination. Labour standards that are included in government contracts are, however, regarded as 'extraneous clauses' and breaches are not deemed to be 'serious' enough to justify contract termination, thereby rendering those clauses relatively unenforceable (Seddon, 2009). This has prompted analysts, including (Collins, 1999), (Howe, 2006a) and (Seddon, 2009), to conclude that:

*Contract has now been taken into the public sector to do something that its rules and assumptions do not serve well, or at least do with some difficulty.*  
(Seddon, 2009: 41)

Accordingly, enforcement through contract termination was not used with any urgency when school cleaners' labour standards were breached. It is true that a 2011–2016 contract was not awarded to the company that was subcontracting-out services and severely infringing labour standards. The reason for this was not explicitly attributed to problems with labour standards because of the fear of litigation (IC 1). By

contrast, when contracts were being renewed at the end of 2009, a company that was known to be breaching labour standards by subcontracting-out labour had its contracts renewed, while a company that had poor relationships with school principals and the trade union, but was complying with labour standards, did not have its contracts renewed.

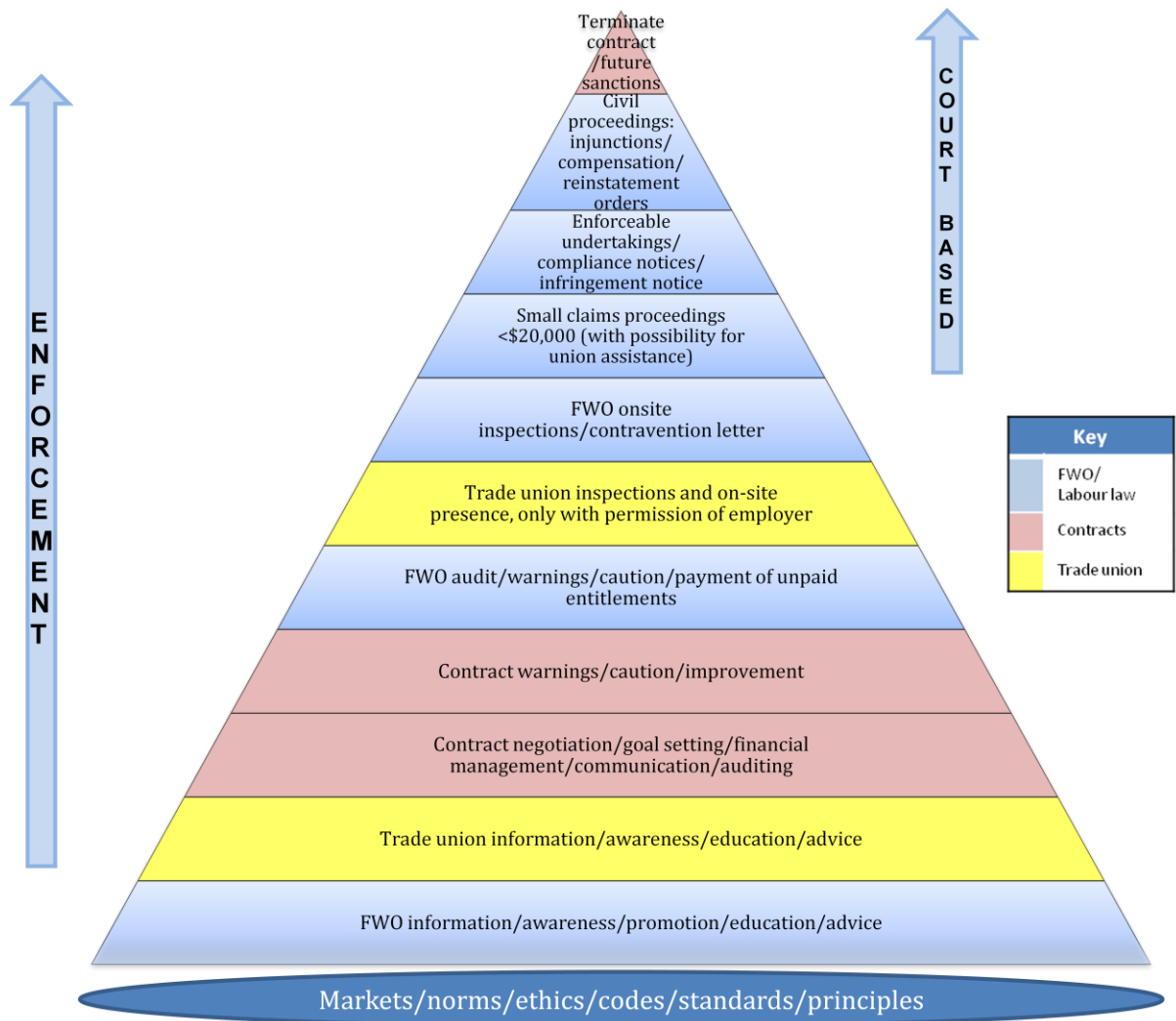
In short, the government agencies that oversee the contracts were found to have few resources to monitor, and little capacity to enforce, the labour related terms of the contracts. This left only United Voice to monitor and enforce the minimum labour standards set out in the contracts. Most power held by the trade union is perceived power, as they do not have the capacity to enforce standards through avenues, such as the imposition of fines, sanctions or contract termination. In reality they can place pressure on any parties to the contracts that are willing to hear them. Yet when it came to serious breaches of labour standards, there were no parties regulating labour standards for these cleaners, through the contracts or labour laws, which had the capacity, or will, to impose terminations or sanctions. The closest measure approximating 'big stick' style enforcement of minimum labour standards was the financial incentive of the contract. This was buttressed by the decision not to award new contracts to the company that was subcontracting-out work to undercut wage related costs.

The only alternative enforcement mechanisms in the pyramid of enforcement for contracts are light touch measures like negotiating and communicating, but these have poor effectiveness without the credible threat of a 'big stick' style punishment. This brings us back to the limitations of using contracts, a tool that was designed to meet commercial objectives, as a mechanism to ensure that minimum industrial relations

standards are met. Similarly for regulation through labour law, while the capacity of the FWO has been enhanced since the Fair Work Act (2009) was enacted, the approach taken by FWO favours education and facilitation over orders and sanctions (Hardy, 2009; Maconachie and Goodwin, 2010a; Fair Work Ombudsman, 2011; Goodwin and Maconachie, 2011: 71). This is in line with trends away from command and control style of regulation, but is only effective if there is at least a threat of a 'big stick' style punishment (Ayres and Braithwaite, 1992; Howe, 2006b; Howe, 2008).

Ideally, a responsive regulation approach, which enrolls non-state actors and combines labour law and contract tools to regulate cleaners' labour standards, would dramatically increase the enforcement tools available for ensuring compliance with labour standards. A combined enforcement pyramid that incorporates all enforcement tools from contracts (Figure 2.3), labour law (Figure 3.1) and trade unions (Figure 3.2) might look like the pyramid below in Figure 9.1. The bottom three levels of the pyramid are all light touch measures of negotiation. Awareness and education are carried out by the FWO broadly across the industry, by trade unions more specifically in sections of industries, like school cleaning, and then more targeted light touch measures are carried out through the contractual mechanisms. Warnings, cautions and similar responses through the contracts and the FWO are on the next levels of the pyramid, with FWO warnings and cautions bearing more weight because there are formal procedures for issuing warnings and conducting audits. Moving up the pyramid, a range of more severe enforcement measures are available to the FWO. Then at the top of the pyramid is the threat of contract termination, which, as was seen in the previous section, is difficult if not impossible for government agencies to execute for labour standards breaches.

**Figure 9.1 Combined responsive regulation enforcement pyramid**

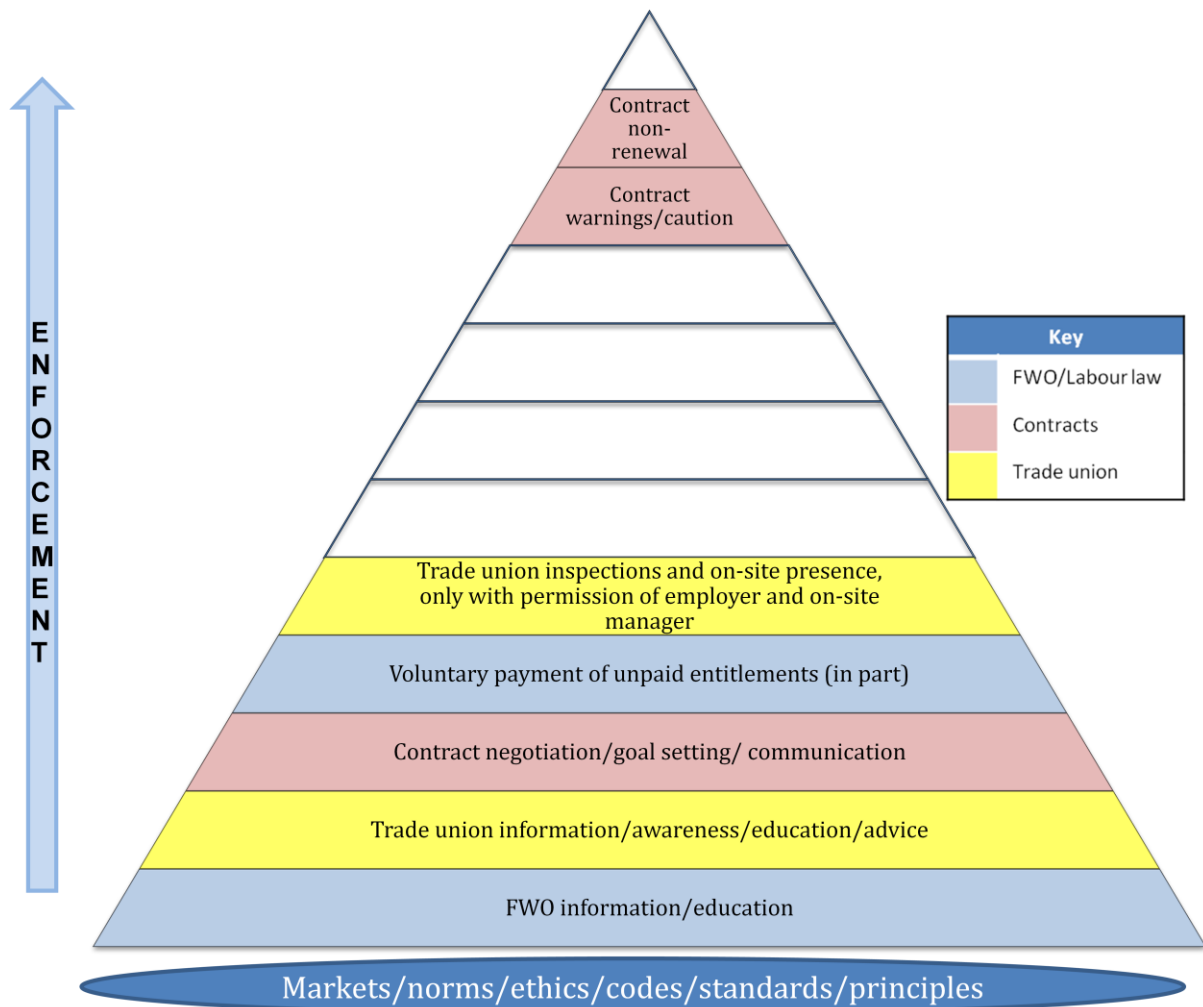


Source: Combination of Figures 2.2, 2.3, 3.1 and 3.2 in *Chapters 2 and 3*.

This elaborate enforcement pyramid is far more extensive than the enforcement tools that were evidenced being put to use in this research. In practice the enforcement pyramid for school cleaners' labour standards looked more like the more limited representation in Figure 9.2 below.



**Figure 9.2 Actual responsive regulation enforcement pyramid for NSW school cleaning contracts**



Source: Combination of Figures 2.2, 2.3, 3.1 and 3.2 in *Chapters 2 and 3* and results from case study of NSW school cleaners.

This pyramid does not meet the requirements of responsive regulation. The model of responsive regulation must include a wide array of light touch measures, a credible threat of sanctions against persistent or severe non-compliance and many more enforcement measures in between (Ayres and Braithwaite, 1992; Freiberg, 2010; Goodwin and Maconachie, 2011). This pyramid includes five levels of light touch measures, in the forms of negotiation and awareness conducted by the FWO, the trade union and government agencies overseeing the contracts. Escalation of enforcement up

the pyramid was only evidenced through contractual mechanisms in the NSW government cleaning contracts. There was an absence of mid-range enforcement measures, signified by the blank levels in the depiction of the enforcement pyramid for NSW school cleaners' labour standards. Indeed, light touch measures for enforcing labour standards through contractual mechanisms and United Voice dominate this enforcement pyramid. There is a pertinent absence of court based enforcement tools; no evidence was found in the NSW school cleaning contracts of the FWO prosecuting cases of breaches or cleaners taking small claims to court.

