REGULATING PRECARIOUS WORK: LESSONS FROM SOUTH AFRICA, AUSTRALIA, AND THE UNITED KINGDOM FOR NIGERIAN LABOUR LAW REFORM

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Abstract

This article undertook a comparative analysis of the legal frameworks governing precarious work and triangular employment relationships in Australia, South Africa, and the United Kingdom, with a view to identifying transplantable lessons for Nigerian labour law reform. The study examined the conceptual foundations of precarious work and non-standard employment, situated the analysis within International Labour Rights Theory, and assessed how each comparator jurisdiction addressed the structural vulnerabilities created by casualization and outsourcing. The article found that Nigeria's Labour Act, which contained no express definition of a "casual" or "outsourced" worker, allowed employers to perpetually classify workers as casual through rolling short-term contracts, thereby denying them statutory entitlements. By contrast, Australia's Fair Work Act evolved through judicial and legislative oscillation toward a "Same Job, Same Pay" regime that delivered direct pay-parity outcomes for labour hire workers. South Africa's Labour Relations Act, as amended in 2014, introduced a deeming provision under section 198A that converted labour broker placements exceeding three months into direct employment with the client enterprise, a position affirmed by the Constitutional Court in the Assign Services decision. The United Kingdom relied principally on judicial doctrine, articulated in Autoclenz and Uber BV v Aslam, to pierce contractual labels disguising dependent work, complemented by the Employment Rights Act 2025's protections for zero-hours and agency workers. The study established that each jurisdiction, despite persistent enforcement challenges,

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embedded substantive protections into statute or binding precedent rather than leaving them to inconsistent adjudication, a sophistication absent from Nigeria's framework. The article concluded that Nigeria's continued reliance on judicial improvisation represented a structural choice sustaining a disadvantaged underclass of workers, and recommended definitional reform, statutory conversion thresholds, equal-treatment obligations, and a unified enforcement agency modelled on the UK's Fair Work Agency as a coherent pathway toward reform.

Keywords: precarious work, casualization, outsourcing, triangular employment, labour broking, non-standard employment; comparative labour law.

1. INTRODUCTION

The global restructuring of work in the late twentieth and early twenty-first centuries has fundamentally altered the traditional employment relationship across both developed and developing economies. Driven by imperatives of cost reduction, operational flexibility, and global competitiveness, employers worldwide have increasingly abandoned the bilateral employment model, in which an employer directly employs, controls, and takes full responsibility for a worker, in favour of fragmented, triangular, and contingent arrangements.[1] This phenomenon, commonly described as the rise of precarious or non-standard employment, has prompted divergent regulatory responses across jurisdictions, ranging from robust statutory intervention to persistent legislative inertia.

Nigeria exemplifies the latter trajectory. Despite the explosive growth of casualization and outsourcing across its oil and gas, banking, and

[1] N E Okorie, 'Contemporary Human Resource Management in Nigeria Public and Private Sectors Organization: Issues, Dimensions and Consequences' (2010) 3(1) *Enterprises International Journal for Development* 3.

telecommunications sectors, its principal labour legislation remains anchored in a bilateral, permanent employment framework conceived for a different economic era.[2] The Labour Act Cap L1, Laws of the Federation of Nigeria 2004 contains no express definition of a "casual worker" or "outsourced worker," a definitional vacuum that has allowed Nigerian employers to perpetually classify workers as casual through rolling short-term contracts, thereby denying them statutory entitlements that would ordinarily accrue to permanent employees.[3]

By contrast, Australia, South Africa, and the United Kingdom, three common law jurisdictions confronting structurally similar challenges, have each developed distinctive statutory and judicial responses to the regulation of precarious work. Australia's Fair Work Act 2009 has oscillated between contract-based and substance-based tests for determining casual employment status, culminating in the landmark "Same Job, Same Pay" regime, which addresses wage suppression in labour hire arrangements directly.[4] South Africa's Labour Relations Act 66 of 1995, as substantially amended in 2014, introduced a deeming provision under section 198A that converts labour broker placements exceeding three months into direct employment with the client enterprise, a position affirmed by the Constitutional Court in the landmark *Assign Services* decision.[5] The United Kingdom, meanwhile, has relied principally on judicial doctrine, articulated in cases such as

[2] A Zakari and Others, 'Assessment of the Nature of Labour Casualization in Nigeria' (2023) 9(1) *African Journal of Humanities and Contemporary Education Research* <https://www.afropoliticanjournals.com> accessed June 2026.
[3] Labour Act Cap L1, LFN 2004, s 91.
[4] Fair Work Act 2009 (as amended), s 15A; Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024.
[5] abour Relations Act 66 of 1995 (as amended by the Labour Relations Amendment Act 6 of 2014) (South Africa), s 198A; *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others* (2018) ZACC 22.

Autoclenz Ltd v Belcher and *Uber BV v Aslam*,[6] to pierce contractual labels that disguise the substantive reality of dependent work, while its Employment Rights Act 2025 introduces sweeping new protections for zero-hours and agency workers.