While there are ample labour standards contract provisions that have been negotiated and implemented, there is poor monitoring and rare instances of full compliance. The poor compliance with labour standards that this research uncovered is not surprising given that there are poor contractual mechanisms for holding to account those who breached the contracts. Reliance on contracting companies' compliance being motivated by the financial incentives of the contracts, as a substitute for government monitoring and enforcement is clearly misplaced. The economic incentive of the contracts did, however, ensure that companies endeavoured to meet the considerable demands of the contracts in ways that were highly visible to the client. This meant that companies focussed on meeting the onerous reporting demands of the contracts, instead of complying with labour related contract specifications. This observation parallels the finding by Ji and Weil (2009: 22) that employers operating as franchisors focus on franchise requirements, such as establishing effective management systems, to the detriment of labour standards. Similarly, when the Australian government outsourced the Job Network there was a financial incentive for contractors to meet very

specific targets set out in the contracts, which failed to account for the broader social objectives of policy makers (Quiggin, 2002: 101-102; Ranald, 2002).

This research has also exposed the limited collaboration between trade unions and the FWO in monitoring and enforcing labour standards through labour law regulatory mechanisms. This is in spite of extremely high levels of active trade union membership amongst school cleaners. United Voice plays a significant part in negotiating labour standards in the EBAs and monitoring those labour standards, but it lacks the power to implement standards or enforce them. This is consistent with the argument elicited in Sub-section 3.3.2 that since 1996 the regulation of labour has become less responsive because, in this case, it fails to enrol non-state actors in the implementation and enforcement of labour standards (Cooney *et al.*, 2006). Although trade unions can be involved in monitoring labour standards they have had less opportunity to do this since legislation was introduced in 2004 limiting trade union right of entry to workplaces (Fenwick and Howe, 2009; Hardy, 2009: 102-105; Hardy and Howe, 2009: 332; Bray and Macneil, 2011: 157; Goodwin and Maconachie, 2011). Legislation introduced since 2004 has restricted trade unions' capacity to enforce standards through low cost measures, such as industrial action (Hardy and Howe, 2009; Bray and Macneil, 2011). This leaves trade unions with few options for enforcement other than civil proceedings, which are usually prohibitively expensive (Hardy and Howe, 2009: 332).

This research shows that the trade union approach to monitoring and enforcing labour standards is to concentrate on contractual mechanisms. Trade union efforts at the implementation stage target the awarding of contracts that pay sufficiently for companies to uphold labour standards. Negotiations for improvements centre on

clauses to be added to the contracts. It should be acknowledged that the trade union plays an important role in negotiating the EBAs and in doing so has a significant impact on incremental improvements to labour standards (or at least in upholding labour standards by keeping wages tracking with inflation). It is worth noting that the avenue for enforcement of the EBAs' labour standards is not through the use of labour law mechanisms by the national inspectorate body. Instead, trade unions agitate for government agencies that oversee the contracts to enforce compliance with the EBAs through contractual measures.

## 9.6 Discussion

The model of responsive regulation can be thought of as having two particular requirements. The first is that various stakeholders are enrolled to participate in a collaborative and democratic system of regulation (Ayres and Braithwaite, 1992: chapter 3; Cooney *et al.*, 2006: 223-224; Howe, 2008: 53; Hardy, 2012: 118). While labour law mechanisms to regulate labour standards of NSW government school cleaners fall short of meeting the participative and collaborative requirements of responsive regulation, this research found that the contracts for services came closer to meeting these requirements. United Voice was actively involved in collaborating with the government bodies that oversee the contracts to negotiate, implement, monitor and enforce labour standards through contractual mechanisms. From a labour law perspective, by outsourcing the cleaning services, government is also outsourcing the obligations to uphold working standards for the cleaners (Ranald, 1997; Quiggin, 2002).

*[Government] would argue that in legitimately contracting out the service it is the contractor's responsibility to sort out the problems and that would be a legitimate point of view because that is exactly why the government outsourced in the first place. It firstly lowers the cost and secondly got rid of the problem.*  
(CM 1)

The second requirement of responsive regulation is that regulators must have at their disposal a wide array of enforcement measures that fit within the enforcement pyramid, ranging from light touch to severe measures, and many measures in between (Ayres and Braithwaite, 1992; Freiberg, 2010; Goodwin and Maconachie, 2011). The enforcement pyramid, Figure 9.2, depicts the actual enforcement measures used to regulate labour standards for NSW school cleaners. This figure illustrates that regulation of school cleaners' labour standards fails to meet the requirements of responsive regulation, as there are inadequate mid-range or harsh measures for escalating enforcement up the pyramid in cases of persistent or severe non-compliance. Significantly, the weakness of the 'big stick' measure of contract termination undermines the deterrence value of the regulation. This finding validates Howe and Landau's (2009) suggestion that contract termination is not a credible 'big stick' enforcement measure to entice cleaning contractors to comply with labour standards provisions in cleaning contracts.

Ostensibly the role of the government parties to the contracts, in particular the SCCB, is to implement reviews or sanctions if contract terms are not complied with. This includes provisions for compliance with labour standards for all workers, including subcontracted workers and there are also stringent OHS requirements. In practice however, the DEC, the primary agency overseeing these contracts, is concerned with safety and security for school staff and students. The monitoring and enforcement of labour standards for contracted cleaners in schools and other NSW government sites is not a priority for the DEC. Some of the contracted cleaning sites, such as police stations or regional government offices, are well outside the frame of the DEC's daily operations.

The DEC operates on the assumption that the contractors are large, reputable companies and would stand to lose too much if they breached the terms of the contracts (DEC 1). There is an expectation that companies will abide by the commitments they have made in their tender simply because they are large, reputable companies (DEC 1). The 2006–2011 contracts required companies to be highly transparent and the DEC relied on this self-reporting by companies as the means by which contractors self-monitor and comply with contract terms (DEC 1). For some companies this approach has been largely effective. Indeed, when there was a blatant breach of labour standards the non-compliant company was implicitly punished by not being awarded any contracts for 2011–1016. This enforcement action was largely the result of trade union participation and communication with government agencies overseeing the contracts. This was evidence of responsive regulation through contractual mechanisms, not through labour law mechanisms. Thus, while the non-awarding of contracts was effective in shifting the problem out of NSW government cleaning contracts, there is no guarantee that cleaners working for this company in other sectors are receiving their minimum labour entitlements.

## **9.7 Conclusion**

In this chapter the final two research questions were answered:

5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?
6. How well does the regulation of labour standards for school cleaners meet the requirements of responsive regulation?

It was concluded that the combination of contract and labour law mechanisms fails to ensure compliance with prescribed labour standards. It was also concluded that the

regulation of labour standards for NSW school cleaners fails to meet the requirements of responsive regulation. The contracts are underpinned by the labour law regulations and explicitly refer to labour standards in the contracts and supporting documents. In practice, however, the mechanisms to define, implement, monitor and enforce labour standards through labour law become subservient to contractual mechanisms. Government bodies that are reliant on contracts for services to regulate labour standards face restrictions, because contracts are a legal instrument designed to support commercial transactions. The trade union picks up the pieces and agitates for a response from those who care to listen, because on their own they have little power to enforce compliance. The avenues for defining, implementing, monitoring and educating employers in an effort to shape or steer behaviour have clearly shifted from labour law to the contracts. The result has been that the commercial contract has become at least as important as the contract of employment in regulating labour.

## Chapter 10

### Conclusion

The objective of this thesis was to understand how labour standards are regulated through the combination of labour law and contracts for services when services are contracted-out. As this was a first time exploration of an issue that had previously not been researched, an in depth and detailed case study of the NSW school cleaning contracts was conducted. The six research questions that were answered in this thesis were:

1. What are the minimum labour standards prescribed by the contractual and labour law regulatory mechanisms?
2. What are the mechanisms for enforcing labour standards for school cleaners?
3. Who is responsible for determining labour standards, and monitoring and enforcing those standards for school cleaners?
4. What are the actual (as opposed to specified legal minimum) labour standards of school cleaners?
5. Does the combination of contract and labour law mechanisms ensure compliance with prescribed labour standards?
6. How well does the regulation of labour standards for school cleaners meet the requirements of responsive regulation?

Answers to the labour law component of the first and second question in *Chapter 3* revealed that there are comprehensive mechanisms in place for protecting school cleaners' minimum labour standards entitlements, that these cleaners benefit from



enterprise bargaining agreements to prop up their entitlements and there is a relatively well resourced national government inspectorate body to enforce those standards. The contractual aspects of the first and second questions were considered in *Chapters 1 and 5*. These analyses showed that regulation through contracts is becoming increasingly prevalent; indeed, there are many clauses pertaining to labour standards in the NSW government cleaning contracts. There are, however, limitations to the extent to which those labour standards clauses are enforceable. Traditionally, labour law was central to the regulation of labour standards and these standards were monitored and enforced by trade unions and national inspectorate bodies. With the proliferation of contracting-out practices the regulation of the employment relationship has fundamentally changed, with the oddity that, in this case, one traditional industrial relations player – the union – remains involved, albeit now in the commercial regulatory space.

The question of who was responsible for regulating labour standards, question three, was examined in *Chapter 5*. The convoluted web of responsibility for school cleaners' labour standards was explored in this chapter, with six entities having a role in regulating labour standards, as well as three cleaning companies being responsible for delivering those labour standards for school cleaners in metropolitan Sydney. This demonstrated that by combining labour law and contracts to regulate labour standards, protection of labour is not reinforced. Instead, the established protections of labour are destabilised by competing interests to minimise government expenditure on contracts and maximise company profits, while still upholding cleaners' labour standards. The emphasis on cost reductions ultimately resulted in pressure to reduce labour related expenses through workload intensification and by undermining labour standards.

An exploration of the actual (as opposed to specified legal minimum) labour standards of school cleaners (question 4) in *Chapters 7 and 8* revealed that there was minimal monitoring, rare enforcement and therefore rare compliance with prescribed labour standards for school cleaners. The result was mixed messages regarding OHS, high injury rates, a preponderance of unpaid overtime and incidences of illegal subcontracting, where cleaners were paid well below their legal minimum entitlements. Bullying and harassment were rife for school cleaners and fear of reprisal weighed heavily into cleaners' decisions not to assert their workplace rights. These findings were consistent with previous research, which found that contracting arrangements obfuscate the employment relationship and have a deleterious effect on labour standards, such as OHS (Johnstone *et al.*, 2001; Alcorso, 2002; Lobel, 2005: 1092-1095; Johnstone and Quinlan, 2006: 275; Quinlan, 2006: 33-34). The problems of being regulated through a complex web of government agencies, on-site managers and private companies were exacerbated for school cleaners because the DEC (the client) focused on the quality of work, without consideration for the labour standards that contributed to the delivery of the cleaning services.

The major finding of this research was that the commercial contract has become at least as important as the contract of employment in regulating labour standards when services are contracted-out. This means that the answer to research question five is that the combination of contract and labour law does not ensure compliance with prescribed labour standards. The dominance of contracts as a tool for regulating labour was found to be problematic because contracts are designed to facilitate commercial objectives like competition and efficiency. This was evidenced in the emphasis on 'best value for money'; problems with the one-size-fits all contract; cleaning companies

focussing their attention on meeting the onerous reporting demands because they were highly visible to the client; and the addition of clauses to constrain workloads, which were largely ignored. As a consequence, school cleaners suffered from excessive workload pressures.

There was also an assumption that by awarding contracts to the largest cleaning companies, the companies would be mindful of complying with contracts rather than risking tainting their commercial reputations. Furthermore, contracted cleaning companies were assumed to be complying with contract terms because these are large-scale, lucrative contracts and not worth risking losing. Thus the government agencies and the SCCB that were overseeing the contracts paid little or no attention to monitoring labour standards for school cleaners through these contractual mechanisms.

The FWO, which is responsible for monitoring and enforcing the labour law, conducted a cleaning services campaign. The focus of this campaign to improve labour standards in the cleaning industry was not, however, on the NSW school cleaners. These school cleaners were well represented by their trade union and had unusual longevity of employment, which meant they were less at risk of not being provided with their labour standards entitlements. Consequently, the onus was on workers and United Voice to monitor and report breaches of labour standards.

Finally, in answer to the sixth research question, there was little evidence of responsive regulation through labour law mechanisms. United Voice rarely participated or collaborated with the FWO to monitor and regulate labour standards. United Voice was, however, enrolled in the process of defining labour standards by negotiating school cleaners' EBAs. In spite of the FWO having an array of enforcement tools, including 'big stick' style punishments to deter non-compliance, there was little

evidence of the FWO using these tools to enforce labour standards for NSW school cleaners.

There were, however, participative and collaborative elements of responsive regulation through the contracts for services. This occurred almost exclusively through trade union involvement in negotiating, monitoring and communicating with government agencies to apply pressure for labour standards to be upheld through the contracts. United Voice was enrolled to participate in the regulatory process by negotiating to include a Code of Practice for government contracts, adding clauses to the cleaning contracts to harness workload pressures and by pressuring government to act when infringements occurred. The contracts have, therefore, become the predominant source of regulation of school cleaners' labour standards. This is problematic because, when used in isolation, contracts fail to meet the requirements of responsive regulation; the enforcement pyramid has limited enforcement tools and weak credible threat of a 'big stick' style of punishment for infringements.

This highlights the potential for United Voice to agitate for federal legislation to support the monitoring of labour standards through contractual mechanisms, including giving unions a role in monitoring and enforcement. This is a realistic possibility because the Textile Clothing and Footwear Union of Australia (TCFUA) has successfully lobbied for federal legislation requiring producers to disclose supply chain details (*Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*). Similarly, the Transport Workers' Union (TWU) has successfully campaigned for the enactment of a federal bill supporting reasonable remuneration rates for truck drivers employed on contractual bases (*Road Safety Remuneration Act 2012*). A similar campaign by United Voice would be a logical extension of the Clean Start campaign already underway. This

thesis has provided a detailed understanding of the existing regulation of labour standards for school cleaners. Future research could build on this thesis by developing trade union strategies and public policies that enable trade unions to monitor and enforce labour standards through contractual mechanisms, along the same lines as the TWU and TCFUA campaigns.

### **10.1 The significance and contribution of this research**

This thesis not only refines our understanding of regulation under government contracting, but also gives voice to a group of vulnerable workers being impacted upon by cost-cutting strategies of privatising government services. These are important research area for two reasons. The first is that cleaners have suffered from growing income disparities when compared with other employees in Australia. The second reason is that there has been a proliferation of government contracting-out services over the past two decades, which has changed the way labour standards are regulated and enforced. Amidst arguments that governments have an obligation to ensure labour standards are upheld for workers who are being paid with public monies (Morris, 1990; Bolton, 2006; McCrudden, 2007; Seddon, 2009), the number of cleaners in Australia who are paid with public monies is not insignificant. The most recent ABS data from the cleaning industry show that more than 22 per cent of Australian cleaners are paid to service government buildings (ABS, 2000). Cleaners are a group of vulnerable workers whose services are commonly outsourced by government agencies and yet there have only been a handful of studies exploring how cleaners are impacted when their work is contracted-out. This research begins to fill these gaps by exploring these issues in relation to school cleaners. Consequently, this research makes an important

contribution to our understanding of how vulnerable workers' labour standards are regulated when services are contracted-out by governments.

The original contribution of this thesis is threefold. First, this thesis is important because it has combined theoretical perspectives on labour law and contracts and used the regulatory theory framework to provide a new perspective on the regulation of labour when services are contracted-out. This enhances our understanding of how labour standards are regulated and the impact of contracting-out government services. In doing so, this thesis contributes to a broadened understanding of labour law theory by incorporating regulation of labour standards through contracts for services into a broader understanding of the regulation of labour. Overall, then, this thesis offers a more integrated analysis of the regulation of labour standards.

Second, this thesis improves awareness about labour standards for NSW school cleaners, as a subset of vulnerable workers. This thesis found that the government inspectorate presumed that school cleaners' labour standards were being upheld because they were well represented by their trade union and had longevity of employment. There was also an assumption that contracted cleaning companies complied with labour standards provisions in the contracts because the contracts were lucrative and the contract clauses were carefully composed. In fact, this was not the case. Non-compliance was found to be widespread and there were poor mechanisms for enforcement of contract provisions.

Finally, the findings of this thesis were significant because they highlight the problems of labour law becoming subservient to contracts. Contracts for services are poorly equipped to ensure labour standards for workers providing the services are upheld. This thesis demonstrates the importance of maintaining processes for

monitoring and enforcing labour standards, even when contracts appear to reinforce those minimum labour standards.

## **10.2 Research limitations and future research**

This thesis provides a better understanding of how labour standards are regulated when services are contracted-out, highlighting the dominance of the contract in the regulation of labour, at the expense of regulation through labour law. A limitation of this research is the low level of involvement from government agencies in the case study. If the DEC, the DFS, the SCCB and particularly, the FWO had been willing to participate in the case study, the findings of this research could have been better substantiated. The timing of conducting this research may have been a contributing factor to the reluctance of government entities to participate, with the changeover in contracts and the sensitive political environment. This research could have been improved by conducting it at a different stage in the contract and political cycles. Furthermore, the FWO was only newly established when this research was conducted and there was limited understanding of the role and functions of the Ombudsman. Howe and Hardy are presently conducting Australian Research Council funded research to understand the investigation and enforcement activities of the FWO.

A further limitation of this research, of course, is the breadth of the conclusions that can be drawn from a single case study approach. The cleaners in the case study of NSW government school cleaning were highly unionised, evenly split between male and female workers and had unusual longevity of employment. The high level of trade union participation significantly enhanced access to the cleaners to conduct the research. However, by selecting a group of cleaners, who are less vulnerable than most, the

results may have been skewed, giving an exaggerated impression of worker empowerment and labour standards compliance.

This research could be supported and further validated by comparisons with school cleaners in other Australian states and territories. For instance, Victorian government school cleaners' work arrangements are not centralised, being employed directly by the schools and therefore would provide a powerful point of comparison with the NSW school cleaners, who are highly centralised and unionised. This research could also be further supported by comparative research of cleaners working on other government contracts, such as the federal government office cleaners. These cleaners are less unionised and there are higher number of students working as cleaners in this sector. This would be an interesting comparison because the federal government made a commitment to the United Voice 'Clean Start' campaign. This meant they made a formal commitment to upholding labour standards through contracts for cleaning, first and foremost by only awarding contracts to companies that have also made a commitment to upholding labour standards. This necessitates paying sufficiently for the contracts so contracted cleaning companies can afford to provide their cleaners with all their labour standards entitlements.

For a broader understanding of how labour is regulated when services are contracted-out, this research could be broadened to include cleaners working in other industries. This could include cleaners working on contracts in the private sector, such as offices, shopping centres, hotels or airports. Building on this thesis, this kind of comparison would illustrate the differences between regulation in public versus private sectors. These approaches could have tested whether the finding that labour law has become subservient to contracts applies across different sectors. This research could



also be extended by continuing with similar case studies in the future to examine how the situation is changing for NSW school cleaners, as government approaches to regulating labour and contracts evolve. Comparative case studies could also be conducted across other industries where services have been contracted-out, such as catering, security or IT services.

The singular case study approach taken in this research allowed for an in-depth exploratory analysis of a phenomenon that was being observed for the first time. Broader qualitative and quantitative approaches to this problem might be able to better test whether labour is increasingly being regulated through contracts, rather than through labour law. These approaches would allow for comparison across different sectors or industries and may help us to better understand how labour standards are being regulated when services are contracted-out.

### **10.3 The implications of this research**

The significance of this thesis is not confined to the realm of labour standards' regulations for NSW school cleaners. The results have broader implications for thinking about regulation in general, and for research into other workers providing services on a contractual basis. With the rising prevalence of contracting-out of services, the regulation of workers through contracts is increasingly important. This thesis has shown how the practice of contracting-out changes the employment relationship. Contractual mechanisms for regulating labour replace labour law, but they are a poor substitute. This has potential repercussions across all sectors that contract-out services and has important implications for the way governments should approach the monitoring and enforcement of labour standards.

The school cleaners in this research were regulated predominantly through the contracts for services; with poor compliance with labour standards provisions in the contracts. These findings remind policy makers not to be complacent about the labour standards of contracted workers. The financial incentives of the contracts do not guarantee that contract requirements will be met. The inclusion of labour standards clauses in the contracts is a necessary but not sufficient condition to ensure labour standards are upheld. Governments have a duty to monitor and enforce these standards, particularly for vulnerable workers who have less capacity to assert their own labour rights.

In instances where trade union participation is high, governments also cannot rest on their laurels, imagining that the trade unions will do all the monitoring and enforcement of labour standards. National policy changes since 1996 have restricted the capacity for trade unions to monitor labour standards at work sites and then enforce those standards through traditional trade union activities, such as industrial action. Labour law should be more responsive, by formally enrolling trade unions in the process of enforcing labour standards. This could be done by increasing the communication between trade unions and the FWO, with the FWO collaborating with trade unions to understand where breaches are occurring and using their enforcement tools to encourage compliance. Alternatively, policy makers could increase the enforcement tools available to trade unions, so they too have an array of tools, including viable 'big stick' style tools of punishment to increase the credible threat of enforcement.

## References

- ABS. 2000. *8672.0 Cleaning Services Industry, Australia, 1998-99* [Online]. Australian Bureau of Statistics. Available: <http://www.abs.gov.au/ausstats/abs@.nsf/productsbytitle/6F0B7E423A0DC6A6CA2568FD0083C4A8?OpenDocument>
- ABS 2001. Unpublished data from the 2001 Census for occupation code 9111-11 in industry division L7866.
- Adams, D. & Hess, M. 2000. Alternatives to competitive tendering and privatisation: A case study from the Australian health industry. *Australian Journal of Public Administration*, 59 (1), pp.49-59.
- Aguiar, L. L. M. 2000. Restructuring and employment insecurities: The case of building cleaners. *Canadian Journal of Urban Research*, 9 (1), pp.64-79.
- Aguiar, L. L. M. 2006. Janitors and sweatshop citizenship in Canada. In: AGUIAR, L. L. M. & HEROD, A. (eds.) *The Dirty Work of Neoliberalism: Cleaners in the Global Economy*. Oxford, Malden MA, Carlton Victoria: Blackwell Publishing, pp.16-36.
- Aguiar, L. L. M. & Herod, A. 2006. *The Dirty Work of Neoliberalism: Cleaners in the Global Economy*. Oxford, Malden MA, Carlton, Victoria: Blackwell Publishing.
- Alcorso, C. 2002. Improving Occupational Health and Safety Information to Immigrant Workers in NSW. *Working paper no. 78 ACIRRT*. University of Sydney.
- Aronsson, G. & Gustafsson, K. 2005. Sickness presenteeism: Prevalence, attendance-pressure factors, and an outline of a model for research. *Journal of Occupational Environmental Medicine*, 47, pp.958-966.
- Arrowsmith, S. & Kunzlik, P. (eds.) 2009. *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions*, New York: Cambridge University Press
- Arrowsmith, S., Linarelli, J. & Wallace, D. J. 2000. *Regulating Public Procurement: National and International Perspectives*. The Hague: Kluwer Law International.
- Arup, C., Gahan, P., Howe, J., Johnstone, R., Mitchell, R. & O'Donnell, A. 2006. *Labour Law and Labour Market Regulation*. Sydney: The Federation Press.
- Ascher, K. 1987. *The Politics Of Privatisation*. Basingstoke: Macmillan.
- Australian Business Limited. 2011. *Government financial incentives for employers* [Online]. Available: <http://www.apprenticeshipscentre.com.au/apprentice/incentives/> [Accessed 25th Oct 2011].
- Australian Government January 2010. Fair Work Principles User Guide.
- Australian Government July 2009. Australian Government Procurement Statement, Minister for Finance and Deregulation.
- Australian Law Reform Commission 2002. Securing Compliance: Discussion Paper 65: Civil and Administrative Penalties in Australian Federal Regulation. Sydney: ALRC.
- Ayres, I. & Braithwaite, J. 1992. *Responsive Regulation: Transcending the Deregulation Debate*. USA: Oxford University Press.
- Baird, M., Cooper, R. & Ellem, B. 2009. Low-paid women: The impact of regulatory change in Australia. *Industrial Relations Journal*, 40 (5), pp.393-407.
- Baldwin, R. & Black, J. 2008. Really responsive regulation. *The Modern Law Review*, 71 (1), pp.59-94.