This article undertakes a comparative analysis of these three jurisdictions' legal frameworks governing precarious work, with a view to identifying lessons and transplantable models for Nigerian labour law reform. It interrogates the conceptual foundations of precarious work and the triangular employment relationship, situates the analysis within International Labour Rights Theory, and examines the legal frameworks, judicial developments, and enforcement architecture of Australia, South Africa, and the United Kingdom in turn. The article argues that Nigeria's continued failure to legislate clear definitions, statutory conversion thresholds, and equal treatment obligations for non-standard workers represents not merely a legislative oversight but a structural choice that sustains a permanently disadvantaged underclass of workers. Drawing on the comparative experience of these three jurisdictions, the article advances specific proposals for definitional reform, the introduction of bright-line conversion rules, statutory equal-treatment obligations, and the strengthening of Nigeria's enforcement institutions, as a coherent pathway toward reconciling the demands of labour market flexibility with the imperative of decent work for Nigeria's casualized and outsourced workforce.

1.2. Precarious Work / Non-Standard Employment

Precarious work, often used interchangeably with "non-standard employment," describes employment arrangements characterised by uncertainty, instability, and limited access to social and legal

[6] *Autoclenz Ltd v Belcher* (2011) UKSC 41; *Uber BV v Aslam* (2021) UKSC 5; Employment Rights Act 2025 (UK).

protections normally associated with standard employment relationships. The concept emerged prominently within labour sociology and industrial relations scholarship as a response to the global proliferation of part-time, temporary, fixed-term, and agency work arrangements that depart from the traditional model of full-time, indefinite, direct employment.

Standing offers one of the most influential conceptualisations, identifying precarious workers as members of the "precariat," a distinct social class defined by insecure labour, lack of occupational identity, and absence of social protection.[7] For Standing, precariousness is not incidental but represents a deliberate strategy of labour market deregulation, justified in the name of efficiency but resulting in growing inequality and the systematic transfer of risk from capital to labour. Kalleberg similarly frames non-standard work arrangements as encompassing fixed contracts, on-call work, part-time, and temporary work, jobs characterised by low income and insecure conditions that remain largely unprotected by mainstream labour regulation.[8]

The International Labour Organization situates precarious work within its broader discourse on "non-standard forms of employment" (NSFE), a category that includes part-time work, temporary work, fixed-term contracts, and triangular employment relationships such as those found in outsourcing and subcontracting arrangements.[9] The ILO maintains that while such arrangements can offer opportunities for labour market entry and flexibility, they frequently come at the expense of workers'

[7] G Standing, *The Precariat: The New Dangerous Class* (Bloomsbury Academic 2011) 10.
[8] A Kalleberg, cited in thesis literature review on non-standard work arrangements.
[9] International Labour Organization, 'Non-Standard Forms of Employment' (Report for Discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16–19 February 2015) <https://www.ilo.org> accessed June 2026.

rights and protections, particularly in the realisation of decent work objectives such as social protection and the right to organise.

Ryder situates the rise of precarious and informal employment within the broader crisis of decent work, arguing that its proliferation signifies the erosion of the post-war social contract between capital and labour.[10] This erosion, he contends, undermines the ILO's fundamental objective of securing work that delivers fair income, security, and dignity to all workers, regardless of contractual classification. Bauman, writing from a sociological perspective, situates precarious work within the broader transformation of modern work under "liquid modernity," in which permanence and predictability are displaced by instability and disposability, and the worker becomes a transient input governed by market volatility rather than a participant in a lifelong vocation.[11]

In jurisdictions such as Australia, South Africa, and the United Kingdom, precarious work manifests through casual employment, labour broking, zero-hours contracts, and agency work, each subject to distinct statutory definitions and regulatory responses. Australia's Fair Work Act, for instance, defines casual employment by reference to the absence of a "firm advance commitment to continuing and indefinite work," while South Africa's Labour Relations Act addresses precariousness through deeming provisions targeting labour broker placements and fixed-term contracts.[12] The United Kingdom's approach, by contrast, has been predominantly judicial, with courts applying multi-factor tests of control, mutuality of obligation, and

[10] G Ryder, *The Future of Work Centenary Initiative: Report of the Director-General* (International Labour Office 2019) 5.
[11] Z Bauman, *Liquid Modernity* (Polity Press 2000) 139.
[12] Fair Work Act 2009 (as amended) (Australia), s 15A; Labour Relations Act 66 of 1995 (as amended) (South Africa), s 198A.

personal service to determine whether ostensibly self-employed or casual workers are, in substance, entitled to statutory protection.

For the purposes of this article, precarious work and non-standard employment are treated as overlapping concepts describing the spectrum of employment arrangements that depart from the standard, indefinite, full-time employment relationship and that, by virtue of their structural characteristics, expose workers to heightened vulnerability, reduced bargaining power, and diminished access to legal protection. This conceptual framing is essential to understanding the comparative regulatory responses examined in this article and their relevance to the Nigerian context, where casualization and outsourcing have proliferated largely unchecked by clear statutory definition.

1.3. Triangular Employment Relationship

The triangular employment relationship describes a tripartite work arrangement in which a worker performs labour for the benefit of one entity, the user enterprise or client, while remaining formally and contractually engaged by a different entity, typically a labour contractor, labour broker, or temporary employment service. This structure fundamentally departs from the traditional bilateral model of employment, in which a single employer directly engages, controls, and bears legal responsibility for a worker, and instead disperses the employment relationship across multiple parties whose respective obligations are often unclear.