- Baldwin, R., Scott, C. & Hood, C. 1998. Introduction. In: BALDWIN, R., SCOTT, C. & HOOD, C. (eds.) *A Reader on Regulation*. New York: Oxford University Press, pp.1-58.
- Bamber, G. J., Lansbury, R. D. & Wailes, N. (eds.) 2004. *International and Comparative Employment Relations: Globalisation and the Developed Market Economies*, Crows Nest, NSW: Allen & Unwin.
- Barton, R. 2002. Privatisation by stealth: The gas and fuel corporation of Victoria. In: FAIRBROTHER, P., PADDON, M. & TEICHER, J. (eds.) *Privatisation, Globalisation and Labour: Studies from Australia*. Sydney: The Federation Press, pp.132-157.
- Bercusson, B. 1978. *Fair Wages Resolution*. UK: Mansell Information Publishing.
- Black, J. 1997. *Rules and Regulators*. Oxford: Clarendon Press.
- Black, J. 2002a. Critical reflections on regulation. *Australian Journal of Legal Philosophy*, 27, pp.1-35.
- Black, J. 2002b. Decentring regulation: understanding the role of regulation and self regulation in a "post-regulatory" world. *Current Legal Problems*, 54, pp.103-146.
- Blaikie, N. 1993. *Approaches to Social Enquiry*. Cambridge UK: Polity Press
- Bluff, L. & Johnstone, R. 2003. Infringement notices: Stimulus for prevention or trivialising offences? *Journal of Occupational Health and Safety*, 19 (4), pp.337-346.
- Bolton, P. 2006. Government procurement as a policy tool in South Africa. *Journal of Public Procurement*, 6 (3), pp.193-217.
- Boushey, H. & Fremstad, S. 2008. The wages of exclusion: Low-wage work and inequality. *New Labor Forum*, 17 (2), pp.9-19.
- Brammer, S. & Walker, H. 2009. Sustainable procurement in the United Kingdom public sector. *Supply Chain Management: An International Journal*, 14 (2), pp.128-137.
- Bray, M. 2011. The distinctiveness of modern awards. In: BAIRD, M., HANCOCK, K. & ISAAC, J. (eds.) *Work and Employment Relations*. Sydney: The Federation Press, pp.17-33.
- Bray, M. & Macneil, J. 2011. Individualism, collectivism and the case of awards in Australia. *Journal of Industrial Relations*, 53 (2), pp.149-167.
- Bray, M., Waring, P. & Cooper, R. 2009. *Employment Relations: Theory and Practice*. Sydney: McGraw Hill
- Bray, M., Waring, P., MacDonald, D. & LeQueux, S. 2001. The 'representation gap' in Australia. *Labour & Industry*, 12 (2), pp.1-31.
- Bromberg, M. & Irving, M. 2007. The scope of the charter. In: BROMBERG, M. & IRVING, M. (eds.) *Australian Charter of Employment Rights*. Prahan, Victoria: Hardie Grant Books, pp.117-126.
- Brosnan, P. & Walsh, P. 1998. Employment security in Australia and New Zealand. *Labour & Industry*, 8 (3), pp.23-42.
- Brown, W. 2011. How do we make minimum wages effective? In: BAIRD, M., HANCOCK, K. & ISAAC, J. (eds.) *Work and Employment Relations: An Era of Change*. Sydney: The Federation Press, pp.167-177.
- Burgess, J. & Campbell, I. 1998. The nature and dimensions of precarious employment in Australia. *Labour & Industry*, 8 (3), pp.5-22.

- Campbell, I. & Peeters, M. 2008. Low pay, compressed schedules and high work intensity: A study of contract cleaners in Australia. *Australian Journal of Labour Economics*, 11 (1), pp.27-46.
- Carney, T. & Ramia, G. 2002. *From Rights to Management: Contract, New Public Management and Employment Services*. The Hague: Kluwer Law International.
- Carney, T., Ramia, G. & Chapman, A. 2006. Which law is laggard? Regulation and the gaps between labour law and social security law. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.383-409.
- Catanzariti, J. & Kane, C. 2012. Major tribunal decisions in 2011. *Journal of Industrial Relations*, 54 (3), pp.312-325.
- Chalmers, J. & Davis, G. 2001. Rediscovering implementation: Public sector contracting and human services. *Australian Journal of Public Administration*, 60 (2), pp.74-85.
- Collins, H. 1999. *Regulating Contracts*. Oxford: Oxford University Press.
- Collins, H. 2000. Justifications and techniques of legal regulation of the employment relation. In: COLLINS, H., DAVIES, P. & RIDEOUT, R. (eds.) *Legal Regulation of the Employment Relation*. The Netherlands: Kluwer Law International, pp.3-27.
- Construction & Property Services Industry Skills Council 2010. Environmental Scan.
- Cooney, S., Howe, J. & Murray, J. 2006. Time and money under workchoices: Understanding the new *Workplace Relations Act* as a scheme of regulation. *University of New South Wales Law Journal*, 29 (1), pp.215-241.
- Cooper, R. 2010. The 'bargaining power' of women employees in the low-paid personal care sector: A brief review of the concepts and the evidence in Australia. Fair Work Australia Low-Paid Authorisations Exhibit No. 20: LHMU.
- Cooper, R. & Ellem, B. 2008. The neoliberal state, trade unions and collective bargaining in Australia. *British Journal of Industrial Relations*, 46 (3), pp.532-554.
- Cooper, R. & Ellem, B. 2011. Trade unions and collective bargaining. In: BAIRD, M., HANCOCK, K. & ISAAC, J. (eds.) *Work and Employment Relations: An Era of Change*. Sydney: The Federation Press, pp.34-50.
- Cope, S. 1995. Contracting-out in local government: Cutting by privatising. *Public Policy Administration*, 10 (3), pp.29-44.
- Corbin, J. & Strauss, A. 2008. *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. 3rd ed. Thousand Oaks: Sage Publications.
- Creswell, J. W. 1998. *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*. Thousand Oaks: Sage Publications.
- Creswell, J. W. 2009. *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*. USA: Sage.
- Crosby, M. August/September 2010. Clean Start enforcement ramped up. *InClean Magazine*. Sydney: The Intermedia Group.
- Crotty, M. 1998. *The Foundations of Social Research*. Crows Nest Australia: Allen & Unwin.

- Dabscheck, B. 2001. 'A felt need for increased efficiency': Industrial relations at the end of the millenium. *Asia Pacific Journal of Human Resources*, 39 (2), pp.4-30.
- Daintith, T. 1994. *The techniques of government*. 3 ed. Oxford: Oxford University Press.
- Deakin, S. & Wilkinson, F. 2000. Labour law and economic theory: A reappraisal. In: COLLINS, H., DAVIES, P. & RIDEOUT, R. (eds.) *Legal Regulation of the Employment Relation*. London: Kluwer Law International, pp.1-34.
- Deakin, S. & Wilkinson, F. 2005. *The law of the labour market*. London: Oxford University Press.
- DEC March 2006. Guide to the School Cleaning Contract 2006-2010, Department of Education and Training.
- Denzin, N., K. 1994. The art and politics of interpretation. In: DENZIN, N., K. & LINCOLN, Y., S. (eds.) *Handbook of Qualitative Research*. USA: Sage Publications, pp.500-515.
- Denzin, N. K. 1970. *The Research Act in Sociology: A Theoretical Introduction to Sociological Methods*. Chicago, US: Aldine Publishing Company
- DiCicco-Bloom, B. & Crabtree, B. F. 2006. The qualitative research interview. *Medical Education*, 40 (4), pp.314-321.
- Domberger, S. 1992. *Competitive tendering and contracting: Recent experience and future policy*. Sydney: University of Sydney, Graduate School of Business, CTC Research.
- Domberger, S. & Hall, C. (eds.) 1995. *The Contracting Casebook*, Canberra: AGPS.
- Domberger, S., Hall, C. & Li, E. A. L. 1995. The determinants of price and quality in competitively tendered contracts. *The Economic Journal*, 105 (433), pp.1454-1470.
- Domberger, S. & Hensher, D. A. 1992. *Private and public sector regulation of competitively tendered contracts*. Sydney: University of Sydney, Graduate School of Business, CTC Research Team.
- Domberger, S., Meadowcraft, S. & Thompson, D. 1987. The impact of competitive tendering on the costs of hospital domestic services. *Fiscal Studies*, 8 (4), pp.39-54.
- Dunleavy, P. 1986. Explaining the privatization boom: Public choice versus radical approaches. *Public Administration*, 64, pp.13-34.
- Edwards, P. (ed.) 2003. *Industrial relations: Theory and practice* Malden, MA: Blackwell Publishing.
- Ellem, B. & Franks, P. 2008. Trade union structure and politics in Australia and New Zealand. *Labour History*, 95, pp.43-67.
- Elton, J. & Pocock, B. 2008. The effects of WorkChoices on vulnerable South Australian workers and their households. *Labour & Industry*, 18 (3), pp.93-114.
- Ewing, K. D. 2005. The function of trade unions. *Industrial Law Journal*, 34 (1), pp.1-22.
- Ewing, K. D. 2008. Future prospects for labour law - lessons from the United Kingdom. *The Economic and Labour Relations Review*, 18 (2), pp.103-112.
- Fair Work Australia. 2009. *Guide: General Protections* [Online]. Available: <http://www.fwa.gov.au/documents/factsheets/GeneralProtectionsGuide.pdf> [Accessed 15th September 2012].
- Fair Work Australia 2010a. Cleaning Services Award 2010 (MA000022).

- Fair Work Australia 2010b. Spotless Property Cleaning Services Pty Ltd (Cleaning Services - NSW) Enterprise Agreement 2010-2011.
- Fair Work Ombudsman. 2011. Available: <http://www.fairwork.gov.au/> [Accessed 12/08/2011].
- Fair Work Ombudsman. 2012. *Sydney cleaners allegedly underpaid \$130,000* [Online]. Available: <http://www.fairwork.gov.au/media-centre/media-releases/2012/03/pages/20120307-glad-group-prosecution.aspx> [Accessed 10th July 2012].
- Fair Work Ombudsman June 2010. NSW - Sydney Metropolitan Cleaning Contractors Campaign Final Report.
- Fair Work Ombudsman June 2011. National Cleaning Services Campaign 2010-11. In: OMBUDSMAN, F. W.
- Fairbrother, P., Paddon, M. & Teicher, J. 2002. *Privatisation, Globalisation and Labour: Studies from Australia*. Sydney: The Federation Press.
- Fairbrother, P. & Testi, J. 2002. The advent of multinational ownership of the Victorian electricity generating plants: Questions for labour. In: FAIRBROTHER, P., PADDON, M. & TEICHER, J. (eds.) *Privatisation, Globalisation and Labour: Studies from Australia*. Sydney: The Federation Press, pp.102-131.
- Fenwick, C. & Howe, J. 2009. Union security after Work Choices. In: STEWART, A. & FORSYTH, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: The Federation Press, pp.173-194.
- Flanders, A. 1965; 2002. Industrial relations: What is wrong with the system? In: KELLY, J. (ed.) *Industrial Relations: Critical Perspectives on Business and Management*. London: Routledge, pp.10-22.
- Forsyth, A. 2009. 'Exit stage left', now 'centre stage': Collective bargaining under Work Choices and Fair Work. In: FORSYTH, A. & STEWART, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: Federation Press, pp.120-140.
- Fraser, L. 1997. Impact of Contracting-out on Female NESB Workers: Case Study of the NSW Government Cleaning Service. Sydney: Research and Statistics Branch, Department of Immigration and Multicultural Affairs.
- Freeman, R. B. & Medoff, J. L. 1984. *What Do Unions Do?* New York: Basic Books, Inc., Publishers.
- Freiberg, A. 2010. *The Tools of Regulation*. Sydney: The Federation Press.
- Friedman, M. & Friedman, R. 1980. *Free to Choose*. Harmondsworth: Penguin.
- Gahan, P. 2006. Trade unions as regulators: Theoretical and empirical perspectives. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.261-281.
- Gahan, P. & Brosnan, P. 2006. The repertoires of labour market regulation. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.127-146.
- Gahan, P. & Pekarek, A. 2012. The rise and rise of enterprise bargaining in Australia, 1991-2011. *Labour & Industry*, 22 (3), pp.195-222.
- Garofalo, C. 2011. Governance and values in contemporary public service. In: DE VRIES, M. S. & KIM, P. S. (eds.) *Value and Virtue in Public Administration: A*

- Comparative Perspective*. Hampshire, New York: Palgrave Mac Millan, pp.17-32.
- Goodwin, M. 2004. *The Great Wage Robbery: Enforcement of Minimum Labour Standards in Australia*. PhD, University of New South Wales.
- Goodwin, M. & Maconachie, G. 2011. Minimum labour standards enforcement in Australia: Caught in the crossfire? *The Economic and Labour Relations Review*, 22 (2), pp.55-80.
- Guba, E. G. & Lincoln, Y. S. 1981. *Effective Evaluation: Improving the Usefulness of Evaluation Results Through Responsive and Naturalistic Approaches*. Classic pbk. [ed.] ed. San Francisco: Jossey-Bass Publishers.
- Gunasekara, C. 2011. Independent contracting in low skilled, low paid work in Australia. *International Journal of Employment Studies*, 19 (1), pp.50-69.
- Gunningham, N., Sinclair, D. & Grabosky, P. 1998. Instruments for environmental protection. In: GUNNINGHAM, N. & GRABOSKY, P. (eds.) *Smart Regulation: Designing Environmental Policy*. New York: Oxford University Press.
- Hancock, K. 2008. The Future of Industrial Relations in Australia. In: RILEY, J. & SHELDON, P. (eds.) *Remaking Australian Industrial Relations*. Sydney: CCH Australia Ltd pp.7-14.
- Hansen, C., D. & Andersen, J., H 2008. Going ill to work - What personal circumstances, attitudes and work-related factors are associated with sickness presenteeism? *Social Science & Medicine*, 67 (6), pp.956-964.
- Hardy, T. 2009. A changing of the guard: Enforcement of workplace relations laws since Work Choices and beyond. In: STEWART, A. & FORSYTH, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: The Federation Press, pp.84-107.
- Hardy, T. 2012. Enrolling non-state actors to improve compliance with minimum employment standards. *The Economic and Labour Relations Review*, 22 (3), pp.117-140.
- Hardy, T. & Howe, J. 2009. Partners in enforcement? The new balance between government and trade union enforcement of employment standards in Australia. *Australian Journal of Labour Law*, 22, pp.306-336.
- Harland, C. M., Callender, G., Knight, L. A., Telgen, J., Thai, K. V. & Walker, H. L. 2006. Public procurement as a lever of government reform: international research evidence. *Proceedings of World Wide Symposium. San Diego, California*.
- Heery, E. & Abbott, B. 2000. Trade unions and the insecure workforce. In: HEERY, E. & SALMON, J. (eds.) *The Insecure Workforce*. London, New York: Routledge.
- Hindess, B. 1997. A society governed by contract? In: DAVIS, G., SULLIVAN, B. & YEATMAN, A. (eds.) *The New Contractualism?* Melbourne: Macmillan Education Australia, pp.14-26.
- Hodge, G. 1999. Competitive tendering and contracting-out. *Public Productivity & Management Review*, 22 (4), pp.455-469.
- Holley, S. & Rainnie, A. 2012. Who cleans up? The declining earnings position of cleaners in Australia. *Economic and Labour Relations Review*, 23 (1), pp.143-160.
- Hood, C. 1991. A public management for all seasons? *Public Administration*, 69 (1), pp.3-19.
- House of Representatives Standing Committee on Family and Community Affairs 1998. What Price Competition? A Report on the Competitive Tendering of



- Welfare Service Delivery. *In: PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA*. Canberra.
- Howe, J. 2004. Government Promotion of Job Creation in Australia: Regulatory Objectives, Instruments and Law. unpublished PhD Thesis: University of Melbourne.
- Howe, J. 2006a. "Money and favours": Government deployment of public wealth as an instrument of labour regulation. *In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.167-186.
- Howe, J. 2006b. "Deregulation" of labour relations in Australia: Towards a more "centred" command and control model. *In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.147-166.
- Howe, J. 2008. *Regulating for Job Creation*. Sydney: The Federation Press.
- Howe, J. 2010. The regulatory impact of using public procurement to promote better labour standards in corporate supply chains. *In: MACDONALD, K. & MARSHALL, S. (eds.) Fair Trade, Corporate Accountability and Beyond*. Surrey, England; Burlington, USA: Ashgate, pp.331-349.
- Howe, J., Johnstone, R. & Mitchell, R. 2006. Constituting and regulating the labour market for social and economic purposes. *In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.307-321.
- Howe, J. & Landau, I. 2007. 'Light touch' labour regulation by state governments in Australia: University of Melbourne Legal Studies Research Paper No. 311. *Melbourne University Law Review* 31 (2).
- Howe, J. & Landau, I. 2009. Using public procurement to promote better labour standards in Australia: A case study of responsive regulatory design. *Journal of Industrial Relations*, 51 (4), pp.575-589.
- Howe, J., Mitchell, R., Murray, J., O'Donnell, A. & Patmore, G. 2005. The coalition's proposed industrial relations changes: An interim assessment. *Australian Bulletin of Labour* 31 (3), pp.189-209.
- Howse, R. 1993. Retrenchment, reform or revolution? The shift to incentives and the future of the regulatory state. *Alberta Law Review*, 31 (3), pp.455-492.
- Hutchinson, J. 2011. Restructuring and workplace bullying in the Australian public sector. *25th Annual Association of Industrial Relations Academics of Australia and New Zealand Conference*.
- Hyman, R. 2008. The state in industrial relations. *In: BLYTON, P., BACON, N., FIORITO, J. & HEERY, E. (eds.) The Sage Handbook of Industrial Relations*. Thousand Oaks, CA: Sage, pp.12-37.
- IBISWorld April 2010. Cleaning Services in Australia. *IBISWorld Industry Report L7866*. Melbourne.
- IBISWorld December 2004. Industry Report for Cleaning Services in Australia. Melbourne.
- ILO. 2013. *Conventions and Recommendations* [Online]. Available: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> [Accessed 8th August 2013].

- InClean Magazine August/ September 2009a. ACCA meeting distills guidelines for working with WorkCover NSW. *InClean Magazine*. Australia: Hardcastle Media.
- InClean Magazine August/ September 2009b. Clean Start nurtures a more sustainable industry. *InClean Magazine*. Australia: Hardcastle Media.
- Industry Commission Australia 1995. The Growth and Revenue Implications of Hilmer and Related Reforms. *In: INDUSTRY COMMISSION TO THE COUNCIL OF AUSTRALIAN GOVERNMENTS*. Canberra.
- Industry Commission Australia 1996. Competitive Tendering and Contracting by Public Sector Agencies. Melbourne: Australian Government Publishing Service.
- International Labor Organisation (ILO) 2010. Global Employment Trends. Geneva January 2010.
- Ironside, M. & Seifert, R. 2003. Tackling bullying in the workplace. *In: EINARSEN, S., HOEL, H., ZAPF, D. & COOPER, C. L. (eds.) Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice*. London: Taylor & Francis.
- Jefferson, T. & Preston, A. 2011. Labour markets and wages in Australia: 2010. *Journal of Industrial Relations*, 53 (3), pp.303-323.
- Jeffer, R. 2001. Extremely competitive. *European Cleaning* April/May, pp.15.
- Ji, M. W. & Weil, D. 2009. Does ownership structure influence regulatory behaviour? The impact of franchising on labor standards compliance. *Boston University School of Management Research Paper No. 2010-21*.
- Job, J. 2008. Barristers beyond the law: state and non-state actors work in partnership to enforce legal and moral norms. *In: VAN SCHOOTEN, H. & VERSCHUUREN, J. (eds.) International Governance and Law*. Cheltenham: Edward Elgar Publishing Limited, pp.151-167.
- Johansson, G. & Lundberg, I. 2004. Adjustment latitude and attendance requirements as determinants of sickness absence or attendance. Empirical tests of the illness flexibility model. *Social Science & Medicine*, 58 (10), pp.1857-1868.
- Johns, G. 2009. Presenteeism in the workplace: A review and research agenda. *Journal of Organizational Behavior*, 31, pp.519-542.
- Johnstone, R., Mayhew, C. & Quinlan, M. 2001. Outsourcing Risk? The regulation of occupational health and safety where subcontractors are employed. *Comparative Labor Law and Policy Journal*, 22 (3), pp.351-394.
- Johnstone, R., McCrystal, S., Nossar, I., Quinlan, M., Rawling, M. & Riley, J. 2012. *Beyond Employment: The Legal Regulation of Work Relationships*. Sydney: The Federation Press.
- Johnstone, R. & Mitchell, R. 2004. Regulating work. *In: PARKER, C., SCOTT, C., LACEY, N. & BRAITHWAITE, J. (eds.) Regulating Law*. Oxford: Oxford University Press, pp.101-121.
- Johnstone, R. & Quinlan, M. 2006. The OHS regulatory challenges posed by agency workers: Evidence from Australia. *Employee Relations*, 28 (3), pp.273-289.
- Kahn-Freund, O. 1972. *Labour and the Law*. 1st edition ed. London: Stevens & Sons.
- Kaine, S. 2012. Collective regulation of wages and conditions in aged care: Beyond labour law. *Journal of Industrial Relations*, 54 (4), pp.204-220.
- Kaufman, B. E. 1993. *The Origins and Evolution of the Field of Industrial Relations in the United States*. Ithaca, New York: ILR Press.

- Kelly, R. 1995. Privatising public health: Private profit at public expense? *Just Policy*, (3), pp.25-32.
- Kelly, R. M. 1998. An inclusive democratic polity, representative bureaucracies, and the New Public Management. *Public Administration Review*, 58 (3), pp.201-208.
- Kodz, J. 2003. Working long hours: A review of the evidence. In: DEPARTMENT OF TRADE AND INDUSTRY. UK: The Institute for Employment Studies.
- Lansbury, R. D. 1995. Industrial relations in an era of global change and challenges. *Labour & Industry*, 6 (2), pp.1-11.
- Laws, J. 2010. Parlous State of Contracting Industry. In *Clean Magazine*. Australia: The Intermedia Group Pty Ltd.
- Lee, M. 2006. Regulating enforcement of workers' entitlements in Australia: The new dimension of individualisation. *Labour & Industry*, 17 (1), pp.41-60.
- Lobel, O. 2005. Interlocking regulatory and industrial relations: The governance of workplace safety. *Administrative Law Review*, 57 (4), pp.1071-1152.
- Maconachie, G. & Goodwin, M. 2010a. Employer evasion of workers' entitlements 1986-1995: Why, what and whose? *Journal of Industrial Relations*, 52 (4), pp.419-439.
- Maconachie, G. & Goodwin, M. 2010b. Transforming the inspection blitz: Targeted campaigns, enforcement and the ombudsman. *Labour & Industry*, 21 (1), pp.369-389.
- Marshall, S. 2006. An exploration of control in the context of vertical disintegration. In: ARUP, C., GAHAN, P., HOWE, J., MITCHELL, R., JOHNSTONE, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.542-560.
- Marx, K. & Engels, F. 1848. Manifesto of the Communist Party. In: TUCKER, R. C. (ed.) *The Marx-Engels Reader*. New York: W. W. Norton & Company Inc, pp.331-362.
- Masterman-Smith, H., May, R. & Pocock, B. 2008. *Living Low Paid: The Dark Side of Prosperous Australia*. Sydney Australia: Allen & Unwin.
- Mayer-Ahuja, N. 2004. Three worlds of cleaning: Women's experiences of precarious labor in the public sector, cleaning companies and private households of West Germany. *Journal of Women's History*, 16 (2), pp.116-141.
- McCallum, R. 2002. Trade union recognition and Australia's neo-liberal voluntary bargaining laws. *Relations Industrielles*, 57 (2), pp.225-253.
- McCallum, R. 2008. Australian labour law and the Rudd vision: Some observations. In: RILEY, J. & SHELDON, P. (eds.) *Remaking Australian Industrial Relations*. 1st ed. Sydney: CCH Australia Ltd, pp.21-30.
- McCallum, R. 2011. Legislated standards: The Australian approach. In: BAIRD, M., HANCOCK, K. & ISAAC, J. (eds.) *Work and Employment Relations*. 1st ed. Sydney: The Federation Press, pp.6-16.
- McCrudden, C. 1999. International economic law and the pursuit of human rights: A framework for discussion of the legality of 'selective purchasing' laws under the WTO Government Procurement Agreement. *Journal of International Economic Law*, 2 (1), pp.3-48.
- McCrudden, C. 2004. Using public procurement to achieve social outcomes. *Natural Resources Forum*, 28 (4), pp.257-267.
- McCrudden, C. 2007. *Buying Social Justice: Equality, Government Procurement, and Legal Change*. 1st ed. Oxford; New York: Oxford University Press.