The International Labour Organization has been instrumental in conceptualising this arrangement, characterising it as one in which an "outsourced worker" of an enterprise, the provider, performs work for a third party, the user enterprise, to whom the provider supplies labour and services.[13] The ILO further distinguishes triangular arrangements from disguised employment relationships, the latter being structured deliberately to obscure the identity of the real employer or to deny the worker protections that would otherwise apply, an appearance given to the relationship that differs from the underlying economic reality, with the intention of nullifying or attenuating legal protection.[14]

Gilley and Rasheed describe this arrangement as involving the client company, the contracting firm, which essentially employs a worker and supplies that worker as a sort of merchandise to the secondary employer, and the outsourced employee, a framing that captures the commodification inherent in the triangular structure.[15] Vining and Globerman similarly observe that this arrangement poses considerable difficulty in determining the true employer between the labour contractor and the user enterprise, complicating the allocation of legal responsibility for wages, working conditions, and statutory benefits.[16]

The significance of the triangular relationship lies in its capacity to diffuse legal accountability. The entity that benefits economically from the worker's labour, the user enterprise, is rarely the entity that bears formal employment obligations, the labour contractor. This separation enables client enterprises to avoid statutory liabilities, including minimum wage compliance, termination protections, and union recognition, by pointing to the contractor as the legally responsible

[13] International Labour Organization, 'Non-Standard Forms of Employment' (Report for Discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16–19 February 2015) https://www.ilo.org accessed June 2026.
[14] ibid.
[15] K M Gilley and A Rasheed, 'Making More by Doing Less: An Analysis of Outsourcing and its Effects on Firm Performance' (2000) 26(4) *Journal of Management* 763.
[16] A Vining and S Globerman, 'A Conceptual Framework for Understanding the Outsourcing Decision' (1999) 17(6) *European Management Journal* 645.

party, even where the contractor itself may be undercapitalised or incapable of satisfying any judgment.[17]

Comparative jurisdictions have responded to this structural challenge through distinct legal mechanisms. South Africa's Labour Relations Act, through section 198A, deems a worker placed with a client by a labour broker for more than three months to be the employee of the client where the worker earns below a prescribed earnings threshold, directly addressing the accountability gap inherent in triangular arrangements.[18] The United Kingdom's Transfer of Undertakings (Protection of Employment) Regulations similarly intervene in triangular structures by preserving employees' contractual rights where a service provision change or business transfer occurs, ensuring continuity of employment despite a change in the formal employing entity.[19] Australia, by contrast, has addressed triangular arrangements principally through judicial imposition of liability on host employers for breaches committed by labour hire companies, as illustrated in *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd*.[20]

For Nigeria, the absence of any statutory "joint employer" doctrine within the Labour Act means that triangular arrangements remain a significant avenue through which employers evade obligations, a gap that comparative experience suggests can be remedied through deeming provisions, transfer regulations, or host-employer liability rules.

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[17] A Adebayo, 'Regulating the Practice of Labour Outsourcing in Nigeria: A Credible Path to Decent Work' (2025) 3 <https://papers.ssrn.com> accessed June 2026.
[18] Labour Relations Act 66 of 1995 (as amended by the Labour Relations Amendment Act 6 of 2014) (South Africa), s 198A.
[19] Transfer of Undertakings (Protection of Employment) Regulations 2006 (UK).
[20] *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* (2015) HCA 45.

1.4. International Labour Rights Theory

International Labour Rights Theory rests on the recognition that certain labour standards constitute universal human rights and should therefore transcend national boundaries and market considerations. It asserts that the protection of fundamental labour rights, including freedom of association, collective bargaining, the prohibition of forced and child labour, and non-discrimination in employment, is integral to human dignity and social justice. Rooted in both legal and moral philosophy, the theory seeks to reconcile economic globalisation with respect for basic human rights by establishing international norms that constrain the exploitation of labour, particularly in jurisdictions where domestic regulatory frameworks remain weak or underdeveloped.

Alston argues that labour rights are not merely economic entitlements but an inseparable component of the international human rights regime.[21] He maintains that the Universal Declaration of Human Rights 1948 and subsequent United Nations covenants recognise work as a source of personal fulfilment and social participation, thereby elevating labour protection to a matter of human dignity rather than a mere incident of contract. According to Alston, this normative foundation imposes on states and international institutions a duty to safeguard workers from conditions that offend human decency, irrespective of the contractual form under which work is performed.

Leary expands this discourse by examining the intersection between international labour standards and international trade, observing that the integration of markets under globalisation has intensified competition among states, creating incentives to weaken labour

[21] P Alston, cited in international labour rights scholarship on the human rights foundations of labour protection.

protections in order to attract investment.[22] She advocates for the embedding of core labour standards into trade agreements and the policies of international financial institutions, to ensure that economic liberalisation does not result in social regression for workers in developing economies such as Nigeria. Langille advances a more functional interpretation, conceptualising international labour rights as "public goods" that create a level playing field by preventing states and corporations from gaining unfair advantage through the exploitation of workers.[23] He links moral imperatives with economic rationality, arguing that minimum global standards prevent trade liberalisation from degenerating into a destructive race to the bottom in labour conditions.

The International Labour Organization provides the institutional backbone of this theory through its Declaration on Fundamental Principles and Rights at Work 1998, which articulates four core labour rights binding on all member states irrespective of ratification.[24] This normative framework has significantly influenced global labour governance, establishing benchmarks against which national compliance can be assessed, including the compliance of Australia, South Africa, the United Kingdom, and Nigeria with international labour standards.

For the purposes of this article, International Labour Rights Theory provides the normative lens through which the comparative regulatory responses of Australia, South Africa, and the United Kingdom are evaluated, and through which Nigeria's persistent compliance gaps are

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[22] V Leary, cited in scholarship on the intersection of international labour standards and international trade.
[23] B Langille, cited in scholarship conceptualising international labour rights as public goods.
[24] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (1998).

interrogated. The theory underscores that the protective mechanisms adopted by these comparator jurisdictions, including statutory conversion thresholds, deeming provisions, and substance-over-form judicial doctrines, are not merely domestic policy choices but instantiations of an emerging international consensus that precarious and triangulated work arrangements must not be permitted to extinguish fundamental labour rights. This theoretical foundation supports the article's central argument that Nigeria's labour law reform must be oriented not merely toward domestic policy convenience but toward genuine alignment with binding international labour standards.

2. LEGAL FRAMEWORK

2.1 Fair Work Act 2009 (as amended)

The Fair Work Act 2009, as substantially amended, constitutes Australia's principal statutory instrument governing employment relations and has undergone dramatic evolution in its treatment of casual employment. Section 15A, inserted by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021, originally defined casual employment by reference to the absence of a "firm advance commitment to continuing and indefinite work," assessed at the point of contract formation.[25] This contract-centred approach was endorsed by the High Court in *WorkPac Pty Ltd v Rossato*,[26] which held that contractual terms, rather than subsequent work patterns, determined casual status.

The pendulum swung decisively in the opposite direction through the Fair Work Legislation Amendment (Closing Loopholes) Act 2023 and its 2024 successor, which introduced a revised statutory definition restoring emphasis to the "real substance, practical reality and true nature" of the employment relationship, alongside a new "employee

[25] Fair Work Act 2009 (as amended) (Australia), s 15A.
[26] *WorkPac Pty Ltd v Rossato* (2021) 271 CLR 456.

choice pathway" permitting eligible casual employees to request conversion to permanent status.[27] The most significant reform, however, is the "Same Job, Same Pay" regime, empowering the Fair Work Commission to make Regulated Labour Hire Arrangement Orders requiring labour hire workers to be paid no less than comparable directly-employed workers, a mechanism that delivered substantial pay increases for coal-mine and aviation labour hire workers by 2025.[28]

2.2 Labour Relations Act 66 of 1995 (as amended, 2014)

The Labour Relations Act 66 of 1995 (LRA) is the primary instrument governing employment relations in South Africa, with sections 197, 198, 198A, 198B, 198C, and 198D, as substantially amended by the Labour Relations Amendment Act 6 of 2014, forming the critical provisions addressing outsourcing and casualisation.[29] Section 197 governs the transfer of a business as a going concern, automatically transferring employment contracts to a new employer where a transfer occurs, a provision interpreted expansively by the Constitutional Court in *National Education Health & Allied Workers Union v University of Cape Town*.[30]

Section 198A, the most transformative provision introduced by the 2014 amendments, deems a worker placed by a Temporary Employment Service with a client for more than three months, and earning below the prescribed earnings threshold, to be the employee of

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[27] Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Australia).
[28] ibid.
[29] Labour Relations Act 66 of 1995 (as amended by the Labour Relations Amendment Act 6 of 2014) (South Africa), ss 197, 198, 198A-D.
[30] *National Education Health & Allied Workers Union v University of Cape Town and Others* (2003) 2 BLLR 154 (CC).

the client.[31] This provision's constitutional validity was confirmed in the landmark *Assign Services* judgment.[32] Section 198B similarly deems fixed-term employees engaged beyond three months without justifiable reason to be permanent employees, while section 198C extends equal treatment obligations to part-time workers.[33]

2.3 Basic Conditions of Employment Act 75 of 1997

The Basic Conditions of Employment Act 75 of 1997 (BCEA) imposes minimum conditions of employment, including maximum working hours, leave entitlements, and notice periods, applicable to all employees regardless of the form of their employment arrangement.[34] Casualised workers employed below the earnings threshold prescribed under section 6(3) are entitled to a maximum of forty-five ordinary working hours per week, twenty-one consecutive days of annual leave, sick and maternity leave, written particulars of employment, and severance pay calculated at one week per completed year of service in cases of operational requirements dismissal.[35]

The earnings threshold under section 6(3) is significant because it operates as the trigger for several of the LRA's deeming provisions, including section 198A, meaning the BCEA and LRA function as an interlocking regulatory system targeting protection specifically at the most vulnerable, lower-paid non-standard workers, rather than spreading thin protection indiscriminately across the entire workforce.[36] This targeted approach contrasts markedly with Nigeria's

[31] Labour Relations Act 66 of 1995 (South Africa), s 198A.
[32] *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others* (2018) ZACC 22.
[33] Labour Relations Act 66 of 1995 (South Africa), ss 198B-C.
[34] Basic Conditions of Employment Act 75 of 1997 (South Africa).
[35] Basic Conditions of Employment Act 75 of 1997 (South Africa), s 6(3).
[36] ibid.