- McCrystal, S. & Orchiston, T. 2012. Industrial legislation in 2011. *Journal of Industrial Relations*, 54 (3), pp.277-292.
- Menzies. 2011. Available: <http://www.menziesgroup.com.au/pages/about/default.aspx> [Accessed 15th September 2011].
- Merritt, A. 1984. Forgotten militants: Use of the New South Wales Masters and Servants Acts by and against female employees 1845-1930. In: TOMLINS, C. L. & DUNCANSON, I. W. (eds.) *Law and History in Australia*. 2nd ed. Melbourne: La Trobe University, pp.54-108.
- Miles, M. B. & Huberman, A. M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Beverly Hills: Sage Publications.
- Mitchell, R. & Arup, C. 2006. Labour law and labour market regulation. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.3-20.
- Mitchell, R., Gahan, P., Stewart, A., Cooney, S. & Marshall, S. 2010. The evolution of labour law in Australia: Measuring the change. *The Australian Journal of Labour Law*, 23 (2), pp.61-93.
- Morris, P. E. 1990. Legal regulation of contract compliance: An Anglo-American comparison. *Anglo-American Law Review*, 19 (2), pp.87-144.
- Murray, J. 2001. The sound of one hand clapping? The 'Ratcheting Labour Standards' proposal and international law. *Australian Journal of Labour Law*, 14 (3), pp.307-310.
- Murray, J. 2008. Labour standards, safety nets and minimum conditions. In: RILEY, J. & SHELDON, P. (eds.) *Remaking Australian Industrial Relations*. Sydney: CCH Publishing Ltd, pp.129-138.
- Murray, J. & Owens, R. 2009. The safety net: Labour standards in the new era. In: FORSYTH, A. & STEWART, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: The Federation Press, pp.40-74.
- Nossar, I. 2006. Cross jurisdictional regulation of commercial contracts for work beyond the traditional relationship. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.202-222.
- NSW Government 1999. *Implementation Guidelines for the NSW Government Procurement Code of Practice and Code of Tendering*. In: NSW GOVERNMENT TREASURY.
- NSW Government 2005. *Code of Practice for Procurement*. In: NSW GOVERNMENT PROCUREMENT.
- NSW Government Procurement. 2011. Available: <http://www.nswprocurement.com.au/policies.aspx> [Accessed 14th August 2011].
- NSW Government Procurement Guidelines: Occupational Health and Safety November 2006.
- NSW Government Procurement Guidelines: Service Provider Performance Management November 2007.
- NSW Treasury July 2004. Policy & Guidelines Paper, NSW Government Procurement Policy Office of Financial Management.
- O'Flynn, J. 2007. From New Public Management to public value: Paradigmatic change and managerial implications. *The Australian Journal of Public Administration*, 66 (3), pp.353-366.

- O'Leary, Z. 2005. *Researching Real-World Problems: A Guide to Methods of Inquiry*. London: Sage.
- Ogus, A. 1998. Rethinking self-regulation. In: BALDWIN, R., SCOTT, C. & HOOD, C. (eds.) *A Reader on Regulation*. Oxford: Oxford University Press, pp.374-388.
- Osborne, D. & Gaebler, T. 1992. *Reinventing Government*. New York: Addison-Wesley.
- Paddon, M. 2001. Social and labour consequences of the decentralization and privatization of municipal services: The cases of Australia and New Zealand (working paper). International Labor Organisation (ILO), Geneva.
- Paddon, M. & Thanki, R. 1995. *Australia's Contracting Public Services: Critical Views of Contracting-Out by the Public Sector*. Collected Papers No 2, Public Sector Research Centre, Sydney: University of NSW.
- Patmore, G. 1991. *Australian Labour History*. Melbourne: Longman Cheshire Pty Limited.
- Peetz, D. 1998. *Unions in a Contrary World: The Future of the Australian Trade Union Movement*. Cambridge: Cambridge University Press.
- Peetz, D. & Preston, A. 2009. Individual contracting, collective bargaining and wages in Australia. *Industrial Relations Journal*, 40 (5), pp.444-461.
- Polanyi, K. 2001 (1944). *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press.
- Pollert, A. & Charlwood, A. 2009. The vulnerable worker in Britain and problems at work. *Work, Employment and Society*, 23 (2), pp.343-362.
- Pollitt, C. & Bouckaert, G. 2011. *Public Management Reform: A Comparative Analysis New Public Management, Governance and the Neo-Weberian State*. 3rd ed. Oxford, New York: Oxford University Press.
- Public Sector Employment and Management Act 2002*.
- Public Sector Management (Goods and Services) Regulation 2000*.
- Quiggin, J. 1996. Competitive tendering and contracting in the Australian public sector. *Australian Journal of Public Administration*, 55 (3), pp.49-58.
- Quiggin, J. 2002. Contracting-out: Promise and performance. *Economic and Labour Relations Review*, 13 (1), pp.88-104.
- Quinlan, M. 1987. Early trade union organization in Australia: Three Australian colonies, 1829-1850. *Labour & Industry*, 1 (1), pp.61-111.
- Quinlan, M. 2004. Workers' compensation and the challenges posed by changing patterns of work: evidence from Australia. *Policy and Practice in Health and Safety*, 2 (1), pp.25-52.
- Quinlan, M. 2006. Contextual factors shaping the purpose of labour law: A comparative historical perspective. In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: The Federation Press, pp.21-42.
- Quinlan, M. & Johnstone, R. 2009. The implications of de-collectivist industrial relations laws and associated developments for worker health and safety in Australia, 1996-2007. *Industrial Relations Journal*, 40 (5), pp.426-443.
- Quinlan, M., Mayhew, C. & Bohle, P. 2001. The global expansion of precarious employment, work disorganization, and consequences for occupational health: A review of recent research. *International Journal of Health Services*, 31 (2), pp.335-414.

- Quinlan, M. & Sheldon, P. 2011. The enforcement of minimum labour standards in an era of neo-liberal globalisation: An overview. *The Economic and Labour Relations Review*, 22 (2), pp.5-32.
- Ramia, G. 2002. The 'new contractualism', social protection and the Yeatman thesis. *Journal of Sociology*, 38 (1), pp.49-68.
- Ramia, G., Chapman, A. & Michelotti, M. 2005. How well do industrial relations and social policy interact? Labour law and social security law in the social protection of sole parents. *The International Journal of Comparative Labour Law and Industrial Relations*, 21 (2), pp.249-279.
- Ramia, G. & Wailes, N. 2006. Putting wage-earners into wage-earners' welfare states: The relationship between social policy and industrial relations in Australia and New Zealand. *Australian Journal of Social Issues*, 41 (1), pp.49-68.
- Ranald, P. 1997. The contracting Commonwealth: Serving citizens of customers? Public accountability, service quality and equity issues in the contracting and competitive tendering of government services, Working paper. University of New South Wales: Public Sector Research Centre.
- Ranald, P. 2002. Where are the jobs in the Job Network? Competitive tendering of employment services. In: FAIRBROTHER, P., PADDON, M. & TEICHER, J. (eds.) *Privatisation, Globalisation and Labour: Studies from Australia*. Sydney: The Federation Press, pp.158-182.
- Ranald, P. & Black, B. 2000. Privatising water in the driest state: The impacts on employees and industrial relations of the corporatisation and outsourcing of metropolitan water and sewerage services in South Australia. *Labour & Industry*, 11 (2), pp.17-37.
- Reiss, A. J. 1983. Policing of organizational life. In: PUNCH, M. (ed.) *From Control in the Police Organization*. Cambridge MA: MIT Press, pp.78-97.
- Riley, J. 2008a. Legal developments in the transitional period. In: RILEY, J. & SHELDON, P. (eds.) *Remaking Australian Industrial Relations*. Sydney: CCH Australia Ltd, pp.53-64.
- Riley, J. 2008b. No rights without remedies: Labor's industrial relations architecture and the enforcement gap. In: RILEY, J. & SHELDON, P. (eds.) *Remaking Australian Industrial Relations*. Sydney: CCH Publishing Ltd, pp.167-174.
- Ryan, N., Furneaux, C., Pink, A. & Brown, K. 2005. Public sector contracting: An Australian study of changing work conditions. *Management Review*, 16 (4), pp.438-458.
- Ryan, S. 2001. Contract cleaning. In: MEAGHER, G., RYAN, S., BUCHANAN, J., CONSIDINE, G., HAGER, P. & KITAY, J. (eds.) *Changing Nature of Work: Industry Case Studies*. Sydney: NSW Board of Vocational Education and Training, pp.43-54.
- Ryan, S. 2007a. 'Dirty Deeds Done Dirt Cheap?' *Employment Relations and the Organisation of Work in the NSW Commercial Cleaning Industry*. Doctor of Philosophy, University of Sydney.
- Ryan, S. 2007b. *Dirty Deeds Done Dirt Cheap? Employment Relations and the Organisation of Work in the NSW Commercial Cleaning Industry*. Doctor of Philosophy, University of Sydney.
- Ryan, S. & Herod, A. 2006. Restructuring the architecture of state regulation in the Australian and Aotearoa/New Zealand cleaning industries and the growth of precarious employment. *Antipode*, 38 (3), pp.486-507.

- Saunders, P. 2006. Unleashing (labour) market forces: The social policy implications of industrial relations reform. *University of New South Wales Law Journal*, 29 (1), pp.80-91.
- Schreuder, J. A. H., Roelen, C. A. M., van der Klink, J. J. L. & Groothoff, J. W. 2013. Characteristics of zero-absenteeism in hospital care. *Occupational Medicine*, 63, pp.266-273.
- Schwandt, T. A. 1994. Constructivist, interpretivist approaches to human inquiry. In: DENZIN, N., K. & LINCOLN, Y., S. (eds.) *Handbook of Qualitative Research*. Thousand Oaks, London, New Delhi: Sage Publications, pp.118-137.
- Scott, C. 2001. Analysing regulatory space: Fragmented resources and institutional design. *Public Law*, 329, pp.329-353.
- Scott, C. 2002. Private regulation of the public sector: A neglected facet of contemporary governance. *Journal of Law and Society*, 29 (1), pp.56-76.
- Seddon, N. 2009. *Government Contracts: Federal, State and Local*. 4th ed. Sydney: The Federation Press.
- Seifert, A. M. & Messing, K. 2006. Cleaning up after globalization: An ergonomic analysis of work activity of hotel cleaners. In: AGUIAR, L. L. M. & HEROD, A. (eds.) *The Dirty Work of Neoliberalism: Cleaners in the Global Economy*. Oxford, Malden MA, Carlton Victoria: Blackwell Publishing, pp.129-149.
- Simpson, R. 1998. Presenteeism, power and organizational change: Long hours as a career barrier and the impact on the working lives of women managers. *British Journal of Management*, 9 (S1), pp.37-50.
- Small, R. & Ranald, P. 1999. Globalisation, Change and the Public Sector. Public Sector Research Centre, The University of New South Wales PSRC Paper No 55.
- Sogaard, K., Blangsted, A. K., Herod, A. & Finsen, L. 2006. Work design and the labouring body: Examining the impacts of work organization on Danish cleaners' health. In: AGUIAR, L. L. M. & HEROD, A. (eds.) *The Dirty Work of Neoliberalism: Cleaners in the Global Economy*. Oxford, Malden MA, Carlton Victoria: Blackwell Publishing, pp.150-171.
- Spotless. 19 August 2011. *Full Year Results Presentation* [Online]. Available: [http://www.spotless.com/Investors-and-Media/assets/Full%20Year%20Results\\_%20Presentation.pdf](http://www.spotless.com/Investors-and-Media/assets/Full%20Year%20Results_%20Presentation.pdf) [Accessed 15th September 2011].
- Standing, G. 2009. *Work After Globalization: Building Occupational Citizenship*. Edward Elgar Publishing, Inc. Cheltenham UK.
- Standing, G. 2011. *The Precariat: The New Dangerous Class*. London: Bloomsbury.
- Stewart, A. 2009. Testing the boundaries: Towards a national system of labour regulation. In: STEWART, A. & FORSYTH, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: The Federation Press, pp.28-47.
- Stilwell, F. 2007. *Political Economy: The Contest of Economic Ideas*. Melbourne: Oxford University Press.
- Sullivan, B. 1997. Mapping contract. In: DAVIS, G., SULLIVAN, B. & YEATMAN, A. (eds.) *The New Contractualism*. South Melbourne: Macmillan Education Australia Pty Ltd, pp.1-13.
- Sutherland, C. 2009. Making the 'BOOT' fit: Reforms to agreement-making from Work Choices to Fair Work. In: STEWART, A. & FORSYTH, A. (eds.) *Fair Work: The New Workplace Laws and the Work Choices Legacy*. Sydney: The Federation Press, pp.108-128.

- Svensen, S. & Teicher, J. 1998. The Privatisation of the Australian State and its Implications for Trade Unionism. *12th AIRAANZ Conference*.
- Tarrant, L. 2011. United Voice. *Employment Relations in a Global Context Conference* Sydney: Workplace Research Centre.
- Teicher, J., van Gramberg, B. & Holland, P. 2006. Trade union responses to outsourcing in a neo-liberal environment: A case study analysis of the Australian public sector. *Asia Pacific Business Review*, 12 (2), pp.243-256.
- Teubner, G. 1983. Substantive and reflexive elements in modern law. *Law and Society Review*, 17 (2), pp.239-285.
- Teubner, G. 1998. Juridification: Concepts, aspects, limits, solutions. In: BALDWIN, R., SCOTT, C. & HOOD, C. (eds.) *A Reader on Regulation*. Oxford: Oxford University Press, pp.389-442.
- Thornthwaite, L. & Sheldon, P. 2012. Employer and employer association experiences of enterprise bargaining: Being careful what you wish for? *Labour & Industry*, 22 (3), pp.255-274.
- Todd, P. 2011. Employers in Australia in 2011: New roles and relations in the workplace? In: BAIRD, M., HANCOCK, K. & ISAAC, J. (eds.) *Work and Employment Relations*. Sydney: The Federation Press, pp.51-62.
- Transfield Services. 2011. *Transfield Services wins A\$540 million contract with NSW Department of Services, Technology and Administration* [Online]. ASX Statement. Available: [http://www.transfieldservices.com/icms\\_docs/109046Transfield\\_Services\\_wins\\_A540\\_million\\_contract\\_with\\_NSW\\_Department\\_of\\_Services\\_Technology\\_and\\_Administration.pdf](http://www.transfieldservices.com/icms_docs/109046Transfield_Services_wins_A540_million_contract_with_NSW_Department_of_Services_Technology_and_Administration.pdf) [Accessed 20th February, 2011].
- Treuren, G. 2000. The concept of the state in Australian industrial relations theory. *Labour & Industry*, 11 (2), pp.75-98.
- Underhill, E. & Fernando, H. 1998. Deregulating precarious employment in Victoria: Trends in employee complaints. *Labour & Industry*, 8 (3), pp.43-61.
- United Nations (UN). August 2008. *Public Procurement as a tool for promoting more Sustainable Consumption and Production patterns* [Online]. Available: <http://www.un.org/esa/sustdev/publications/innovationbriefs/no5.pdf> [Accessed 23 December 2009].
- United Voice 2012. Clean Start Guidelines to Responsible Contracting.
- Virtanen, P. 1994. 'An epidemic of good health' at the workplace. *Sociology of Health & Illness*, 16 (3), pp.394-401.
- Vosko, L. F. 2007. Precarious part-time work in Australia in transnational labour regulation: The gendered limits of SER-centrism. *Labour & Industry*, 17 (3), pp.45-71.
- Walsh, J. 2004. Dirty Schools, Forgotten Cleaners: The Injuries of Victoria's Failed Experiment in Contract School Cleaning, Liquor Hospitality and Miscellaneous Union.
- Walters, D., Johnstone, R., Frick, K., Quinlan, M., Baril-Gingras, G. & Thebaud-Mony, A. 2011. *Regulating Workplace Risks: A Comparative Study of Inspection Regimes in Times of Change*. Cheltenham: Edward Elgar Publishing Limited.
- Webb, B. & Webb, S. 1897. *Industrial Democracy*. London: Longmans Green and Co., Ltd.
- Webb, B. & Webb, S. 1907. *The History of Trade Unionism*. London: Longmans Green and Co., Ltd.



- Webb, S. 1912. The economic theory of a legal minimum wage. *Journal of Political Economy*, 20 (10), pp.973-998.
- Weber, M. 1947. *The Theory of Social and Economic Organisation*. New York: Oxford University Press.
- Weber, M. 1968. Bureaucracy, Chapter XI, Volume 3, Part 2, Chapters X to XVI. *Economy and Society*. New York: Bedminster Press.
- Weil, D. 2008. A strategic approach to labour inspection. *International Labour Review*, 147 (4), pp.349-375.
- Weil, D. 2009a. Protecting vulnerable workers: A sector-based approach. *Special Symposium: Regulating Work in Global Value Chains 15th World Congress of the International Relations Association* Sydney NSW Australia.
- Weil, D. 2009b. Rethinking the regulation of vulnerable work in the USA: A sector-based approach. *Journal of Industrial Relations*, 51 (3), pp.411-430.
- Weil, D. 2011. Enforcing labour standards in fissured workplaces: The US experience. *The Economic and Labour Relations Review*, 22 (2), pp.33-54.
- Weil, D. & Pyles, A. 2005. Why complain? Complaints, compliance, and the problem of enforcement in the US workplace. *Comparative Labor Law and Policy Journal*, 27, pp.59-92.
- Weiss, L. & Thurbon, E. 2006. The business of buying American: Public procurement as trade strategy in the USA. *Review of International Political Economy*, 13, pp.701-724.
- Weller, S. 1999. Clothing outwork: Union strategy, labour regulation and labor market restructuring. *Journal of Industrial Relations*, 41 (2), pp.203-227.
- Wheelwright, K. 2006. Protecting and promoting small and medium enterprises: A role for labour law in the new labour law era? In: ARUP, C., GAHAN, P., HOWE, J., JOHNSTONE, R., MITCHELL, R. & O'DONNELL, A. (eds.) *Labour Law and Labour Market Regulation*. Sydney: Federation Press.
- Whitfield, K. & Strauss, G. 1998. Research methods in industrial relations. In: WHITFIELD, K. & STRAUSS, G. (eds.) *Researching the World of Work: Strategies and Methods in Studying Industrial Relations* Ithaca: ILR Press.
- Wills, J. 2009. Subcontracted employment and its challenge to Labor. *Labor Studies Journal*, 34 (4), pp.441-460.
- Wilson, M. 1997. New Contractualism and the Employment Relationship in New Zealand. In: DAVIS, G., SULLIVAN, B. & YEATMAN, A. (eds.) *The New Contractualism?* Melbourne: Macmillan Education Australia, pp.87-101.
- Yeatman, A. 1995. Interpreting contemporary contractualism. In: BOSTON, J. (ed.) *The State Under Contract*. Wellington: Bridget Williams Books, pp.124-134.
- Yeatman, A. 1997. Contract, status and personhood. In: DAVIS, G., SULLIVAN, B. & YEATMAN, A. (eds.) *The New Contractualism?* Melbourne: Macmillan Education Australia, pp.39-56.
- Yin, R. K. 1994. *Case Study Research: Design and Methods*. Thousand Oaks, London, New Delhi: Sage.
- Young, S. 2007. Outsourcing: Uncovering the complexity of the decision. *International Public Management Journal*, 10 (3), pp.307-325.

## **Annex A**

### **Interview Themes and Questions**

#### **Interviews with cleaners**

##### **Work history and background**

1. Age and gender.
2. Education and work background.
3. Family situation and home life.
4. Ambitions and goals.
5. Work life balance, daily schedule, working hours what they are and what you wish them to be.

##### **Work arrangement**

6. Work arrangement, i.e. employee, contractor, sub contractor, fulltime, part time, casual, length of time with current and previous employers (where relevant)...
7. Colleagues, companions on the job and communication with other workers in similar or different positions.
8. Individual contract or award pay or similar and determination of sick leave, annual leave and superannuation entitlements.
9. Rest breaks, minimum call back times, maximum weekly work hours.
10. Perceptions of equal opportunity employment or discrimination.

##### **Job security**

11. Guarantee for regular hours, reliability/predictability of hours.
12. Security of tenure for long term, expectations and experiences.
13. Threats to job security.

##### **Job satisfaction**

14. Pride in work and sense of accomplishment vs stigmatism.
15. Reasons for enjoying work or not eg. sufficient time and equipment to complete task, autonomy, interactions with other staff.
16. Incidence of harassment or bullying.

##### **Voice measures**

17. Regular meetings with all staff and/or managers:
  - a. A committee of employees that discusses problem management on a regular basis.
  - b. Formal employee involvement programme such as quality circles.

18. Frequency and types of communication with managers and supervisors, who are these managers or supervisors, who are you accountable to?

### **Perceived job control and influence over rewards**

19. Deciding how to do your job and organised your work.
20. Setting working hours.
21. Pay rate and pay rises, how work is paid for, time sheets, set times...
22. The pace of work, expected rate of work (in square metres per hour).
23. Deciding how to work with new equipment, what equipment to work with and how much equipment.
24. Deciding what kinds of perks/bonuses are offered to people.
25. Paid for hours worked, unpaid overtime or able to do job in less than allocated time, motivations for doing unpaid work.

### **Training and Occupational Health and Safety**

26. Describe training, how often, what is involved, induction only or regular training sessions.
27. Is there a safety culture eg. high awareness and encouragement of safe practices, how is it encouraged.
28. Discuss health issues arising from work, eg. equipment, chemical exposure, pace of work.
29. Discuss safety issues arising from work eg. equipment, chemical exposure, pace of work.
30. Protocol and point of call for OHS issues and likelihood of speaking out if an issue arises, fear of reproach or dismissal for doing so.
31. Workers compensation procedures and experiences.

### **Collective representation**

32. Trade union membership, reasons for and against, benefits and drawbacks of.
33. Other group memberships such as migrant groups that are relevant to or assist with work rights in some way.

### **Government contracts**

34. Awareness of or implications arising from the government contracts.
35. Any ways in which this has changed or is expected to change.
36. Monitoring, presence of anyone from outside the school or company to monitor contracts, quality of work or labour standards.

### **Disputes**

37. Problems that have arisen from the employment arrangement, salaries, leave, superannuation entitlements etc.
38. Employment disputes experience.
39. Points of call for problems or disputes and success in resolving them.

## **Interviews with government officials**

### **WEBClean**

1. Who monitors and manages WEBClean?

### **Programming**

3. How often are schedules and programs varied?
4. Who does all the programming and reporting and meeting with principals etc. from the contracted firms?

### **Contract structure**

5. How has the trial of Facilities Maintenance in the Riverina and Central Coast gone (GAs being outsourced as well)? Is it likely to continue?
6. Does the extra package for office buildings in the Central Business District include schools? How has that worked out?

### **Monitoring of contract compliance**

7. Is Public Works doing any other monitoring of the contracts?
8. Asset Management Unit Random Cleaning Inspection determine “Whether or not safe work practices are being implemented at the school” – does this include the cleaners’ working practices?
9. When the Asset Management Unit (AMU) conducts cleaning inspections are they auditing the cleaning register and cleaning service manuals?
10. Who monitors standards of equipment and materials?
11. How much of the monitoring is about monitoring the work done by cleaners and how much is about monitoring the operations of the cleaning companies?
12. If there is a problem with a contract quality of performance how are these addressed?
13. Who monitors cleaners’ labour standards?
14. If all these aspects of labour, equipment, manuals, quality of cleaning etc are monitored by AMU random inspections:
  - a. how often are random inspections done?
  - b. how long does an inspection take?
  - c. what are the consequences for non-compliance?

### **Documentation**

15. Is it possible to get a copy of:
  - a. Overview for School Principals – School Cleaning Contract 2006-2010
  - b. Questionnaires for 4 weekly Quality Monitoring and OH&S reports
  - c. Standard items included in DSTA/CSCU annual performance reviews and 3 monthly meetings
  - d. Annual survey of schools conducted by CSCU
  - e. Standard tender/contract

## **Interviews with teachers and principals**

### **Overview**

1. In your understanding, what are the major problems with school cleaning from the point of view of the teachers and principals?

### **Profile of cleaners**

2. What is the gender of each cleaner in your school?
3. How many years has each of these cleaners been working at your school?
4. Do each of these cleaners work directly for the lead contractor, or for a subcontractor?
5. Can each of these cleaners speak and understand spoken English?
6. Can each of these cleaners read and write English?
7. Do your cleaners (as a group) have sufficient time to perform their required duties?
8. Can principals see the hours of cleaning allocated to their school on WebClean?
9. Can the principals reconcile the number of hours on WebClean and the number of hours reported in their cleaner log-on books and request/demand any missing hours?

### **Power and interests in the contracted cleaning industry.**

10. Who makes key decisions about responsibilities and workloads of teachers?
11. Who makes key decisions about responsibilities and workloads of principals?
12. Who makes key decisions about the responsibilities and workloads of the GA?
13. Who makes the key decisions about responsibilities and workloads of cleaners?
14. Who decides what gets cleaned, when it gets cleaned?
15. With regard to cleaning, what are teachers main interests?
16. With regard to cleaning, what are principals main interests?