Labour Act, which applies a blanket and narrow definition of "worker" without any income-based differentiation.

2.4 Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006

The Transfer of Undertakings (Protection of Employment) Regulations 2006 constitute the United Kingdom's principal legislative instrument protecting employees' contractual rights where a transfer of a business undertaking or a service provision change occurs.[37] TUPE regulates the impact of outsourcing on employment continuity, ensuring that employees' existing contractual terms are preserved and providing protection against dismissal for transfer-connected reasons. The Regulations place duties on both transferors and transferees to disclose information regarding employee liabilities and to fulfil consultation obligations prior to any transfer.[38]

TUPE's significance lies in its direct address of the accountability gap inherent in outsourcing: where a client enterprise terminates an outsourcing arrangement and engages a new service provider, TUPE generally operates to transfer affected employees, along with their accrued rights, to the incoming contractor, preventing employers from using contractual restructuring as a means of stripping away employment protections.[39] This stands in marked contrast to the Nigerian position, where no equivalent statutory mechanism exists to protect workers upon a change of outsourcing contractor.

2.5 Employment Rights Act 1996

Section 230 of the Employment Rights Act 1996 defines "employee" and supplies the statutory context for unfair dismissal, redundancy,

[37] Transfer of Undertakings (Protection of Employment) Regulations 2006 (UK).
[38] ibid.
[39] ibid.

and related employment protections in the United Kingdom.[40] However, the comparatively open-textured language of the statute has historically generated extensive litigation over employment status, prompting UK courts to develop reality-based, multi-factor tests of control, mutuality of obligation, personal service, and integration, as articulated in *Autoclenz Ltd v Belcher* and applied subsequently in *Pimlico Plumbers Ltd v Smith* and *Uber BV v Aslam*.[41]

The Employment Rights Act 2025, which received Royal Assent, introduces twenty-eight major employment law reforms to be phased in through 2027, including restrictions on "fire and rehire" practices now treated as automatically unfair dismissal, a reduction of the unfair dismissal qualifying period from two years to six months, and new rights for zero-hours and low-hours workers to be offered guaranteed hours reflecting their actual worked pattern, extending critically to agency workers.[42] The Act also establishes the Fair Work Agency, a single enforcement body empowered to enforce minimum wage, holiday pay, and agency worker protections.

2.6 ILO Convention No. 181 on Private Employment Agencies, 1997

ILO Convention No. 181 on Private Employment Agencies 1997 establishes a regulatory framework for private employment agencies and labour-hire intermediaries, including their licensing, the prohibition of fee-charging to workers for placement, and the allocation of responsibility between agency and user enterprise for matters such as wages, social security, and occupational safety.[43] For many years, Nigeria had not ratified this Convention; however,

[40] Employment Rights Act 1996 (UK), s 230.
[41] *Autoclenz Ltd v Belcher* (2011) UKSC 41; *Pimlico Plumbers Ltd v Smith* (2018) UKSC 29; *Uber BV v Aslam* (2021) UKSC 5.
[42] Employment Rights Act 2025 (UK).
[43] ILO Convention (No. 181) on Private Employment Agencies 1997.

Nigeria has since become the thirty-eighth country to ratify Convention No. 181, alongside the Migrant Workers (Supplementary Provisions) Convention 1975, a development the ILO has described as a "game-changer," chiefly in the context of migrant labour governance and bilateral labour agreements.[44]

The Convention's significance for comparative analysis lies in its direct relevance to the triangular employment relationships examined throughout this article. By mandating the licensing of labour intermediaries and clarifying the allocation of statutory responsibility between agencies and client enterprises, Convention No. 181 provides an international benchmark against which Nigeria's continuing failure to regulate labour broking and outsourcing firms can be measured.

2.7 ILO Recommendation No. 198 on Employment Relationship, 2006

ILO Recommendation No. 198 on the Employment Relationship 2006 addresses precisely the problem of disguised and ambiguous employment relationships that lie at the heart of casualization and outsourcing globally.[45] The Recommendation urges member states to formulate a national policy for reviewing and clarifying the scope of laws relevant to the employment relationship, to combat disguised employment, and to ensure that national laws determine the existence of an employment relationship primarily by reference to the facts of the work actually performed and the remuneration received, irrespective of how the relationship is characterised in any contrary contractual arrangement.[46]

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[44] International Labour Organization, statement on Nigeria's ratification of Convention No. 181 <https://www.ilo.org> accessed 11 June 2026.

[45] ILO Recommendation (No. 198) on the Employment Relationship 2006.

[46] ibid.

Being a Recommendation rather than a Convention, it is not subject to ratification and creates no binding international obligation. Its force in Nigeria depends entirely on the persuasive use the National Industrial Court of Nigeria chooses to make of it in individual cases, rather than on any systematic legislative implementation of the kind the Recommendation itself calls for, a position that contrasts sharply with the statutory codification of the "primacy of facts" principle achieved through judicial doctrine in the United Kingdom and through deeming provisions in South Africa.

3. COMPARATIVE ANALYSIS: REGULATION OF PRECARIOUS WORK IN AUSTRALIA, SOUTH AFRICA AND THE UNITED KINGDOM

3.1. Australia: Casualization, The Fair Work Act, And Judicial Developments

Australia's deregulation of its labour market in the 1990s widened the gap between permanent and casual employees, and the country is now recognised as having the second largest casual workforce after Spain, with casual employment its fastest-growing employment form.[47] Employers adopt casualization and outsourcing strategies primarily to reduce costs, increase flexibility, and respond to global competition, transferring non-core functions to third-party contractors to lower overheads associated with training and statutory benefits.[48]

The Fair Work Act 2009 provides a statutory definition of casual employment emphasising the absence of a firm advance commitment to continuing and indefinite work, while opening a pathway for workers engaged for more than twelve months to request conversion to

[47] E E Anugwon, 'Globalization and Labour Utilisation in Nigeria: A Study of the Manufacturing Sector' (2007) 19(2) *African Development Review* 382.

[48] K M Gilley and A Rasheed, 'Making More by Doing Less: An Analysis of Outsourcing and its Effects on Firm Performance' (2000) 26(4) *Journal of Management* 763.

permanent employment.[49] Australian jurisprudence on this question has oscillated dramatically: the Federal Court held in *WorkPac Pty Ltd v Skene* that casual status depended on the real substance and practical reality of the relationship, a position subsequently displaced by Parliament's insertion of section 15A, which the High Court endorsed in *WorkPac Pty Ltd v Rossato* by emphasising contractual terms over actual work patterns.[50] Legislative reform in 2023 and 2024 restored emphasis to substantive reality, alongside introducing an "employee choice pathway" for conversion.[51]

The most consequential recent development is the "Same Job, Same Pay" regime, empowering the Fair Work Commission to mandate that labour hire workers receive pay parity with directly-employed comparators, a mechanism that delivered pay increases of up to AUD 40,000 annually for coal-mine labour hire workers by 2025.[52] Courts have also imposed liability on host employers for breaches by labour hire companies, as in *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd*, addressing the accountability diffusion characteristic of triangular employment.[53]

3.2. South Africa: Labour Broking, the LRA Amendments of 2014, and the Assign Services Judgment

Labour broking, involving a three-party arrangement between a Temporary Employment Service, a client company, and a placed worker, has been instrumental to the rise of casualisation in South Africa. Prior to the 2014 amendments, this arrangement was frequently

[49] Fair Work Act 2009 (as amended) (Australia), s 15A.
[50] *WorkPac Pty Ltd v Skene* (2018) FCAFC 131; *WorkPac Pty Ltd v Rossato* (2021) 271 CLR 456.
[51] Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Australia).
[52] ibid.
[53] *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* (2015) HCA 45.

used to insulate client companies from employer obligations, prompting sustained protest from COSATU, which argued that the system promoted low wages and exploitative conditions.[54]

The Labour Relations Amendment Act 6 of 2014 introduced section 198A, deeming a worker placed by a TES with a client for more than three months, earning below the BCEA threshold, to be the employee of the client.[55] This provision's interpretation was contested in *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others*, where the Constitutional Court resolved the dispute in favour of the "sole employer" interpretation, holding that an employee contracted through a labour broker for more than three months becomes the employee of the client firm on the same terms as comparable employees.[56] This judgment is now the definitive authority on labour broking in South Africa.

Section 198B similarly addresses fixed-term contracts, deeming employees engaged beyond three months without justifiable reason to be permanent, while section 200A creates a rebuttable presumption of employment based on indicators such as supervision and control.[57] Together, these provisions form a coherent anti-avoidance architecture extending statutory protection to South Africa's most vulnerable non-standard workers, with the burden of proof regarding justifiability resting squarely on the employer.

3.3. United Kingdom: TUPE, Employment Status Jurisprudence, and the Employment Rights Act 2025

[54] Congress of South African Trade Unions, position on Temporary Employment Services, cited in South African labour relations scholarship.
[55] Labour Relations Act 66 of 1995 (South Africa), s 198A.
[56] *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others* (2018) ZACC 22.
[57] Labour Relations Act 66 of 1995 (South Africa), ss 198B, 200A.