### **Other questions**

17. How often and how effective are FWO inspections?

## **Interviews with United Voice officials**

### **Minimum standards**

1. Will a better Award and a better government procurement commitment to that Award bring stability and improve the labour standards in the industry?
2. Enterprise agreements are encouraged in the *Code of Practice*. How does this work?

### **Training**

3. Are there any specific training requirements?

### **Government**

4. The role of the State Contracts Control Board (SCCB) is to investigate and rule on whether government-wide sanctions will be implemented in instances of breaches of contracts. How does this work in practice?
5. Can anyone in a government department give a clear answer on how the whole-of-life cost of goods and services are calculated for cleaning contracts?
6. There is an emphasis in the OH&S guidelines on OH&S ultimately saving time and money because it reduces time lost to injuries. Is this an issue?
7. If the principal contractor is accountable, who is holding them to account?
8. What kind of information can I reasonably expect to get out of FWO?

### **Compliance**

9. How does compliance play out in practice?
10. The NSW Govt Proc/t Implementation Guidelines state that 'minor breaches need not be reported to the SCCB' – what, in practice, constitutes minor vs 'repeated and serious' breaches?
11. How often does the SCCB impose a government wide sanction on a contractor? How often do they conduct an assessment for a government-wide sanction?
12. Compliance Audits will be undertaken on the following Contractors: BROADLEX, ISS, TRANSFIELD, JOSS, MENZIES AND SPOTLESS. During 2010 inspectors plan to undertake approximately 500 inspections of these, approximately 20 per cent will be detailed audits. What impact do these inspections have?

## **Interviews with cleaning company managers**

### **Government**

1. What are the roles of the SCCB, inspectors, DET, Commerce and Treasury?
2. How important are the NSW Code of Practice for Procurement and the NSW Procurement Implementation Guidelines?
3. How well does the contract work? What alternatives are there?
4. How useful are the reporting demands from the government?
  - a. What purpose does the WebClean system serve?
  - b. How useful is the communication book?
5. How does the government manage the number of hours worked in the contracts?
6. Could/should the government monitor the work practices across the industry better? What impacts would this have?
7. What are the criteria for a winning bid for a NSW government cleaning contract?

### **Business and management**

8. How would you prioritise these key different stakeholders?
  - a. DET, DSTA and inspectors
  - b. Onsite managers/principals
  - c. Unions
  - d. Cleaners
  - e. Company managers and supervisors
9. How is bullying managed (management-cleaners, cleaner-cleaner, staff-on-site – cleaner)?
10. What efforts are made to reduce and minimise the risks of injuries?
11. Why professionalise? Why get certificate III qualifications for cleaners and ISO 9001:2008 certified and AS/NZS ISO 14001:2004 certified?
12. How do you improve the productivity of cleaners?
13. What are the industry-wide profit margins for the government cleaning contracts, and how do they compare to say hospital cleaning or general office cleaning?
14. Can the smaller companies operate legally and compete as sub-contractors in this industry?

### **Trade union**

15. What is the role of the trade union?
16. How useful is the trade union in improving the professionalism of the industry?

### **Other**

17. What portion of NSW government contract cleaners are non-English speaking or illiterate?

## Annex B

### Interviews

Interviewee no.	Description	Date	Method of communication
UV 1 (Key informant)	United Voice Official	July 2010 March 2011	Face-to-face, One-on-one
IC 1	Industry consultant	September 2010	Face-to-face, One-on-one
DEC 1	DEC Official	August 2010	Face-to-face, One-on-one
SP 1	DEC school principal	October 2010	Face-to-face, One-on-one
SP 2	DEC school principal	February 2011	Face-to-face, One-on-one
SP 3	DEC school principal	March 2011	Face-to-face, One-on-one
SP 4	DEC school principal	March 2011	Face-to-face, One-on-one
SP 5	DEC deputy school principal	March 2011	Face-to-face, One-on-one
T 1	DEC school teacher	October 2010	Face-to-face, One-on-one
TF 1	Teachers Federation official	November 2010	Face-to-face, One-on-one
TF 2	Teachers Federation official	February 2011	Face-to-face, One-on-one
CM 1 (Key informant)	Contracted cleaning company former manager	November 2010 April 2011	Face-to-face, One-on-one
CM 2	Contracted cleaning company manager	April 2011	Telephone, One-on-one
CM 3	Contracted cleaning company manager	April 2011	Face-to-face, One-on-one
C1	Cleaner 1	October 2010	Face-to-face, One-on-one
C2	Cleaner 2	October 2010	Face-to-face, One-on-one
C3	Cleaner 3	November 2010	Face-to-face, One-on-one
C4	Cleaner 4	November 2010	Face-to-face, Group of two
C5	Cleaner 5	November 2010	Face-to-face, Group of two
C6	Cleaner 6	November 2010	Face-to-face, One-on-one
C7	Cleaner 7	November 2010	Face-to-face, Group of two
C8	Cleaner 8	November 2010	Face-to-face, Group of two
C9	Cleaner 9	November 2010	Face-to-face, One-on-one
C10	Cleaner 10	November 2010	Face-to-face, One-on-one
C11	Cleaner 11	November 2010	Face-to-face, One-on-one
C12	Cleaner 12	November 2010	Face-to-face, One-on-one
C13	Cleaner 13	November 2010	Face-to-face, One-on-one
C14	Cleaner 14	November 2010	Face-to-face, One-on-one
C15	Cleaner 15	November 2010	Telephone, One-on-one
C16	Cleaner 16	November 2010	Face-to-face, One-on-one
C17	Cleaner 17	November 2010	Face-to-face, One-on-one
C18	Cleaner 18	November 2010	Face-to-face, One-on-one
C19	Cleaner 19	November 2010	Face-to-face, One-on-one
C20	Cleaner 20	November 2010	Face-to-face, Group of two
C21	Cleaner 21	November 2010	Face-to-face, Group of two



C22	Cleaner 22	November 2010	Face-to-face, One-on-one
C23	Cleaner 23	November 2010	Face-to-face, One-on-one
C24	Cleaner 24	November 2010	Face-to-face, Group of two
C25	Cleaner 25	November 2010	Face-to-face, Group of two
C26	Cleaner 26	November 2010	Face-to-face, One-on-one with translator
C27	Cleaner 27	November 2010	Telephone, One-on-one
C28	Cleaner 28	November 2010	Telephone, One-on-one
C29	Cleaner 29	November 2010	Face-to-face, One-on-one
C30	Cleaner 30	November 2010	Face-to-face, One-on-one
C31	Cleaner 31	November 2010	Face-to-face, One-on-one
C32	Cleaner 32	November 2010	Face-to-face, One-on-one
C33	Cleaner 33	November 2010	Face-to-face, One-on-one
C34	Cleaner 34	February 2011	Face-to-face, One-on-one
C35	Cleaner 35	February 2011	Face-to-face, One-on-one
C36	Cleaner 36	February 2011	Face-to-face, One-on-one
C37	Cleaner 37	February 2011	Face-to-face, One-on-one
C38	Cleaner 38	February 2011	Face-to-face, One-on-one

## Annex C

### Participant Information and Consent



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#### **PARTICIPANT INFORMATION STATEMENT**

##### **Research Project**

**Title:** Buying Social Justice through Public Procurement? Labour standards for contracted cleaners in New South Wales public schools.

##### **(1) What is the study about?**

The aim of this research is to build a deep understanding of the ways in which public procurement policies impact labour standards for contracted cleaners in NSW public schools. If governments understand the impacts of their policies they can tailor them better to improve the labour standards and working lives of contracted cleaners and other service providers.

##### **(2) Who is carrying out the study?**

The study is being conducted by Sasha Holley and will form the basis for the degree of PhD in Public Policy at The University of Sydney under the supervision of Dr Gaby Ramia, Senior Lecturer.

##### **(3) What does the study involve?**

The study involves one on one interviews that will be audio taped with your consent. I will meet with you at your place of work, the University of Sydney or a cafe convenient to your home or work (we will arrange the place that suits you best) and will conduct a private interview with you face-to-face. In addition, you will be asked to review the interview transcript for authentication purposes.

##### **(4) How much time will the study take?**

Interviews generally last between sixty and ninety minutes depending upon individual circumstances.

**(5) Can I withdraw from the study?**

Being in this study is completely voluntary - you are not under any obligation to consent and - if you do consent - you can withdraw at any time without affecting your relationship with the University of Sydney.

You may stop the interview at any time if you do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

Non-participation or withdrawal from this study will have no implications or repercussions for, and will not prejudice your ongoing employment.

**(6) Will anyone else know the results?**

All aspects of the study, including results, will be strictly confidential and only the researchers will have access to information on participants. A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report.

**(7) Will the study benefit me?**

The results of the study will be made available for you if you make a request to do so.

**(8) Can I tell other people about the study?**

Please do.

**(9) What if I require further information?**

When you have read this information, Sasha Holley will discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact Sasha Holley on 0414 762 242 (shol1284@uni.sydney.edu.au).

**(10) What if I have a complaint or concerns?**

**Any person with concerns or complaints about the conduct of a research study can contact the Deputy Manager, Human Ethics Administration, University of Sydney on (02) 8627 8176 (Telephone); (02) 8627 8177 (Facsimile) or ro.humanethics@sydney.edu.au (Email).**

This information sheet is for you to keep



**The University of Sydney**

**Discipline of Public Policy  
Graduate School of Government  
Faculty of Economics and Business**

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### **PARTICIPANT CONSENT FORM**

I, .....[PRINT NAME], give consent to my participation in the research project

TITLE: Buying Social Justice through Public Procurement? Labour standards for contracted cleaners in New South Wales public schools.

In giving my consent I acknowledge that:

1. The procedures required for the project and the time involved have been explained to me, and any questions I have about the project have been answered to my satisfaction.
2. I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the project with the researcher/s.
3. I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher(s) or the University of Sydney now or in the future.
4. I understand that non-participation or withdrawal from this study will have no implications or repercussions for, and will not prejudice my ongoing employment.
5. I understand that my involvement is strictly confidential and no information about me will be used in any way that reveals my identity.
6. I understand that being in this study is completely voluntary – I am not under any obligation to consent.

7. I understand that I can stop the interview at any time if I do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

8. I consent to: –

- i) Audio-taping YES  NO   
ii) Receiving Feedback YES  NO

If you answered YES to the “Receiving Feedback Question (ii)”, please provide your details i.e. mailing address, email address.

**Feedback Option**

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Email:** \_\_\_\_\_

**Signed:** .....

**Name:** .....

**Date:** .....



**Sasha Holley**

PhD Candidate, Graduate School of Government

00 June 2010

Cleaning Department  
ISS Facility Services NSW  
Unit 1, 12 Mars Rd  
Lane Cove, NSW 2066

Letter of Introduction

To whom it may concern,

I am a PhD student at the University of Sydney and would like to opportunity to meet with you to discuss how cleaning contracts are managed and how services are provided to NSW public schools.

This research seeks to provide Australian governments with valuable information on how to make the most of their procurement practices to improve labour standards for contracted service workers, particularly low-paid workers. The aims of the research are to:

- fill the gap in public procurement, labour law and industrial relations academic literature;
- provide Australian local, state and federal governments with a holistic understanding of the impacts of public procurement on contracted cleaners and other service providers; and
- improve labour standards for contracted cleaners and other low-paid services.

Being in this study is completely voluntary and you are not under any obligation to participate. Non-participation or withdrawal from this study will have no implications or repercussions for, and will not prejudice your ongoing employment.

If you are happy to meet with me and help with this study, please contact me at [shol1284@uni.sydney.edu.au](mailto:shol1284@uni.sydney.edu.au) or call 0414 762 242. I am very happy to answer any further questions you have about my research.

Yours sincerely,

Sasha Holley

## **Are you a cleaner?**

Are you interested in doing a confidential interview about your job and what you think about your work?

I am interested in your working conditions.

If you choose to participate the information you share will remain completely anonymous.

You will not be identified by your name, the school or building you clean, your employer, your family or the suburb you live in.

If you are interested in doing a confidential interview you can:

- call me at home on 9401 4342 (if we don't answer please leave a message)

or

- send me a text on 0414 762 242 and I will call you back

or

- email me at [holley.sasha@gmail.com](mailto:holley.sasha@gmail.com)

**Sasha Holley**  
Phd Student  
University of Sydney

Being in this study is completely voluntary and you are not under any obligation to participate. Non-participation or withdrawal from this study will have no implications or repercussions for, and will not prejudice your ongoing employment.