The United Kingdom labour market has witnessed extensive reliance on contracts, agency workers, zero-hours arrangements, and outsourced supply chains. The Transfer of Undertakings (Protection of Employment) Regulations 2006 protect employees' contractual rights where a business transfer or service provision change occurs, ensuring continuity of employment terms and protection against transfer-connected dismissal.[58]

UK courts have developed a sequence of important decisions clarifying how tribunals approach the factual reality of working relationships. In *Autoclenz Ltd v Belcher*, the Supreme Court emphasised the primacy of factual reality over written contractual labels, particularly where bargaining power is unequal.[59] In *Pimlico Plumbers Ltd v Smith*, the Court found a plumbing operative to be a "worker" entitled to statutory protection despite contractual provisions suggesting self-employment. Most significantly, in *Uber BV v Aslam*,[60] the Supreme Court concluded that Uber drivers are "workers" entitled to minimum wage and paid holiday rights, rejecting a purely contractual approach that would permit platforms to label drivers as independent contractors where the underlying reality is one of dependency and control.[61]

The Employment Rights Act 2025 introduces twenty-eight major reforms phased through 2027, including treating "fire and rehire" practices as automatically unfair dismissal, reducing the unfair dismissal qualifying period to six months, and granting zero-hours and agency workers' rights to guaranteed hours and compensation for late

[58] Transfer of Undertakings (Protection of Employment) Regulations 2006 (UK).
[59] *Autoclenz Ltd v Belcher* (2011) UKSC 41.
[60] *Pimlico Plumbers Ltd v Smith* (2018) UKSC 29.
[61] *Uber BV v Aslam* (2021) UKSC 5.

shift cancellation, alongside establishing the Fair Work Agency as a unified enforcement body.[62]

4. COMPARATIVE SYNTHESIS: CONVERGENCES, DIVERGENCES AND TRANSFERABLE MODELS

The comparative analysis reveals significant convergence among Australia, South Africa, and the United Kingdom in their rejection of purely contractual approaches to determining employment status, each jurisdiction favouring substance over form, albeit through different institutional mechanisms. Australia and the United Kingdom rely predominantly on judicial doctrine, examining the real substance and practical reality of the relationship, while South Africa achieves the same substantive outcome through legislative deeming provisions that operate automatically upon satisfaction of statutory criteria.[63]

A key divergence lies in the mechanism of protection. Australia's "Same Job, Same Pay" regime directly addresses wage suppression through binding pay-parity orders, a mechanism without direct equivalent in South Africa or the UK.[64] South Africa's section 198A deeming provision offers the most direct solution to the accountability diffusion inherent in triangular employment, converting the client into the sole employer after a fixed temporal threshold.[65] The UK's TUPE Regulations, by contrast, address continuity of employment specifically in the context of business transfers and service provision changes, rather than ongoing labour hire arrangements.[66]

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[62] Employment Rights Act 2025 (UK).
[63] Comparative synthesis drawn from the Fair Work Act 2009 (Australia), Labour Relations Act 66 of 1995 (South Africa), and judicial doctrine under the Employment Rights Act 1996 (UK).
[64] Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Australia).
[65] Labour Relations Act 66 of 1995 (South Africa), s 198A.
[66] Transfer of Undertakings (Protection of Employment) Regulations 2006 (UK).

All three jurisdictions have moved toward institutional consolidation of enforcement, exemplified by the UK's new Fair Work Agency and Australia's empowered Fair Work Commission, suggesting that effective regulation of precarious work requires not merely substantive legal rules but a well-resourced, centralised enforcement architecture, a lesson of direct relevance to Nigeria's chronically underfunded labour inspectorate.[67]

5. SHARED CHALLENGES ACROSS JURISDICTIONS

Despite their comparatively advanced regulatory frameworks, Australia, South Africa, and the United Kingdom continue to confront challenges strikingly similar to those facing Nigeria, namely misclassification, fragmented responsibility in supply chains, weak enforcement, and the novel challenges emanating from gig and platform work.[68] In Australia, the High Court's endorsement of contractual labels in *WorkPac Pty Ltd v Rossato*[69] demonstrated the danger of leaving the definition of "casual" to be settled purely by contractual characterisation without a substance-based safety valve, since this approach permits employers to draft around protective legislative intent.

In South Africa, despite the 2014 amendments, deep structural problems persist: a significant number of workers in informal, casual, or non-standard employment remain outside the reach of the LRA, undermining its central objective of extending fair labour practices to all workers.[70] In the United Kingdom, while judicial decisions have

[67] Employment Rights Act 2025 (UK).
[68] Comparative analysis drawn from Fair Work Act 2009 (Australia), Labour Relations Act 66 of 1995 (South Africa), and Employment Rights Act 1996 (UK) jurisprudence.
[69] *WorkPac Pty Ltd v Rossato* (2021) 271 CLR 456.
[70] Labour Relations Act 66 of 1995 (South Africa).

shifted the balance toward substantive, reality-based assessments, legal uncertainty, enforcement gaps, and the fragmentation of work through outsourcing remain pressing challenges, with many workers falling outside robust coverage or lacking practical access to remedies.[71]

These shared challenges suggest that even sophisticated regulatory frameworks cannot fully eliminate the structural pressures generated by global competition and corporate cost-cutting, underscoring the importance of continuous legislative refinement and well-resourced enforcement institutions, lessons of direct relevance to any Nigerian reform effort.

6. LESSONS AND POLICY TRANSPLANTS FOR NIGERIA

Drawing on the comparative experience of Australia, South Africa, and the United Kingdom, this article identifies four transplantable policy models for Nigerian labour law reform. First, definitional reform: Nigeria's Labour Act, which defines "worker" narrowly under section 91, should be amended to include a clear, purposive definition of casual and temporary employment, modelled on Australia's section 15A focus on the absence of a firm advance commitment to continuing work.[72]

Second, conversion rules: South Africa's three-month deeming threshold under section 198A offers a transplantable model for Nigeria, which already has a de facto practice of long-term casual re-engagement, and should adopt an explicit anti-avoidance clause and conversion timeline, such as a six-month conversion rule, to give employers a clear compliance horizon.[73] Third, equal treatment

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[71] Employment Rights Act 1996 (UK); *Uber BV v Aslam* (2021) UKSC 5.
[72] air Work Act 2009 (as amended) (Australia), s 15A; Labour Act Cap L1, LFN 2004, s 91.
[73] Labour Relations Act 66 of 1995 (South Africa), s 198A.

obligations: South Africa's BCEA earnings-threshold model demonstrates the practical viability of targeting statutory protection at the most vulnerable, lower-paid non-standard workers, while the UK's reality-over-contract doctrine could usefully be codified as an explicit statutory rule in Nigeria's Labour Act rather than left to inconsistent judicial application.[74]

Fourth, enforcement architecture: the United Kingdom's creation of the Fair Work Agency as a single, well-resourced enforcement body directly addresses the enforcement-capacity gap identified as a central weakness of Nigeria's Federal Ministry of Labour's inspectorate division, providing a concrete institutional template Nigeria could adapt.[75] Taken together, these four reforms offer Nigeria a coherent, internationally-tested pathway toward reconciling labour market flexibility with the protection of its most vulnerable workers.

7. FINDINGS

This comparative study finds that Australia, South Africa, and the United Kingdom have each developed substantive legal mechanisms, whether statutory or judicial, to address the structural vulnerabilities inherent in precarious and triangular employment, a regulatory sophistication wholly absent from Nigeria's Labour Act. Australia's evolution from contract-based to substance-based casual employment tests, culminating in the "Same Job, Same Pay" regime, demonstrates the practical viability of statutory pay-parity mechanisms directly analogous to the equal-pay-for-equal-work principle already latent, but unenforced, in section 17(3)(e) of the Nigerian Constitution.[76]

[74] Basic Conditions of Employment Act 75 of 1997 (South Africa); *Autoclenz Ltd v Belcher* (2011) UKSC 41.
[75] Employment Rights Act 2025 (UK).
[76] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(3)(e).

South Africa's section 198A deeming provision demonstrates the practical viability of a bright-line temporal trigger, namely three months, for automatic deeming of employment status, replacing Nigeria's open-ended and judicially contested approach to determining employer identity in triangular arrangements.[77] The United Kingdom's reality-over-contract doctrine, articulated in *Autoclenz* and *Uber*, provides an internationally tested articulation of the "primacy of facts" principle that Nigerian courts already gesture toward through inconsistent multiple-factor tests, but which remains uncodified in statute.[78]

Collectively, these findings confirm that Nigeria's continuing reliance on judicial improvisation, rather than legislative codification, to address casualization represents a significant regulatory deficit relative to its comparator jurisdictions, each of which has embedded substantive protections directly into statute rather than leaving them to inconsistent case-by-case adjudication.

8. CONCLUSION

This article has undertaken a comparative analysis of the legal frameworks governing precarious work in Australia, South Africa, and the United Kingdom, with a view to identifying transplantable lessons for Nigerian labour law reform. The findings demonstrate that each comparator jurisdiction has developed substantive mechanisms, whether through statutory deeming provisions, pay-parity regimes, or reality-based judicial doctrine, to address the structural vulnerabilities inherent in casualization and triangular employment, a sophistication conspicuously absent from Nigeria's Labour Act. While Australia, South Africa, and the United Kingdom continue to confront persistent challenges of misclassification and enforcement, their comparative

[77] Labour Relations Act 66 of 1995 (South Africa), s 198A.
[78] *Autoclenz Ltd v Belcher* (2011) UKSC 41; *Uber BV v Aslam* (2021) UKSC 5.

experience nonetheless offers Nigeria a coherent and internationally-tested template for reform. The article concludes that Nigeria's continued reliance on judicial improvisation, absent legislative codification, represents an unsustainable approach to regulating its rapidly expanding precarious workforce, and that deliberate statutory reform, informed by these comparative lessons, is now an urgent imperative.

9. RECOMMENDATIONS

i. Adopt a statutory conversion threshold modelled on South Africa's section 198A: The Labour Act should be amended to deem casual or outsourced workers engaged continuously for a defined period, such as three to six months, as employees of the user enterprise, eliminating the accountability gap inherent in Nigeria's triangular employment arrangements.

ii. Codify the primacy-of-facts doctrine, modelled on UK jurisprudence: Nigeria should statutorily entrench the substance-over-form principle articulated in *Autoclenz* and *Uber*, requiring courts and tribunals to determine employment status by reference to the actual conduct and economic reality of the relationship rather than contractual labels alone.

iii. Establish a unified, well-resourced labour enforcement agency, modelled on the UK's Fair Work Agency: Nigeria's Federal Ministry of Labour's inspectorate division should be restructured into a single, adequately funded enforcement body empowered to monitor compliance, investigate violations, and bring claims on behalf of casual and outsourced workers.